

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

IN THE MATTER OF: )

H. D. )

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) OAH No. 08-0169-CSS

) CSSD No. 001141382

**DECISION AND ORDER**

**I. Introduction**

The Obligor, H. D., challenges the Modified Administrative Child Support and Medical Support Order issued February 29, 2008. This order imputed income to Mr. D. at the minimum wage and based on this income, increases his support obligation from \$50 per month to \$242 per month effective December 1, 2007. The Obligee child is C. G., born 00/00/03. The modification action was initiated at the request of the custodian, F. S.

A hearing was held on April 22, 2008. Mr. D. appeared in person and represented himself; Ms. S. participated by phone. David Peltier, Child Support Specialist, appeared for CSSD. The evidentiary record remained open to provide Mr. D. with an opportunity to obtain a doctor's statement regarding his ability to work and to provide CSSD with an opportunity to comment on the statement. Mr. D. was also provided an opportunity to submit evidence regarding his support of prior children.<sup>1</sup> The record closed June 28, 2008. Rebecca L. Pauli, Administrative Law Judge, Office of Administrative Hearings, conducted the hearing.

Based on the information obtained after the Modified Administrative Child Support and Medical Support Order was issued, Mr. D.'s child support obligation should be \$749 per month effective December 1, 2007 through December 31, 2007, and \$206 per month effective January 1, 2008 and ongoing.

**II. Facts**

A. *Facts Established Prior To Order Reopening The Record*

Ms. S. requested modification of a child support order on November 13, 2007.<sup>2</sup> Prior to Ms. S.'s request for modification, Mr. D. was paying child support in the amount of \$50 per month pursuant to an Amended Administrative Child Support and Medical Support Order dated

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<sup>1</sup> Order Reopening The Record For Limited Purpose (Dated June 11, 2008).

<sup>2</sup> Exhibit 2.

June 28, 2006. CSSD set Mr. D.'s child support at the minimum allowed by law after finding he was entitled to a variance because he was not working due to an injury.<sup>3</sup>

In response to Ms. S.'s request for modification, CSSD issued a Notice of Petition for Modification on November 15, 2007, requesting Mr. D. provide current income information.<sup>4</sup> Mr. D. did not provide the information requested and CSSD imputed income to him at the minimum wage of \$7.15 per hour for 2,080 hours.<sup>5</sup> Based on the imputed income CSSD determined Mr. D.'s income for child support purposes, including a permanent fund dividend (PFD), to be \$16,526.<sup>6</sup> This resulted in a presumptive child support obligation of \$242 per month, applying the standard deductions.<sup>7</sup>

On March 24, 2008, Mr. D. filed his appeal and request for formal hearing. Mr. D. believes CSSD incorrectly calculated his child support obligation because he has not worked since he was injured on the job in 2004 and he has twice been denied social security benefits.<sup>8</sup>

CSSD reviewed the Alaska Department of Labor and Workforce Development database and discovered that in 2007 Mr. D. received a lump sum workers' compensation payment in the amount of \$35,330.<sup>9</sup> CSSD also reviewed the Division of Public Assistance database and found that in 2007 Mr. D. received \$42,000 from a personal injury action.<sup>10</sup> CSSD revised its child support calculation. In its revised calculation CSSD included as income for child support purposes Mr. D.'s PFD and his workers' compensation payment but not the \$42,000 personal injury settlement. Based on these income figures and applying the standard deductions CSSD calculated Mr. D.'s presumptive child support obligation to be \$616 per month effective December 1, 2007 and ongoing.<sup>11</sup>

At the April 22, 2008, hearing, Mr. D. testified he has not worked since he was injured in 2004. In 2007, he made \$11,000 from the sale of a trailer that he purchased for \$3,000 and

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<sup>3</sup> Exhibit 1 at 4.

<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 5.

<sup>6</sup>  $\$7.15 \times 2080 = \$14,872$ .  $\$14,872 + \$1,654 \text{ PFD} = \text{Total Gross Income of } \$16,526$ .

<sup>7</sup> Exhibit 5.

<sup>8</sup> Exhibit 6.

<sup>9</sup> Exhibit 7.

<sup>10</sup> Exhibit 8. The computer print out has a print date of February 2, 2008, which is prior to the date upon which the Modified Administrative Child Support and Medical Support Order was issued. However, the date upon which CSSD became aware of this event is unknown.

