

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

IN THE MATTER OF )  
 )  
 L. E.-D. ) Case No. OAH-08-0175-CSS  
 ) CSSD Case No. 001093154  
\_\_\_\_\_)

**DECISION & ORDER**

**I. Introduction**

The obligor, L. E.-D., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on March 13, 2008. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on April 24, 2008. Mr. E.-D. appeared by telephone, as did the custodian of record, J. B. Andrew Rawls represented CSSD. The children are C. E. (DOB 00/00/98) and M. E. (DOB 00/00/02). Because modification is not appropriate at this time, the modified order is VACATED, and support will remain as set in the existing 2005 order.

**II. Facts**

The previous support order had set support at \$410 per month for the two children in October of 2005. In 2006, Mr. E.-D. had been working as a cook at a Soldotna restaurant called F. In this job, he had earned about \$1600 per month. His total reported wages for 2006 were \$17,402.60. Late in 2006, Mr. E.-D. and his wife bought a restaurant in Nikiski that came available on good terms. So far, the restaurant has not been a large success. Mr. E.-D. and his wife commingle their personal and business income and expenses, but they estimate they take about \$2000 per month to pay for food, rent and all other expenses for themselves and their two children. Both Mr. E. and his wife testified that they are living marginally off income of the restaurant.

According to the restaurant's 2007 profit and loss statement, the restaurant had gross sales of \$221,897 with the cost of goods sold being \$109,403. Most of the business's expenses appear to be routine business expenses. Payroll expenses \$49,208, but it is not clear if this includes pay for Mr. E.-D. and his wife. About \$16,000 of expenses are categorized as "personal." At least some of these expenses, such as \$3,623 for "child support" do not appear to be related to the business. The business's bottom line shows a loss of \$6,158.83 for 2007.

**III. Discussion**

According to Civil Rule 90.3(h), a child support award may be modified upon a showing of a material change of circumstances. A material change of circumstances is presumed to exist if support calculated under the rule would vary by more than fifteen percent.

The modified order that CSSD issued on March 13, 2008, was based on a statistical wage figure for a food service manager. This figure does not accurately reflect the income that Mr. E.-D. was earning either when he was working at F. or that he may have been earning by running his own restaurant.

Mr. E.-D.'s business enterprise is still new, and it is difficult to determine exactly how much income should be attributed to him. In very approximate terms, the amount Mr. E.-D. owes under the previous order for two children would be supported by income of about \$20,000 per year. Mr. E.-D. did not earn that much working at F., and it is more likely than not that the amount he is now earning from the restaurant does not exceed that amount. Because of the commingling of personal and business income and expenses, there is not sufficient evidence to show that Mr. E.-D.'s support obligation would be reduced by more than fifteen percent if support were calculated according to his current income.

#### **IV. Conclusion**

The record does not show by a preponderance of the evidence that Mr. E.-D.'s support obligation should change by more than fifteen percent, or that there has otherwise been a material change in circumstances since the previous order was issued. No modification is appropriate at this time.

#### **V. Order**

IT IS HEREBY ORDERED that the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division on March 13, 2008 be VACATED. The previous support order shall remain in effect, with support remaining at \$410 per month for two children.

DATED this 1<sup>st</sup> day of August, 2008.

By: *Signed* \_\_\_\_\_  
DALE WHITNEY  
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 18<sup>th</sup> day of August, 2008.

By: Signed \_\_\_\_\_  
DALE WHITNEY  
Administrative Law Judge

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