

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

IN THE MATTER OF:)

G. K. H.)

) OAH No. 06-0500-CSS

) CSSD No. 001117605

DECISION AND ORDER

I. Introduction

This case involves the Obligor G. K. H.'s appeal of a Denial of Modification that the Child Support Services Division (CSSD) issued in his case on May 30, 2006. The Obligee child is G., DOB 00/00/02.

The formal hearing was held on August 1, 2006. Mr. H. appeared in person; the Custodian, B. A. H., appeared telephonically. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on August 25, 2006.

Kay L. Howard, Administrative Law Judge with the Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, I have concluded Mr. H.'s appeal should be granted. CSSD's Denial of Modification should be vacated and Mr. H.'s child support should be modified based on his actual income to \$86 per month.

II. Facts

A. History

Mr. H.'s child support order previously was set at \$289 per month for one child.¹ On October 27, 2005, Mr. H. requested modification.² On October 28, 2005, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Mr. H. did not provide income information, so on May 30, 2006, CSSD denied the petition for modification.⁴ Mr. H. filed an appeal on June 30, 2006.⁵

¹ Pre-hearing brief at pg. 1.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 4.

⁵ Exh. 5.

B. Material Facts

Mr. H. and Ms. H. are the parents of G., DOB 00/00/02. G. lives with Ms. H. In addition to the support payment, G. receives Children's Insurance Benefits (CIB) of \$118 per month from the Social Security Administration (SSA) because of Mr. H.'s disability. The funds are paid to Ms. H.

Mr. H. is disabled from a "slip and fall" accident on stairs in 1994. He has had four surgeries since then, the most recent a spinal fusion of the C4-5 vertebrae in January 2006. His income consists of Social Security disability of \$507 per month, plus \$140 per month from Adult Public Assistance. Mr. H., who used to be a chef, last worked in 2003 for a short period of time.

Mr. H. has three older children, A., J. and G., Jr. A. and J. are currently living in the home with him. G., who has been living in Washington, D.C., will be joining the family in the near future because his mother recently died. A. and J. also receive Children's Insurance Benefits of \$118 per month from the SSA because of Mr. H.'s disability. He receives the payments as their guardian and uses it to pay household bills. The girls' mothers also help out by providing clothing and other necessities for them. In addition to his usual household expenses, Mr. H. has approximately \$10,000 in debts currently in collections.

III. Discussion

Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."⁶ 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. H.'s child support previously was set at \$296 per month. CSSD initially denied his request for modification, but after he provided income information, the agency calculated his child support at \$86 per month.⁷ This calculation includes provision for the CIB payments each child receives in the amount of \$118 per month.

The custodian, Ms. H., claimed at the hearing that A. only lives with Mr. H. on the weekends, and that J.'s mother lives in his home and contributes to the bills. Ms. H. also claimed that Mr. H. works under the table for cash as a chef. She said, for example, that her

⁶ AS 25.27.190(e).

⁷ Exh. 6.

sister-in-law hires Mr. H. to cook for parties she hosts at different clubs. Mr. H. denied her claim, so Ms. H. was given two weeks to file a written statement from her sister-in-law confirming Mr. H. works for her on the side, but no documents were received. Mr. H. provided school records and birth certificates showing that A. and J. live in his home, and he also documented the benefits he receives from Social Security disability and public assistance.

Accordingly, based on the record as a whole, I find CSSD's calculation is correct. This figure was calculated from Mr. H.'s actual income and it is a reasonable measure of his ability to pay support. The effective date of the modification is November 2005, which is the first month after CSSD issued the notice that a petition for modification had been filed.⁸

IV. Conclusion

Mr. H. met his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. He established "good cause and material change in circumstances" sufficient to modify his ongoing child support to \$86 per month for one child, effective November 2005, and I conclude this figure should be adopted. CSSD's denial of modification should be vacated.

V. Child Support Order

1. CSSD's May 30, 2006, Notice of Denial of Modification is vacated;
2. Mr. H. is liable for modified ongoing child support in the amount of \$86 per month for one child, effective November 2005.

DATED the 14th day of September, 2006.

By: Signed
Kay L. Howard
Administrative Law Judge

⁸ See 15 AAC 125.321(d).

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 2nd day of October, 2006.

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

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