

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

IN THE MATTER OF:)

K. L. G.)

OAH No. 07-0389-CSS

CSSD No. 001123572

DECISION AND ORDER

I. Introduction

The Obligor, K. L. G., requested a modification review of an existing child support order, issued January 2005, setting the support amount at \$598.00 per month. The Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order on May 23, 2007, reducing the child support payment to \$355.00 per month. The Custodian of record, C. M. C., appealed the modification amount arguing the modification amount does not reflect Mr. G.'s actual earnings. The Obligee child is S., DOB 00/00/01.

At Ms. C.'s request a hearing was held on July 26, 2007, before Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings. Mr. G. appeared by telephone; Ms. C. did not participate. Andrew Rawls, Child Support Specialist, appeared for CSSD. The hearing was recorded.

Subsequently, Ms. C. filed a motion for supplemental hearing.¹ The motion was granted and the supplemental hearing was held on August 21, 2007. Because ALJ Howard was unavailable to conduct the August 21, 2007 supplemental hearing, Rebecca L. Pauli Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the August 21, 2007 hearing.² Ms. C. appeared by telephone; Mr. G. did not participate.³ Mr. Rawls appeared for CSSD. The record closed on August 22, 2007.

Based on a review of the entire record in this case and after due deliberation, it is concluded that based on the information available to CSSD on May 23, 2007, it correctly

¹ 15 AAC 05.030(j).

² Prior to the August hearing, ALJ Pauli listened to the recording of the July 26, 2007 hearing in its entirety. The parties consented on the record to ALJ Pauli conducting the supplemental hearing and rendering a decision and order.

³ Mr. G. was called at the phone number he previously provided but he did not answer.

calculated Mr. G.'s modified monthly child support payment.⁴ However, Mr. G. presented new financial records at the July 26, 2007 hearing. In light of this new evidence, the modified child support payment should be \$463.00 per month, effective April 1, 2007.

II. Facts

A. History

Mr. G.'s child support obligation for S. was set at \$598.00 per month in January 2005. Mr. G. initiated modification of the child support obligation on February 13, 2007.⁵ On February 21, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.⁶ Mr. G. provided financial information⁷ and on May 23, 2007, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. G.'s modified ongoing child support at \$355.00 per month, effective March 1, 2007.⁸ Ms. C. appealed on June 25, 2007.⁹

B. Material Facts¹⁰

Mr. G. lives in Florida with his girlfriend and their child. At the time he requested modification his adjusted annual income was \$21,329.76.¹¹ Based on this information CSSD calculated a child support payment of \$355.00 per month, effective March 1, 2007.¹² Mr. G. agrees that this is an appropriate monthly child support payment. At hearing, Mr. G. testified that he had started a new job on April 7, 2007, and presented current employee earning records establishing that his annual income is expected to be \$33,800.00 per year.¹³

Ms. C. does not dispute that the monthly child support payment should be modified; however, she argues that the modification should be based on Mr. G.'s current earnings of \$33,800.00 per year.

⁴ In fact, ALJ Howard made a preliminary ruling at the first hearing adopting CSSD's calculation. Given the new income evidence, her ruling is hereby vacated.

⁵ Exhibit 1.

⁶ Exhibit 2.

⁷ Exhibit 3.

⁸ Exhibit 4.

⁹ Exhibit 5.

¹⁰ The facts are taken from Ms. C. and Mr. G. hearing testimony, unless otherwise indicated.

¹¹ Exhibit 4, p. 7.

¹² Exhibit 4.

¹³ Exhibit A; G. Hearing Testimony.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁴ Civil Rule 90.3(a)(1) provides that an Obligor's child support payment 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."¹⁵ If the newly calculated child support payment is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "good cause and material change in circumstances" has occurred and authorizes modification of the child support order.

On May 23, 2007, CSSD issued its modified child support order reducing Mr. G.'s monthly child support payment to \$355.00, effective March 1, 2007. CSSD concluded there was a material change in circumstances that justified a reduction in Mr. G.'s child support because the newly calculated child support of \$355.00 per month was more than a 15% change from the previous order of \$598.00 per month.

However, from the time Mr. G. requested modification in February 2007 to the date CSSD modified his monthly child support payments in May 2007, Mr. G.'s financial circumstances changed; he had an increase in annual income. CSSD based its calculation on an annual gross income of \$25,499.00.¹⁶ In April 2007 Mr. G. started a new job with an expected annual income of \$33,800.00.

Ms. C. appealed the modification order arguing that the income used to calculate child support should most accurately reflect what Mr. G. is presently earning; she is correct.

Child support is calculated as a certain percentage of the income which will be earned when the support is to be paid. This determination will necessarily be somewhat speculative because the relevant income figure is expected future income. The court must examine all available evidence to make the best possible calculation.¹⁷

On the record presented, the most reliable evidence of income Mr. G. will earn when paying future monthly child support are his current earning records indicating an anticipated future income of \$33,800.00. An annual income of \$33,800.00 results in an adjusted annual

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ AS 25.27.190(e).

¹⁶ Exhibit 4, p. 7.

¹⁷ Civil Rule 90.3(e) Commentary.

income is \$27,789.20,¹⁸ which, in turn results in a monthly child support payment of \$463.00.¹⁹ This is a 22% change from the previous order of \$598.00 and as such, there is “good cause and a material change in circumstances” that support a modification of the monthly child support payment amount to \$463.00, effective April 1, 2007.

In keeping with the principal that child support should be based upon the best possible evidence to determine the income earned while the support is paid, from March 1, 2007 to March 31, 2007, Mr. G.’s income resulted in a monthly child support payment of \$355.00. Accordingly, for the month of March, his monthly child support should be \$355.00. Effective April 1, 2007, Mr. G.’s monthly child support payment should be \$463.00.

IV. Conclusion

Mr. G. met his burden of proving by a preponderance of the evidence that there is good cause and a material change in circumstances that support a modification of his monthly child support payment. On the information available at the time, CSSD correctly calculated Mr. G.’s modified child support at \$355 per month, effective March 1, 2007. However, based on new evidence provided by Mr. G. at hearing, the correct monthly child support payment is \$463.00 per month, effective April 1, 2007.

V. Child Support Order

- Mr. G. is liable for modified ongoing child support in the amount of \$355.00 per month, effective March 1, 2007.
- Mr. G. is liable for modified ongoing child support in the amount of \$463.00 per month, effective April 1, 2007.

DATED this 11th day of September, 2007.

By: Signed _____
Rebecca L. Pauli
Administrative Law Judge

¹⁸ Mr. G.s annual gross income of \$33,800.00, minus federal income taxes of \$3,425.04 and the FICA deduction of \$2,585.76 equal \$27,789.20 in adjusted annual income as calculated on CSSD’s online child support calculator.

¹⁹ Civil Rule 90.3(a)(2)(A).

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 28th day of September, 2007.

By: Signed _____
Signature
Rebecca L. Pauli _____
Name
Administrative Law Judge _____
Title

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