<sup>11</sup> Exhibit 9.

repaired. He testified that he had help with the repair work. Mr. D. has monthly rental income from a trailer that he owns. The trailer presently rents for \$800 a month and he pays \$390 a month for space rental netting Mr. D. \$410 per month rental income.

Mr. D. lives in a trailer which he owns with his wife, N. P. D., and three children, Y. born 00/00/95, K. born 00/00/02 and S. born 00/00/04.<sup>12</sup> Y. has leukemia and due to Y.'s needs, Ms. D. is unable to work.<sup>13</sup> Mr. D.'s monthly expenses are minimal. He pays \$385 a month for space rental. He estimates his monthly utilities to be less than \$200. He does not know what his family spends on food per month. The family owns two vehicles: a 1997 Ford Echo that is paid off and a 2000 Kia on which the monthly payment is \$246 per month. Insurance, gas, and maintenance for the cars average \$100 per month. The family has no consumer debt other than a large cellular bill incurred while Y. was in Seattle, Washington receiving treatment for her cancer.

Mr. D. provided some medical records. A chart note dated January 23, 2007, states that Mr. D.'s condition affects "his ability to work and he will not be successful currently in any kind of a work environment."<sup>14</sup> However, the subsequent chart notes do not discuss his inability to work or difficulties he may encounter. Mr. D. has not applied for vocational rehabilitation or pursued employment because he believes he cannot work.<sup>15</sup>

In addition to the three children who live with Mr. D. he has a 13 year-old daughter from a prior relationship who lives in the Virgin Islands, Z. M., born 00/00/93. The Territorial Court of the Virgin Islands has ordered support of Z. M. in the amount of \$150 per month.<sup>16</sup> Mr. D. provided a receipt dated April 18, 2008 from Western Union showing a transfer in the amount of \$350 to the Virgin Islands.<sup>17</sup> When CSSD was provided a copy of the order, CSSD revised its calculation to include a deduction for a prior child resulting in a child support obligation of \$586 per month.<sup>18</sup>

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<sup>12</sup> Exhibit 12; D. Testimony.

<sup>13</sup> April 4, 2008, letter from Joseph Stratman, MSW, Providence Alaska Medical Center admitted at hearing.

<sup>14</sup> Exhibit 10 at 16.

<sup>15</sup> D. R. Testimony.

<sup>16</sup> Exhibit 10 at 4 - 5.

<sup>17</sup> April 18, 2008 Western Union Receipt admitted at hearing.

<sup>18</sup> Exhibit 11.

Ms. S. initiated the request for modification after she discovered Mr. D. had the trailer which he sold and the one which he rents. She believes he can afford more child support than the minimum \$50 per month he has been paying.

*B. Evidence Submitted In Response To Order Reopening The Record*

After the hearing, Mr. D. submitted a birth certificate for S., a birth certificate for K., and a Notarized Translation of Birth Certificate stating that he is the father of Y. D. and that N. P. is her mother. The Notarized Translation is dated February 23, 2005.<sup>19</sup> Mr. D. also submitted a letter from the manager of his trailer park confirming that he, his wife, and their three biological children have lived in the park for the past year.<sup>20</sup>

In response to the post hearing submission CSSD performed a revised calculation giving Mr. D. a deduction for paying support for an older child from a prior relationship and for the cost of supporting 2 prior children in the home.<sup>21</sup> CSSD's revised calculation results in a modified ongoing child support in the amount of \$427 per month.<sup>22</sup>

**III. Discussion**

Mr. D.'s raises several issues on appeal. The first issue is whether he has established by a preponderance of the evidence that he is entitled to a deduction for prior children.<sup>23</sup> The second issue is what Mr. D.'s annual income is for purposes of calculating child support and based on that amount what is his presumptive child support obligation. Once those two issues are addressed it can be determined whether the facts of this case establish by clear and convincing evidence that unless varied, the presumptive child support obligation is manifestly unjust.

*A. Prior Children*

A parent is obligated both by statute and at common law to support his or her children.<sup>24</sup> For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,<sup>25</sup> that is, total income from all sources after allowable deductions.<sup>26</sup> One such allowable

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<sup>19</sup> Exhibit 12 at 4.

<sup>20</sup> Exhibit 12 at 1.

<sup>21</sup> Exhibit 13.

<sup>22</sup> *Id.*

<sup>23</sup> To prove a fact by a preponderance of the evidence is to show that "the fact more likely than not is true." 2 AAC 64.290(e); 15 AAC 05.030(h).

