

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

IN THE MATTER OF: )

J. F. F. )

) OAH No. 07-0224-CSS

) CSSD No. 001060661

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor J. F. F.'s appeal of a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in his case on February 13, 2007. The Obligee children are J., T. and C.

The formal hearing was held on May 23, 2007. Mr. F. appeared in person; the Custodian, M. M. M., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was tape-recorded.

Kay L. Howard, Administrative Law Judge, Office of Administrative Hearings (OAH), conducted the hearing. Having reviewed the record in this case and after due deliberation, CSSD's Notice of Denial of Modification Review is affirmed.

**II. Facts**

**A. History**

Mr. F.'s child support order previously was set at \$103.33 per child by Deputy Commissioner of Revenue Larry Persily on December 11, 2002.<sup>1</sup> There were only two children in this case at the time, so Mr. F.'s monthly child support obligation was \$206.66. After C. was born in 2004, CSSD modified Mr. F.'s child support to \$309.99 per month, consistent with Deputy Commissioner Persily's 2002 order.<sup>2</sup>

Mr. F. filed a petition for modification on November 13, 2006.<sup>3</sup> On November 16, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>4</sup> Mr. F. did not submit income information at that time, so on February 13, 2007; CSSD issued a Notice of Denial of Modification Review.<sup>5</sup> Mr. F. filed an appeal on April 24, 2007.<sup>6</sup>

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<sup>1</sup> Obligor's Exh. A (hereinafter, "Exh. A") at pg. 10.

<sup>2</sup> Exh. A at pg. 5.

<sup>3</sup> Exh. 1.

<sup>4</sup> Exh. 2.

<sup>5</sup> Exh. 4.

## **B. Material Facts**

Mr. F. is thirty-six years old. In seven different child support cases at CSSD, Ms. M.'s among them, he has nine children who range in age from sixteen down to three years of age. All of these cases have arisen at different times, and have received varying treatment from CSSD caseworkers and the hearing officers/ administrative law judges to whom his child support orders have been appealed over the years.

Mr. F. has a spotty work history.<sup>7</sup> Currently, he is employed at a Tesoro station, where he earns \$10 per hour, full-time. This hourly wage results in annual income of approximately \$20,800. Pursuant to Civil Rule 90.3, this income equals a child support amount of \$334 per month for three children.<sup>8</sup>

## **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>9</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>10</sup> If the newly calculated child support amount is more than a 15% change – higher or lower – from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established. If the newly calculated child support amount is less than a 15% change, CSSD is not obligated to modify the support order.

In Mr. F.'s case for J., T. and C., he is presently obligated to pay \$309.99 per month for three children. A child support calculation based on his current income, including adjustments for prior children, equals \$334 per month for three children. This does not equal a 15% change, so modification is not warranted in this case from a straight calculation perspective.<sup>11</sup>

It is also important to consider this case from a historical perspective. On December 11, 2002, Deputy Commissioner of Revenue Larry Persily issued an Order Granting Reconsideration of a Revenue hearing officer's order in three of Mr. F.'s cases. This case was among them,

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

<sup>7</sup> See Exh. 6.

<sup>8</sup> Exh. 7.

<sup>9</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> A 15% change from \$309.99 per month would equal \$46.50, or a total support amount of \$356.49.

although C. had not yet been born. Deputy Commissioner Persily affirmed the hearing officer's finding that strict adherence to the Civil Rule 90.3 guidelines "for so many cases with the same non-custodial parent would result in a total support obligation far in excess of anything reasonable."<sup>12</sup> Mr. Persily found that treating all of Mr. F.'s cases separately and applying Civil Rule 90.3 to them as individual calculations would result in widely differing support obligations (and, it should be noted, comparatively low orders for the youngest children).<sup>13</sup>

On that basis, Deputy Commissioner Persily treated all of Mr. F.'s cases as though all the children were in one family. This allowed him to determine a reasonable child support amount for all of Mr. F.'s children, \$103.33 per month per child, based on an income figure of \$20,979.34.<sup>14</sup> The purpose of treating Mr. F.'s cases in this way was to equalize the support orders and to set an amount that Mr. F. had some hope of paying. Mr. Persily had three of Mr. F.'s cases before him at the time, so CSSD has been gradually bringing Mr. F.'s other cases in line with that order.

As stated above, modification of this case is not called for at this time because a child support amount calculated under Civil Rule 90.3 from Mr. F.'s income does not meet the 15% threshold necessary for a modification. However, even if modification were indicated by a more than 15% change based on Mr. F.'s income, it would likely not be adopted at this time. Even though nearly five years have passed since the Deputy Commissioner issued his order, it is still relevant today. Mr. F. earns about the same amount of income in a year, he is determined to make significant inroads into his arrears with consistent child support payments, and Mr. Persily's order was based on a finding of unusual circumstances under Civil Rule 90.3(c). In order to lower his support obligation from the amount calculated from his income, as requested by Mr. F., a finding of unusual circumstances under Civil Rule 90.3(c) would have to be made. Since the current support amount of \$309.99 per month is already based on a finding of unusual circumstances, a second layer of such findings should not be made at this time.

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<sup>12</sup> Exh. A at pg. 11.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

**IV. Conclusion**

Mr. F. has not established “good cause and material change in circumstances” sufficient to modify his child support obligation. Therefore, his child support shall remain at \$309.99 per month for three children.

**V. Child Support Order**

- CSSD’s February 13, 2007, Notice of Denial of Modification Review is affirmed;
- Mr. F.’s child support shall remain at \$309.99 per month for three children.

DATED this 14th day of September, 2007.

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 1st day of October, 2007.

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

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