

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

IN THE MATTER OF)
)
 J. S.)
)
 _____)

Case No. OAH-06-0811-CSS
CSSD Case No. 00116645

DECISION & ORDER

I. Introduction

The obligor, J. S., appeals from a Notice of Denial of Modification Review issued by the Child Support Services Division (CSSD) on October 20, 2006. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on December 20, 2006, and at a continued hearing on January 22, 2007. Mr. S. appeared by telephone at both hearings. The custodian of record, L. B., did not appear. David Peltier represented CSSD. The children are T. S. (DOB 00/00/99), S. S. (DOB 00/00/01) and K. S. (DOB 00/00/02). Mr. S.'s child support obligation is set at \$1293 per month for three children in accordance with CSSD's most recent calculations.

II. Facts

This case arises from a request by the custodian for modification of Mr. S.'s support obligation, submitted in June 2006. Mr. S.'s current monthly support obligation is \$1,527 per month for three children, set in July 2005. Although the hearing was continued and the record was left open twice to afford Mr. S. an opportunity to provide copies of his 2006 tax return or W-2 tax form, Mr. S. did not provide this information. CSSD has recalculated Mr. S.'s obligation using two different methods of establishing his annual income. In a post-hearing brief of January 31, 2007, CSSD first estimated Mr. S.'s 2006 income by using his year-to-date income from October 13, 2006, plus reported unemployment benefits of \$3,386.00. This gross annual income of \$56,141.70 results in a child support obligation for the three children in this case of \$1,133.18 per month.¹

CSSD then made a second calculation in which it averaged income for the years 2004-2006, resulting in average income of \$65,114 and a monthly child support obligation of \$1293.28.² Mr. S.'s income in 2004 was \$77,160, and in 2005 it was \$62,040.

¹ Exhibit 10.

² Exhibit 11.

In its post-hearing brief, CSSD details the rather complicated methodology for calculating Mr. S.'s child support obligation. Mr. S. has five children from three different non-consecutive relationships. The oldest and youngest children, T. and K., are both covered by this order, along with S.. Mr. S. pays support for a child of a different relationship named N. who is younger than T., but older than S. and K.. I., who currently lives in Mr. S.'s household, is younger than S. but older than K..

III. Discussion

Mr. S.'s principal arguments are that the custodian should pay half the costs of raising the children, and that CSSD should not garnish his tax return, because he has a younger child living in his household and his girlfriend is pregnant. In Alaska, both parents are obligated to support their children.³ The custodian is presumed to be providing her share of support by having the children living in her household. Mr. S. did not demonstrate that manifest injustice would result in this case from the normal application of Civil Rule 90.3.

A modification of support is warranted upon a material change of circumstances.⁴ A material change in circumstances is presumed to have occurred if the amount of support under the new calculation varies by more than fifteen percent from the existing order.⁵

Of the two alternative methods CSSD has presented for calculating income, the average income of \$65,113.98 detailed in Exhibit 11, page 1 is the best estimate of Mr. S.'s likely earnings for two reasons. First, Mr. S.'s income appears to fluctuate, and a three-year average is the best method of calculating likely future earnings. Second, the figure for 2006 alone does not appear to include the last two and a half months of wages for the year, and therefore may understate the amount that Mr. S. actually earned or could have earned that year.

CSSD's initial calculations did not include a credit for I., which should be applied against support for K. only. When the credit is included, the monthly support amount based on average income, as calculated in Exhibit 11, results in monthly support of \$1293 for three children. This amount constitutes a decrease of more than fifteen percent from the current amount of \$1,527 per month for three children, and thus represents a material change of circumstances.

IV. Conclusion

The best estimate of Mr. S.'s annual gross income is \$65,113.98, based on an average of earnings for the years from 2004 through 2006. CSSD has correctly calculated Mr. S.'s monthly

³ AS 25.20.030.

⁴ Civil Rule 90.3(h)(1).

support obligation to be \$1293 per month for three children. This amount represents a reduction of more than fifteen percent in support and a material change in circumstances.

V. Order

IT IS HEREBY ORDERED that Mr. S.'s support obligation be set a \$1293 per month for three children, effective July 1, 2006.

DATED this 27th day of February, 2007.

By: Signed
DALE WHITNEY
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 27th day of March, 2007.

By: Signed
Jerry Burnett
Director, Administrative Services

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