<sup>24</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>25</sup> 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

deduction is for support paid for a prior child or children. Here, there are three prior children for whom support should be deducted.

The first child, Z. M., receives child support in the amount of \$150 pursuant to a court order. The Western Union receipt established that Mr. D. sent more than twice the court ordered child support in April 2008. In its Post Hearing Brief and at the hearing CSSD did not advocate that support for Z. should disallowed as a deduction for purposes of calculating C.'s child support.<sup>27</sup> As long as Mr. D. actually pays the ordered child support he is entitled to a deduction for the amount ordered. Similarly, as to the two prior children in the home, Y. and K., CSSD did not advocate that support for these two prior children in the home should be disallowed as a deduction. The unchallenged documents submitted post hearing is persuasive evidence that Mr. D. should receive a deduction for Y. and K.

*B. Income Determination and Child Support Calculation*

Child support is calculated as a percentage of the income which will be earned when the support is to be paid.<sup>28</sup> The income determination will necessarily be speculative because the relevant figure is yet-to-be-earned expected income. Therefore, it is important to examine all available evidence to make the best possible calculation.

Civil Rule 90.3(a) and 15 AAC 125.030(a) require child support be based on a parent's annual income from all sources, including workers' compensation benefits, awards, and prizes. For reasons not apparent in the record, the 2007 income utilized by CSSD for purposes of child support does not reflect the Obligor's annual income from all sources.<sup>29</sup> Alaska law allows CSSD to use an Obligor's "potential income" if a finding is made that the Obligor is voluntarily and unreasonably unemployed or underemployed.<sup>30</sup> CSSD originally calculated Mr. D.'s child support obligation using "imputed" or "potential income after finding Mr. D. R. was voluntarily unemployed."<sup>31</sup>

When an Obligor is found to be voluntarily unemployed or underemployed, the child support is calculated using his or her "potential income," which is based on the Obligor's "work

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<sup>26</sup> 15 AAC 125.070(a); 15 AAC 125.065; Civil Rule 90.3(a)(1).

<sup>27</sup> See Exhibit 11.

<sup>28</sup> Civil Rule Commentary 90.3 III E.

<sup>29</sup> Exhibits 9, 11.

<sup>30</sup> Civil Rule 90.3(a)(4).

<sup>31</sup> Exhibit 4 at 4, 5.

history, qualifications and job opportunities.”<sup>32</sup> The use of “potential income” in a child support obligation is not to punish the Obligor parent.<sup>33</sup> A primary goal of imputing income, according to the Alaska Supreme Court, is to compel the parent to find full-time employment:

An important reason -- if not the chief reason -- for imputing income to a voluntarily underemployed parent is to goad the parent into full employment by attaching an unpleasant consequence (a mounting child support debt or, in certain cases of shared custody, a reduced child support payment) to continued inaction. Indeed, in primary and shared custody situations alike, an order imputing income often yields no tangible benefits to the children unless and until it impels the underemployed parent to find a job.<sup>[34]</sup> ”

In its February 29, 2008 order, CSSD imputed income based on the Alaska Minimum Wage of \$7.15 per hour multiplied by 2080 hours for full time employment plus Mr. D.’s permanent fund dividend. This resulted in a child support obligation of \$242 per month effective December 1, 2007.<sup>35</sup> Mr. D. appealed claiming he cannot work.

An Obligor who claims he or she cannot work, or pay child support, because of a disability, or similar impairment, must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.<sup>36</sup> Even though Mr. D. was provided with an opportunity to present persuasive evidence of his inability to work, he did not. Mr. D. has not presented persuasive evidence that he is unable to obtain employment that pays him at least a minimum wage, \$7.15 per hour. There is no persuasive explanation in the record for why Mr. D. is not working full-time other than he has voluntarily and unreasonably removed himself from the workforce. Therefore, it is appropriate to impute income to Mr. D. at the minimum wage which results in an annual imputed income of \$14,872.<sup>37</sup>

In 2007, Mr. D. had other income from four sources: 1) \$35,330 received in a workers’ compensation settlement;<sup>38</sup> 2) \$42,000 from a personal injury action;<sup>39</sup> 3) \$11,000 he netted

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<sup>32</sup> Civil Rule 90.3, Commentary III.C.

<sup>33</sup> *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

<sup>34</sup> *Beaudoin v. Beaudoin*, 24 P.3d 523 (Alaska 2001).

<sup>35</sup> Exhibit 5.

<sup>36</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1371 (Alaska 1991).

