

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

IN THE MATTER OF: )

P. M. P. )

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) OAH No. 04-0227-CSS  
) CSSD NO. 001062889  
)

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor P. M. P.'s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 5, 2004. The Obligee child is D., DOB 00/00/97.

The formal hearing was held on March 15, 2005. Mr. P. appeared through counsel, Jody A. Reausaw; the Custodian, D. F. B., appeared in person. David Peltier, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on March 15, 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. P.'s appeal should be granted; the parties settled the case at the hearing based on CSSD's revised calculations.

**II. Facts**

**A. History**

Mr. P.'s child support previously was set at \$382 per month.<sup>1</sup> Ms. B. initiated modification on May 5, 2004.<sup>2</sup> On May 6, 2004, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On July 28, 2004, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. P.'s modified ongoing child support at \$916 per month, effective June 2004.<sup>4</sup> Mr. P. appealed, but his appeal was

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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. 3.

remanded to CSSD before the hearing was held.<sup>5</sup> CSSD issued a subsequent Modified Administrative Child Support and Medical Support Order on October 5, 2004, that set Mr. P.'s modified ongoing child support at \$835 per month, effective June 1, 2004.<sup>6</sup>

Mr. P. filed an appeal on December 2, 2004.<sup>7</sup> He asserted his child support should be calculated from a three-year average income figure.<sup>8</sup>

Prior to the hearing, CSSD revised Mr. P.'s child support calculation to \$768 per month, which the agency calculated pursuant to Civil Rule 90.3(a) from Mr. P.'s three-year average earnings of \$67,447.56.<sup>9</sup> On February 9, 2005, Mr. P. filed a Non-Opposition to Pre-Hearing Brief of CSSD in which Mr. P. indicated he does not oppose CSSD's revised calculation.

The formal hearing was convened on March 15, 2005. Mr. P.'s attorney appeared on his behalf, and Ms. B. appeared in person. Mr. P.'s counsel stated Mr. P. affirms his non-opposition to CSSD's revised calculation of \$768 per month, and Ms. B. stated she would also accept the revised figure CSSD calculated.

### **B. Findings**

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

1. Mr. P. met 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. CSSD correctly calculated Mr. P.'s modified child support at \$768 per month, based on his three-year average earnings.

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or his children.<sup>10</sup> Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or his "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>11</sup> If the newly calculated child support amount is more than

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

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

<sup>7</sup> Exh. 10.

<sup>8</sup> Exh. 10 at pg. 2.

<sup>9</sup> Exh. 11.

<sup>10</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

a 15% change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established.

CSSD calculated Mr. P.’s modified child support at \$768 per month, after he asserted his child support should be based on his three-year average earnings.<sup>12</sup> Both Mr. P. and Ms. B. agreed to the amount CSSD calculated. This figure should be adopted.

The effective date of the modification is June 2004, which is the first month after CSSD issued the notice that a petition for modification had been filed.<sup>13</sup>

#### **IV. Child Support Order**

1. Mr. P. is liable for modified ongoing child support in the amount of \$768 per month, effective June 2004, and ongoing;
2. All other provisions of CSSD’s October 5, 2004, Modified Administrative Child Support and Medical Support Order are affirmed.

DATED this 17th day of June, 2005.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>11</sup> AS 25.27.190(e).

<sup>12</sup> See Civil Rule 90.3, Commentary III.E.

<sup>13</sup> 15 AAC 125.321(d).

**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 P. M. P. 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 17th 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.]