

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

IN THE MATTER OF:)

C. D. P.)

) OAH No. 06-0200-CSS

) CSSD No. 001064117

DECISION AND ORDER

I. Introduction

The Custodian, D. P. K., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. P.'s case on February 2, 2006. The Obligee children are Z. and J.

The formal hearing was held on April 3, 2006. Ms. K. appeared by telephone; Mr. P. did not participate. David Peltier, Child Support Specialist, appeared for CSSD. The hearing was recorded. The record closed on April 4, 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 Ms. K.'s appeal should be granted. Mr. P.'s child support order should not be modified because the petition for modification, without more evidence, does not establish "good cause and material change in circumstances" sufficient to modify his ongoing child support amount.

II. Facts

Mr. P.'s child support obligation for Z. and J. was established at \$415 per month in February 2003. Mr. P. initiated modification of the order on October 10, 2005.¹ On October 11, 2005, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.² On February 2, 2006, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. P.'s modified ongoing child support at \$234 per month, effective November 1, 2005.³ Ms. K. appealed on March 8, 2006.⁴

¹ Exh. 1.

² Exh. 2.

³ Exh. 4.

⁴ Exh. 6.

III. Discussion

Mr. P. and Ms. K. are the parents of Z., DOB 00/00/91, and J., DOB 00/00/95. Both parties live in the greater Anchorage area and Ms. K. has primary custody of the children.

Although Mr. P. initiated the modification, little is known of his current circumstances because he did not provide income information. It appears that Mr. P. currently receives Social Security disability and SSI benefits totaling \$780 per month.⁵ He did not participate in any way after moving for modification of his support obligation.

Ms. K. filed the appeal and testified at the hearing that in addition to getting back pay for his disability payments, Mr. P. is involved as the plaintiff in a sexual harassment suit currently before the Alaska Superior Court. She asserts he won the case and received between \$30,000-\$50,000. CSSD obtained copies of the court documents. They appear to indicate that the litigation has not been fully resolved, but at least one defendant has been dismissed as the result of a settlement.⁶ The details of the settlement were not divulged in the court documents CSSD filed.

A parent is obligated both by statute and at common law to support his or her children.⁷ 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."⁸ If the newly calculated child support amount is less than a 15% change from the previous order, Civil Rule 90.3(h) does not require that the child support amount be modified.

In general, litigation proceeds are not considered a regular source of income, but there is so little known about Mr. P.'s current financial circumstances, it is impossible to determine his income. Until such time as he fully participates in the process and provides accurate and comprehensive financial information, especially about the litigation Ms. K. referred to, Mr. P.'s child support should not be modified. Therefore, I find that the petition for modification does not establish "good cause and material change in circumstances" sufficient to modify Mr. P.'s

⁵ Exh. 1.

⁶ Exh. 7 at pg. 66.

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ AS 25.27.190(e).

child support amount, and conclude the petition should be denied without prejudice, meaning he may file another request for modification review.

IV. Conclusion

Ms. K. met her burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. Mr. P.'s petition for modification does not establish "good cause and material change in circumstances" sufficient to modify his ongoing child support amount. CSSD's modification should be vacated and Mr. P.'s child support should remain at \$415 per month until such time as he provides accurate and comprehensive financial information with a petition for modification review.

V. Child Support Order

- The petition for modification is denied;
- CSSD's February 2, 2006, Modified Administrative Child Support and Medical Support Order is vacated;
- Mr. P. remains liable for child support in the amount of \$415 per month.

DATED this 24th day of April, 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 15th 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.]