

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

IN THE MATTER OF:)

D. A. T.)

) OAH No. 07-0275-CSS
) CSSD No. 001065063
)

DECISION AND ORDER

I. Introduction

This case involves the Obligor D. A. T.'s appeal of a Denial of Modification that the Child Support Services Division (CSSD) issued in his case on April 30, 2007. The Obligee child is A., DOB 00/00/96.

The formal hearing was held on June 11, 2007. Mr. T. appeared by telephone; the Custodian, B. B., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on July 9, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, it is concluded Mr. T.'s appeal should be granted. CSSD's Denial of Modification should be vacated and Mr. T.'s child support should be modified based on his actual income to \$284 per month.

II. Facts

A. History

Mr. T.'s child support order was set at \$564 per month for one child in October 1997.¹ On March 6, 2007, Mr. T. requested a modification of his order.² On March 9, 2007, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Mr. T. did not provide income information, so on April 30, 2007, CSSD denied the petition for modification.⁴ Mr. T. filed an appeal on May 9, 2007.⁵

¹ Pre-hearing brief at pg. 1.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

B. Material Facts

Mr. T. retired from the military in the early 1990's, one year after the first gulf war in Iraq. Subsequently he worked for the government overseas. Between 2 ½-3 years ago Mr. T. started his own business, C. C. G., which has had various government contracts, primarily doing training for the military. Mr. T. had working capital of about \$70,000 in 2004-2005, but he has not had any corporate income since 2006 and currently has no contracts for work.

Mr. T. received military retirement totaling \$17,508 in 2006.⁶ He received a slight increase as of January 2007, which should total \$18,084 for the year.⁷ In addition to his retirement, Mr. T. has been living off of savings since the beginning of 2006. Based on Mr. T.'s expected 2007 income, CSSD performed a child support calculation which equals \$284 per month.⁸

Ms. B. reported that Mr. T. made child support payments of \$350 per month during the period from 1996-1998; and \$1,000 per month from 1999-2005.⁹ In addition, Mr. T. reported that at some time in the past he started an educational fund for A. and contributes \$100 per month and \$500 per quarter to it, although there is no documentation of the fund.

III. Discussion

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”¹⁰ 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.

Mr. T.'s child support previously was set at \$564 per month, although it appears he has been paying well in excess of that amount since 1999. CSSD initially denied his request for modification, but he subsequently provided income information. CSSD performed a child support calculation after the hearing, which results in a child support amount of \$284 per month.¹¹ The custodian, Ms. B., did not participate in the hearing or provide any information

⁶ Exh. 5 at pg. 13.

⁷ Exh. 5 at pg. 9.

⁸ Exh. 7.

⁹ Exh. 6.

¹⁰ AS 25.27.190(e).

¹¹ Exh. 7.

other than the statement as to the amount of child support she has received from Mr. T. since 1996.

Accordingly, based on the record as a whole, I find CSSD's calculation is correct. This figure was calculated from Mr. T.'s actual income and it is a reasonable measure of his ability to pay support. The effective date of the modification is April 1, 2007, which is the first month after CSSD issued the notice that a petition for modification had been filed.¹²

IV. Conclusion

Mr. T. met his burden of proving that CSSD's Notice of Denial of Modification Review was incorrect. He established "good cause and material change in circumstances" sufficient to modify his ongoing child support to \$284 per month, effective April 2007, and this figure should be adopted. CSSD's denial of modification should be vacated.

V. Child Support Order

1. CSSD's April 30, 2007, Notice of Denial of Modification is vacated;
2. Mr. T. is liable for modified ongoing child support in the amount of \$284 per month, effective April 1, 2007.

DATED the 8th day of August, 2007.

By: Signed
Kay L. Howard
Administrative Law Judge

¹² Exh. 2; 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 27th day of August, 2007.

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

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