

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

IN THE MATTER OF:)

J. L. C.)

) OAH No. 06-0011-CSS

) CSSD No. 001104106

DECISION AND ORDER

I. Introduction

This case involves the Obligor J. L. C.'s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on November 16, 2005. The Obligee children are T. and Z.

The formal hearing was held on January 20, 2006, and March 30, 2006. Both Mr. C. and the Custodian, T. L. M., appeared in person at the first hearing. Mr. C. appeared by telephone at the second hearing; Ms. M. did not appear. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on April 10, 2006.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, I have concluded Mr. C.'s appeal should be denied. CSSD's effective date of the order is correct, and, other than fine-tuning Mr. C.'s child support to reflect his most current income information, CSSD's child support calculation is also correct.

II. Facts

A. History

Mr. C.'s child support obligation for T. previously was set at \$506 per month in 2001. CSSD initiated modification in order to add the child Z. to the order.¹ On July 19, 2005, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order. Mr. C. did not provide income information. On November 16, 2005, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. C.'s modified ongoing child support at \$848 per month, effective August 2005.² Mr. C. filed an appeal and requested a

¹ Exh. 1.

² Exh. 2.

formal hearing on December 21, 2005, on the basis that he and Ms. M. were married at the time Z. was born and they lived together and he was supporting the family through September 2005.³

B. Material Facts

Mr. C. and Ms. M. are the parents of T., DOB 00/00/00, and Z., DOB 00/00/04. The parties were married on May 11, 2001, but pursuant to a court order issued on October 21, 2005, the marriage ceremony was found to be null and void because Mr. C. was still married to another woman. Custody of the children was awarded to Ms. M. and Mr. C. was granted visitation.⁴

The parties were living together in Anchorage in early 2005. Mr. C., who was in the military, went out of state for training in March 2005. During the training, Mr. C. traveled into Mexico against orders, and was arrested there. He told Ms. M. that he was in jail in California after having been pulled over for speeding, but she found out he was in Mexico and decided at that time to separate from Mr. C. When he returned to Anchorage, Ms. M. let him stay in the house, but under the expectation he would pay rent, which apparently he did not do. At the end of May 2005, Mr. C. went to California to appear in court. When he returned to Anchorage in June, Mr. C. was living out of his car. Ms. M. allowed Mr. C. to stay at the house two more times between June and September, provided he would pay rent, but both times she had to get a restraining order to have him removed because of violent or sexually aggressive behavior.

Mr. C. was formerly in the military. He left the service in April 2005 and is now employed at Providence Hospital as an emergency room technician. He earns \$14.42 per hour for 36 hours of work per week. Mr. C.'s 2005 income consisted of wages of \$33,548.75; the PFD, unemployment benefits of \$592, and military benefits of \$7,058.96.⁵ This income amount results in a child support calculation pursuant to Civil Rule 90.3 of \$803 per month for two children.⁶

During the first quarter of 2006, Mr. C. earned \$9243.65, which includes some overtime.⁷ From that quarter of earnings, Mr. C.'s 2006 income is projected to be \$36,974.60, plus the PFD, which results in a child support amount of \$693 per month for two children.⁸

³ Exh. 5.

⁴ Exh. 13.

⁵ Exh. 19 at pg. 1.

⁶ *Id.*

⁷ Post-Hearing Brief at pg. 1.

⁸ Exh. 20.

III. Discussion

Civil Rule 90.3(a)(1) provides that an Obligor's child support 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."⁹ 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.

Mr. C.'s child support previously was set at \$506 per month. CSSD calculated his modified child support at \$848 per month, effective August 1, 2005. After the hearing, CSSD was directed to fine-tune the calculation and also prepare a projected child support amount for 2006. Mr. C. provided his most recent income information for both 2005 and 2006, and CSSD correctly calculated the support amounts using his information.¹⁰

Based on the evidence as a whole, I find CSSD correctly calculated Mr. C.'s modified child support at \$803 per month from August 2005 through December 2005, and \$693 per month for January 1, 2006 through May 1, 2006, and ongoing.

Mr. C. testified he was in the home through September 2005 and should not be liable for child support until then. Given the evidence as a whole, I find he did not live in the home after March 2005, so he is liable for support as of August 1, 2005, the effective date of the modification.

IV. Conclusion

Mr. C. 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. Other than fine-tuning the calculations, I conclude CSSD's modified child support calculations are correct and should be adopted as of August 1, 2005.

V. Child Support Order

- Mr. C. is liable for modified child support in the amount of \$803 per month, effective August 2005 through December 2005; and \$693 per month, effective January 2006 through May 2006, and ongoing;

⁹ AS 25.27.190(e).

¹⁰ Exhs. 19 & 20.

- Mr. C. is liable for additional arrears for Z. of \$208 per month for May 2005 through July 2005.

DATED this 1st day of May, 2006.

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. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

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

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 after the date of this decision.

DATED this 18th day of May, 2006.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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