

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

IN THE MATTER OF: )

J. N. S. )

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) OAH No. 06-0622-CSS

) CSSD No. 001114585

**DECISION AND ORDER**

**I. Introduction**

The Obligor, J. N. S., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 15, 2006. The Obligee child is J., DOB 00/00/02.

The hearing was held on September 20, 2006. Mr. S. appeared in person; the Custodian of record, M. L. M., did not participate. Andrew Rawls, Child Support Specialist, appeared for CSSD. The hearing was recorded. The record closed on September 20, 2006.

Kay L. Howard, Administrative Law Judge in the Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, I have concluded CSSD correctly calculated Mr. S.' modified child support amount and it should be adopted.

**II. Facts**

**A. History**

Mr. S.' child support obligation for J. previously was set at \$50 per month. Ms. M. initiated modification of the order on April 27, 2006.<sup>1</sup> On May 1, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>2</sup> Mr. S. provided income information.<sup>3</sup> On August 15, 2006, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. S.' modified ongoing child support at \$324 per month, effective June 1, 2006.<sup>4</sup> Mr. S. appealed on August 21, 2006.<sup>5</sup>

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<sup>1</sup> Exh. 1.

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

<sup>3</sup> Exh. 3.

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

<sup>5</sup> Exh. 6.

## **B. Material Facts**

Mr. S. is a warehouseman. Most of his employment experience has been in warehouses and doing such jobs as stocking and driving. He has also worked on the North Slope. He was most recently employed by a business known as Ry River, Inc., doing warehouse work paid at \$11 per hour, but he was fired on May 25, 2006. He said his employer claimed he was doing something on their computers he should not have been doing, but Mr. S. said it was not true. He has been looking for work since losing that job. Mr. S. has checked with Job Service and also looked online. He worked briefly for JC Penney, but Mr. S. was terminated because his background check revealed he was incarcerated from November 2004 through August 2005. Mr. S. was planning to attend a job fair after the hearing was completed. He has a high school diploma, but no college education.

## **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>6</sup> 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."<sup>7</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a material change in circumstances has occurred.

Mr. S.' child support previously was set at \$50 per month. Pursuant to the petition for modification, CSSD calculated his child support at \$324 per month. The agency calculated this amount based on a standard work year paid at \$11 per hour (2080 hours x \$11), which yielded an annual income figure of \$23,725.76, including the PFD.<sup>8</sup>

Mr. S. objected to having his child support modified upward after he lost his job, but the modification action was initiated before Mr. S. was terminated. Had the modification been accomplished immediately, he still would have been employed and his child support would have been correctly determined based on his income at the time. CSSD was suspicious of Mr. S. losing his job after notice of the modification was issued, but there is no evidence on this issue other than Mr. S.' denial that he voluntarily quit his job.

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<sup>6</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>7</sup> AS 25.27.190(e).

<sup>8</sup> Exh. 5.

It is not necessary to find Mr. S. is voluntarily unemployed in order to affirm the modification. Mr. S. became unemployed after the modification was initiated and remained unemployed at the time of the hearing. He has not established that his unemployment is anything other than a temporary circumstance that will improve when he finds another job. The Alaska Supreme Court discourages adjustment of support amounts for Obligor who have been temporarily unemployed.<sup>9</sup> Mr. S. may lack the ability to meet his ongoing child support obligation every month while he is unemployed temporarily, but the fact of his unemployment will not excuse the support obligation.<sup>10</sup> Mr. S. will no doubt incur some arrears while he is unemployed, but he will be able to start paying those off once he starts working again.

Thus, based on the whole record, I find CSSD correctly calculated Mr. S.' modified child support obligation at \$324 per month, and conclude that amount should be adopted.

**IV. Conclusion**

Mr. S. 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 correctly calculated Mr. S.' modified child support, which should be adopted.

**V. Child Support Order**

- Mr. S. is liable for modified ongoing child support in the amount of \$324 per month, effective June 1, 2006.

DATED this 10<sup>th</sup> day of October, 2006.

By: Signed \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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<sup>9</sup> *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

<sup>10</sup> *See also, Douglas v. State*, 880 P.2d 113 (Alaska 1994).

**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 25<sup>th</sup> 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.]