

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

IN THE MATTER OF: )

J. D. H. )

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) OAH No. 04-0207-CSS  
) CSSD NO. 001106129  
) DOR NO. 040811  
)

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor J. D. H.'s appeal of a Modified Administrative Child Support and Medical Support Order the Child Support Services Division (CSSD) issued in his case on October 28, 2004. The Obligee children are D., DOB 00/00/01, and B., DOB 00/00/02.

The formal hearing was held on January 25, 2005. Mr. H. appeared by telephone; the Custodian, Candace K. H., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on January 25, 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. H.'s appeal should be denied and CSSD's Modified Administrative Child Support and Medical Support Order should be affirmed.

**II. Facts**

**A. History**

Mr. H.'s previous support order was set at \$695 per month for the child D. in 2002.<sup>1</sup> Mr. H. requested a modification on June 1, 2004.<sup>2</sup> On June 4, 2004, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On October 28, 2004, CSSD issued a Modified Administrative Child Support and Medical Support Order. The modified order added the child B. to Mr. H.'s previous order for D. and charged Mr. H. \$938 per month for two children from April 2004 through June 2004, based on the 2002 child support order. The

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<sup>1</sup> Exh. 4 at pg. 1.

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

<sup>3</sup> Exh. 1 at pg. 2.

order also set modified ongoing child support at \$50 per month, effective July 1, 2004.<sup>4</sup> Mr. H. filed an appeal on November 18, 2004.<sup>5</sup>

At the beginning of the formal hearing, CSSD was asked to explain its calculations and the actions it took regarding Mr. H.'s child support obligation because of the confusing nature of the case. CSSD explained that in 2002, Mr. H.'s previous support order was set at \$695 per month for his oldest child, D. The order was not being enforced in 2004 because Ms. H. had withdrawn from enforcement services. However, in April 2004, Ms. H. applied for and began receiving public assistance benefits, which reactivated Mr. H.'s child support order for D. CSSD added the younger child B. to D.'s order, then charged Mr. H. \$938 per month as of April 2004 for two children instead of one child. CSSD said the increased amount represents the support level for two children based on Mr. H.'s income at the time the original order was set.

CSSD further explained that Mr. H. applied for a modification in June 2004, which resulted in CSSD modifying the case as of July 2004 to \$50 per month, based on Mr. H.'s incarceration and lack of income. CSSD said Mr. H. was charged \$938 per month for two children only for the months of April 2004 through June 2004, because, as of July 2004, his child support obligation has been modified to \$50 per month.

Mr. H. claimed he should be paying support of only \$50 per month for all the time periods involved in this case. He testified he was arrested on a domestic violence charge that Ms. H. filed against him in August 2003. Mr. H. stated the judge set his child support at \$50 per month because he was incarcerated at the time and would remain in jail for an indefinite period. CSSD provided a copy of the temporary child support order.<sup>6</sup>

Mr. H. further claimed CSSD was charging him support based on a "default" income amount from a prior time when he was still working. Since then, however, Mr. H. said he has been incarcerated and unable to work. Mr. H. claimed he had been requesting a modification of his order since April 2004, but CSSD did not send him a modification packet until June 3, 2004. As a result, he has large arrears he would not have incurred if CSSD had sent him a modification packet in a timely manner, or the modification became effective when he first requested it.

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

<sup>5</sup> Exh. 7.

<sup>6</sup> Exh. 8.

As evidence of his attempts to obtain a modification as early as April 2004, Mr. H. provided copies of letters he sent to CSSD dated April 27, 2004, and May 17, 2004. In the first letter, Mr. H. stated he was confused that CSSD had raised his child support because the court had ordered him to pay \$50 per month.<sup>7</sup> The second letter outlined Mr. H.'s circumstances and his inability to obtain financial information to send CSSD because of his incarceration.<sup>8</sup> Mr. H. said he knows CSSD got the first letter because he sent it from jail and CSSD's subsequent letters were addressed to him at the jail address.

Mr. H. further testified that after he was released from jail, he personally went to CSSD in January 2004 or February 2004 to discuss his case. Mr. H. said he told CSSD's staff that he was not working because the judge had ordered him not to work. In an attempt to get verification of his legal status, he said he asked his attorney to write a letter to CSSD, but she never did send one. Mr. H. said on March 8, 2004, he was arrested again and has remained in jail ever since. For all of these reasons, Mr. H. said he could not document his income, so CSSD must have used a default income amount to set his child support obligation.

## **B. Findings**

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

1. Mr. H. did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h);
2. D. and B. began receiving public assistance benefits in April 2004;
3. Mr. H. submitted a request for modification to CSSD on June 1, 2004;
4. CSSD sent notice of the request to both Mr. H. and Ms. H. on June 4, 2005;
5. The effective date of the modification is July 1, 2004;
6. Mr. H. was incarcerated as of March 2004, so his income for purposes of the modification is below the federal poverty level;
7. Mr. H.'s modified child support is correctly calculated at \$50 per month, effective July 1, 2004;

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<sup>7</sup> Exh. 7 at pgs. 23-26.

