

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF: )

K. K. C. )

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) OAH No. 04-0156-CSS  
) CSSD NO. 001105531  
) DOR NO. 040758  
)

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor K. K. C.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 6, 2004. The Obligee child is O., DOB 00/00/01.

The formal hearing was held on January 4, 2005. Mr. C. appeared in person; the Custodian, M. D. Z., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 14, 2005.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, was appointed to hear this appeal by the Chief Administrative Law Judge, Terry L. Thurbon. Having reviewed the record in this case and after due deliberation, I have concluded Mr. C.'s appeal should be granted. His child support should be calculated from his actual income.

**II. Facts**

**A. History**

Mr. C.'s child support was set at \$298 per month in September 2002.<sup>1</sup> Ms. Z. initiated modification on July 16, 2004.<sup>2</sup> On July 22, 2004, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On October 6, 2004, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. C.'s modified ongoing child support at \$458 per month, effective August 2004.<sup>4</sup> The calculation is based on the wages Mr. C. received during the four consecutive quarters from the third quarter of 2003 through the

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<sup>1</sup> Pre-Hearing Brief at pg. 1.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 4.

second quarter of 2004.<sup>5</sup> Mr. C. filed an appeal on October 22, 2004.<sup>6</sup> On November 9, 2004, CSSD issued an Amended Modified Administrative Child Support and Medical Support Order that revised the child support calculation to \$538 per month, adding an \$80 medical debit to the previously calculated amount of \$458 per month.<sup>7</sup>

At the formal hearing, Mr. C. stated CSSD's calculation is incorrect because he no longer earns the income he received in his previous employment. Mr. C. testified he has moved out of Alaska and is currently attending college in Minnesota, where he is pursuing a law-enforcement degree. Mr. C. stated he left Alaska in the summer of 2004, and began school in August 2004. He stated he has always wanted to be a police officer, but he needs a two-year associate of arts degree to be qualified. He said he has completed one year of college, and now has one year remaining, at which point he will begin looking for suitable employment in the law-enforcement field. Mr. C. said obtaining a job as a police officer should significantly increase his income.

Mr. C. further testified he is using funding from the GI Bill to pay for school. He said he receives \$1100 per month, which is slated to be used for tuition and living expenses. In addition to attending school, Mr. C. stated he is employed at a community mental health facility, where he earns \$10.50 per hour for 32 hours of work per week.

After the hearing, CSSD filed a Post Hearing Brief in which the agency stated it verified through Internet sources that when he receives his two-year degree, it appears that Mr. C. will be qualified to apply for a police officer position in Minnesota. CSSD then recalculated Mr. C.'s child support obligation using the actual income he began receiving in mid-2004. CSSD used wages of \$10,742.16, plus the PFD and Mr. C.'s GI Bill funds to determine his total annual income is \$23,573.02, which yields a child support calculation of \$393 per month.<sup>8</sup>

## **B. Findings**

Based on the evidence in the record and after due consideration, I hereby find:

1. As required by 15 AAC 05.030(h), Mr. C. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect;

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<sup>5</sup> Exh. 4.

<sup>6</sup> Exh. 6.

<sup>7</sup> Exh. 7.

<sup>8</sup> Exh. 10 at pg. 1. Mr. C. received a PFD for 2004.

2. Mr. C. is currently working and pursuing a two-year college degree, after which he will be eligible to apply for a police officer position and increase his annual income;

3. CSSD correctly calculated Mr. C.'s modified child support amount at \$393 per month based on his actual income.

### **III. Discussion**

The issue raised in this appeal is whether CSSD used the correct income figure to calculate Mr. C.'s modified child support amount. A parent is obligated both by statute and at common law to support his or her children.<sup>9</sup> Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources."

Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>10</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established.

A parent's child support obligation should be calculated using the income he or she receives during the time period the child support is to be paid.<sup>11</sup> The calculation is somewhat speculative because the issue concerns the parent's expected future income. Civil Rule 90.3 recognizes that all the evidence must be evaluated in order to make the best possible determination.<sup>12</sup>

Mr. C. presented credible testimony that he left Alaska to pursue a law-enforcement degree, which will enable him to become a police officer. Beginning in August 2004, Mr. C. began working part-time and receiving funds from his GI Bill to finance his college classes. This income should be used to determine his modified child support amount. His previous employment should not be the basis of his modified ongoing child support obligation.

### **IV. Conclusion**

Mr. C. met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect. His modified child support amount should be calculated from his actual income, which results in a child support amount of \$393 per month. This figure should be adopted.

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<sup>9</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> Civil Rule 90.3, Commentary III.E.

<sup>12</sup> *Id.*

**V. Child Support Order**

- Mr. C. is liable for modified child support in the amount of \$393 per month, effective August 2004, and ongoing.

DATED this 1st day of June, 2005.

By: Signed  
Kay L. Howard  
Administrative Law Judge

**Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry L. Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of K. K. C. be adopted as of this date and entered in the file as the final administrative determination in this appeal.

Under AS 25.27.062 and AS 25.27.250 the Obligor's income and property are subject to an order to withhold. Without further notice, a withholding order may be served on any person, political subdivision, department of the State or other entity.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 1st day of June, 2005.

By: Signed  
Terry L. Thurbon  
Chief Administrative Law Judge

[This document has been modified to conform to technical standards for publication.]