<sup>37</sup> \$7.15 x 2080 hours = \$14,872.

<sup>38</sup> Exhibit 7; D. Testimony.

<sup>39</sup> Exhibit 8; D. Testimony.

from the sale of a trailer;<sup>40</sup> and 4) \$410 per month net rental income.<sup>41</sup> The \$42,000 from the personal injury action is not included for purposes of child support because the nature of the award is unknown.<sup>42</sup> The \$35,330 from workers' compensation was from a settlement and intended to replace lost future earnings and is included for purposes of child support as are the rental proceeds and the proceeds from the sale of the trailer. Additionally, there is imputed income the amount of \$14,872 plus Mr. D.'s PFD. Therefore, Mr. D.'s total income for child support purposes in 2007 is \$67,776<sup>43</sup> which, after applying the standard deductions in addition to a \$150 deduction for child support in a prior relationship and a \$1,386 deduction for prior children in the home, results in a presumptive child support obligation of \$749 as shown in Appendix A.

In 2008, Mr. D.'s income for child support purposes is anticipated to be \$21,446<sup>44</sup> which, after applying the standard deductions in addition to a \$150 deduction for child support in a prior relationship and a \$382 deduction for prior children in the home, results in a presumptive child support obligation of \$206 per month as shown in Appendix B.

The Modified Administrative Child Support and Medical Support Order was effective as of December 1, 2007. Mr. D.'s income in 2008 will be substantially less than it was in 2007. Modification of a support order is appropriate upon a showing of good cause and material change in circumstances.<sup>45</sup> "A material change in circumstances will be presumed if support as calculated under this rule is more than 15 percent greater or less than the outstanding support order."<sup>46</sup> Here, there is a presumptive material change in circumstance from 2007 to 2008. Therefore Mr. D.'s child support obligation from January 1, 2008 and ongoing should be reduced to \$206 per month.

A child support obligation may be varied if the amount calculated would result in a manifest injustice due to unusual circumstances.<sup>47</sup> The obligor must provide clear and

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<sup>40</sup> D. Testimony.

<sup>41</sup> *Id.*

<sup>42</sup> For example what portion of the award was taken by attorney's fees and outstanding medical expenses?

<sup>43</sup>  $\$35,330 + \$11,000 + (\$410 \times 12 = \$4,920) + \$14,872 + \$1,654 = \$67,776$ .

<sup>44</sup>  $\$14,872 \text{ Imputed Income} + (\$410 \times 12 = \$4,920 \text{ Net Rental Income}) + \$1,654 \text{ PFD} = \$21,446$ .

<sup>45</sup> AS 25.27.190(e); Civil Rule 90.3(h)(1).

<sup>46</sup> Civil Rule 90.3(h)(1).

<sup>47</sup> 15 AAC 125.075(a)(2).

convincing evidence of manifest injustice.<sup>48</sup> “Good cause” may be established by the presence of "unusual circumstances" in a particular case.<sup>49</sup> Mr. D. provided an outdated medical record (over one year old) that he should not be working. He submitted more recent medical records, none of which state that he cannot work or cannot work full time.<sup>50</sup> Mr. D.’s testimony without more is not clear and convincing evidence that there is good cause to vary the presumptive support obligation of \$206 per month.<sup>51</sup>

#### **IV. Conclusion**

Mr. D.’s 2007 income for purposes of child support is \$67,776 and his child support obligation is \$749 per month effective December 1, 2007. Mr. D.’s 2008 income for purposes of child support is \$21,446 and his child support obligation is \$206 per month effective January 1, 2008.

#### **V. Child Support Order**

- H. D. is liable for child support in the amount of \$749 per month, effective December 1, 2007 through December 31, 2007; \$206 per month, effective January 1, 2008 and ongoing. The Modified Administrative Child Support and Medical Support Order issued February 29, 2008 is so amended.
- All other provisions of the Modified Administrative Child Support and Medical Support Order issued February 29, 2008, remain in full force and effect.

DATED this 21st day of July 2008.

By: Signed  
Rebecca L. Pauli  
Administrative Law Judge

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<sup>48</sup> 15 AAC 125.075(a); See Civil rule 90.3(c)(1).

<sup>49</sup> “Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children . . . .” Civil Rule 90.3(c)(1)(A).

<sup>50</sup> Exhibit 10.

<sup>51</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1371 (Alaska 1991).



**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 11th day of August 2008.

By: Signed \_\_\_\_\_  
Rebecca L. Pauli  
Administrative Law Judge

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