<sup>8</sup> Obligor's Exh. B.

8. Mr. H.'s arrears of \$938 per month for two children for April 2004 through June 2004 are based on his original child support order, which was in effect at the time D. and B. began receiving public assistance benefits.

### **III. Analysis**

Mr. H.'s child support was set at \$695 per month for D. in 2002, but enforcement of the order was subsequently suspended. After D. and younger sibling B. began receiving public assistance benefits in April 2004, CSSD reactivated the order for D., added B. and charged Mr. H. \$938 per month for both children for April 2004 through June 2004. As of July 2004, CSSD modified Mr. H.'s ongoing child support obligation to \$50 per month, based on his incarceration.

#### **A. Effective Date of the Modification**

Mr. H. claims CSSD did not respond to his request for a modification in a timely manner, which delayed the modification by three months and increased his support obligation to \$938 per month for April 2004 through June 2004. Under Civil Rule 90.3(h)(2), a child support order may not be modified retroactively. CSSD's regulations state that the effective date of a modification is the first day of the month after the nonrequesting party is served with notice of the petition for modification.<sup>9</sup>

Mr. H. and CSSD exchanged correspondence about the child support case and his expired support order from the domestic violence case during April 2004 and May 2004. The record does not reveal when CSSD sent Mr. H. a modification packet to complete and send in, but he wrote the date May 29, 2004 on it when he filled it out, and CSSD received it on June 1, 2004.<sup>10</sup> CSSD subsequently sent both parties a notice of the request for modification on June 4, 2004.<sup>11</sup> Pursuant to CSSD's regulations, the modification is effective as of July 1, 2004, so that is the date Mr. H.'s child support order should be modified for both children to the amount of \$50 per month, based on his incarceration and lack of income at the time.

#### **B. Mr. H.'s Income**

Mr. H. claims that CSSD used his former income while he was working to calculate his arrears for D. and B. from April 2004 through June 2004. CSSD asserted Mr. H.'s original child

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<sup>9</sup> 15 AAC 125.321(d).

<sup>10</sup> Exh. 2.

<sup>11</sup> Exh. 1 at pg. 2.

support order for D. was the basis for calculating Mr. H.'s arrears for April 2004 through June 2004, not any recalculation of his income.

CSSD is correct on this issue. CSSD did not perform another calculation in order to set up Mr. H.'s child support obligation for D. and B. when they began receiving public assistance benefits. Mr. H. already had a valid child support order in place for D., based on Mr. H.'s income in 2002. Because a modification had not yet been requested, CSSD merely reactivated that order and added the appropriate figure for a second child to the original support amount for D.

Mr. H. argues CSSD used "default" income information to set up his order for D. and B., but that is not the case. "Default" income information refers to averaged income figures for particular industries or age and gender categories of workers provided by the Alaska Department of Labor. CSSD occasionally has to obtain this information in order to calculate a parent's income when that person's actual income amount is not provided or available.<sup>12</sup> In this case, CSSD did not make any determination of Mr. H.'s income, nor did it need to, because CSSD already had a valid child support order in place for D. when both children began receiving public assistance benefits in April 2004. The order was not being enforced at the time because Ms. H. had withdrawn from CSSD's collection services, but it was still a valid order, and CSSD was required to reactivate it when public assistance began to be paid for the children.

CSSD did use Mr. H.'s current income information for the modification. CSSD calculated his ongoing child support amount at the minimum amount of \$50 per month, based on his incarceration and lack of income. When Mr. H. is released from jail and obtains employment, he should contact CSSD staff to initiate a modification of his child support order from the minimum amount.

#### **IV. Conclusion**

Mr. H. had a valid, though suspended, child support order of \$695 per month for D. in place when D. and B. began receiving public assistance benefits in April 2004. CSSD reactivated Mr. H.'s child support order, included B. in the order and added the support amount for one additional child from the original calculation. The resulting support amount for two children was \$938 per month. Mr. H. requested a modification that became effective in July 2004, and CSSD set his modified child support at \$50 per month for both children based on Mr.

H.'s incarceration and lack of income. The arrears of \$938 per month for two children apply just to the months of April 2004 through June 2004.

Mr. H. did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. CSSD's order should be affirmed.

Accordingly, I issue the following child support order:

**III. Child Support Order**

1. The October 28, 2004, Modified Administrative Child Support and Medical Support Order is affirmed.
2. Mr. H. is liable for modified ongoing child support in the amount of \$50 per month, effective July 1, 2004.
3. Mr. H. remains liable for child support of \$938 per month for two children from April 2004 through June 2004 pursuant to his previous child support order in effect as of April 2004.

DATED this 5th day of April, 2005.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>12</sup> 15 AAC 125.050

**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 J. D. H. be adopted as of this date and entered in his 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 5th day of April, 2005.

By: Signed \_\_\_\_\_

Terry L. Thurbon  
Chief Administrative Law Judge

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