

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

IN THE MATTER OF:)

J. R. T.)

) OAH No. 08-0115-CSS

) CSSD No. 001140263

DECISION AND ORDER

I. Introduction

This case involves the Obligor J. R. T.' appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 25, 2008. The Obligee children are M., DOB 00/00/03, and A., DOB 00/00/04.

The formal hearing was held on March 26, 2008. Mr. T. did not appear for or participate in the hearing; the Custodian, F. T. M., appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on April 9, 2008.

Kay L. Howard, Administrative Law Judge, Office of Administrative Hearings (OAH), conducted the hearing. Based on the record as a whole and after due deliberation, Mr. T.' appeal is granted because CSSD overestimated his earnings in the child support calculation.

II. Facts

A. History

Mr. T.' child support obligation for M. and A. was originally set at \$507 per month in March 2006, and subsequently lowered to \$50 per month as of April 2007 because Mr. T. was incarcerated at the time.¹ On November 29, 2007, Ms. M. requested a modification review.² On December 5, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. T. provided income information.⁴ On February 25, 2008, CSSD issued a Modified Administrative Child and Medical Support Order that set Mr. T.' modified ongoing support at \$1115 per month, effective January 1, 2008.⁵ Mr. T. filed an appeal on February 27,

¹ See Exh. 1.

² Exh. 3.

³ Exh. 4.

⁴ Exh. 5.

⁵ Exh. 6.

2008, claiming he did not earn as much income as CSSD attributed to him and that he was currently unemployed and on a union out-of-work list.⁶

On March 7, 2008, a notice of the date and time for the hearing was sent by certified mail to the parties. Both Mr. T. and Ms. M. received and signed for their notices and the green cards were returned to the OAH. Mr. T. did not appear for the formal hearing.

B. Findings

Based on the evidence in the record and after due consideration, the following findings are entered:

1. Mr. T. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h);

2. Mr. T. received and signed for his notice of hearing and had actual notice of the date and time for the hearing, but he did not appear at the hearing to provide evidence regarding his appeal;

3. Mr. T. was incarcerated from October 2006 through October 2007, a period of approximately one year;⁷

4. The most recent years in which Mr. T. worked a full years' period of time prior to his incarceration were 2003, 2004 and 2005. In 2003, he received \$42,834.78, including unemployment benefits ("UIB"); in 2004, he received \$39,130.08, including UIB; and in 2005, he received \$37,562.65, including UIB.⁸ The average of these three years of income figures is \$39,842.50.⁹

III. Discussion

Mr. T. filed an appeal and requested a formal hearing, but he failed to appear for the hearing. He received and signed for the notice of the date and time for the hearing, so there was no reason not to hold the hearing in his absence. This decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the requesting party fails to appear.

⁶ Exh. 8.

⁷ F. T. M. testimony.

⁸ Exh. 11 (The exhibit attached to CSSD's Submission to Record was marked Exhibit 10, but documents filed during the hearing had already been marked as Exhibit 10. Thus, CSSD's Exhibit 10 has been renumbered as Exhibit 11).

⁹ $(\$42,834.78 + \$39,130.08 + \$37,562.65 = \$119,527.51 \div 3 = \$39,842.50)$

Child support orders may be modified 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 from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established and the child support amount may be modified. A modification is effective beginning on the first of the month after the parties are served with notice that a modification has been requested.¹¹ If a person has erratic income from year to year, Civil Rule 90.3 allows CSSD to use in the child support calculation an average income figure taken from several years’ worth of income.¹² In most cases, CSSD uses the average income from a three-year period of time.

CSSD estimated his annual income at \$63,241.92, based on his hourly wage.¹³ But that amount overestimated Mr. T.’ income because he does not work full-time during the entire year. Rather, he usually works for several employers and has periods of unemployment between his different jobs. Mr. T. has never earned the amount of income CSSD attributed to him.¹⁴

The best estimate of Mr. T.’ annual income is found in his historical earnings. The figures from the most recent years of 2006 and 2007 should not be used because he was incarcerated from October 2006 through October 2007, and neither of those years represents a typical year of employment for him. The most recent 3-year period before 2006 in which it appears that Mr. T. worked a consistent amount of time occurred from 2003 through 2005. In those three years he earned a total of \$119,527.51, which averages \$39,842.50 per year.¹⁵ This amount is the best estimate of Mr. T.’ total income for 2008. Inserting that figure into the calculation yields a child support amount of \$724 per month for two children.¹⁶ The worksheet has been labeled as Attachment A and attached to this decision.

¹⁰ AS 25.27.190(e).

¹¹ 15 AAC 125.321(d).

¹² Civil Rule 90.3, Commentary III.E.

¹³ Exh. 7.

¹⁴ See Exh. 11; Submission to Record at pg. 1.

¹⁵ Mr. T.’ total income in those years, \$119,527.51, when divided by 3 years, equals an average income figure of \$39,842.50. See Finding of Fact no. 4, above.

¹⁶ The child support calculation includes a deduction for union dues of \$137.93 per month, which was extrapolated from the union dues Mr. T. paid in 2007. The deduction was calculated as follows: in 2007, Mr. T. earned a total of \$16,659.66, which is 42% of the 3-year average earnings he received from 2003-2005 ($\$16,659.66 \div \$39,842.50 = .418 = 42\%$). He paid union dues of \$695.15 in 2007, see Exh. 8 at pg. 11, which more likely than not is also 42% of the total union dues he would have paid had he been employed for the entire year. From there it is a simple mathematical calculation to determine the total annual union dues he would have paid is \$1655.12 ($\$695.15/x = 42/100 = 69515/42x = \1655.12). Dividing that figure by 12 yields a monthly union dues deduction of \$137.93.

IV. Conclusion

Mr. T. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. He did not appear at the hearing to present evidence to support his appeal, but CSSD acknowledged it had overestimated Mr. T.' income. After the hearing, a new calculation was prepared that yields a child support amount of \$724 per month for two children, which was calculated from an average of the earnings he received over a 3-year period from 2003-2005. This recalculation should be adopted.

V. Child Support Order

- Mr. T. is liable for modified ongoing child support in the amount of \$724 per month, effective January 1, 2008;
- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order dated February 25, 2008, remain in effect.

DATED this 29th day of April, 2008.

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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 16th day of May, 2008.

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

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