

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

IN THE MATTER OF:)	
)	OAH Case No: 08-0586-CSS
E. P. M. JR.)	CSSD Case No: 001145616
_____)	

DECISION AND ORDER

I. Introduction

M. R. P. has appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued on August 6, 2008 in Mr. M.’s case.¹ In her appeal filed on October 27, 2008, Ms. P. alleges that the amount of child support stated in the modified order is both inadequate and incorrect.

The formal hearing in this case was held on November 17, 2008, before Administrative Law Judge (“ALJ”) James T. Stanley. Mr. M. and Ms. P. appeared telephonically. David Peltier, Child Support Specialist II, appeared in person for CSSD. Exhibits 1 through 10 were admitted into evidence. The hearing was recorded. The record closed on November 26, 2008. CSSD filed its post-hearing brief on November 18, 2008.

Ms. P. met her burden of proving that CSSD’s August 6, 2008, Modified Administrative Child Support and Medical Support Order is incorrect. CSSD recalculated the amount of child support that Mr. M. should pay for two children.

II. Facts²

Mr. M. and Ms. P. are the parents of L. M. (DOB 00/00/06) and X. M. (DOB 00/00/07); Ms. P. is the custodian of record for both children. Mr. M. works for a native village and earns \$22 per hour. His typical workday is seven to eight hours long. However, he does not work during the winter months. Ms. P. works part of the year at a mine and earns \$14 per hour.

CSSD set Mr. M.’s child support for L. at \$501 per month in May 2007.³ On November 30, 2007, Mr. M.’s probability of paternity of X. was determined to be 99.99%, based on genetic testing results.⁴ CSSD then issued an Order Establishing Paternity on December 10, 2007.⁵

¹ Exhibit 8.

² The facts are derived from the evidence and testimony, unless another source is cited.

³ Exhibit 1.

On March 14, 2008, CSSD issued a Notice of Petition for Modification of Administrative Support Order in order to add X. to Mr. M.'s child support order and to set an ongoing support amount for both children.⁶ CSSD requested financial information from Mr. M., but he did not respond.⁷ On August 6, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that set modified ongoing child support at \$85 per month for two children, with additional arrears totaling \$22 for past public assistance benefits paid on X.'s behalf, and calculated based on divided custody.⁸ Ms. P.'s appeal followed.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁹ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated from his or her "total income from all sources." An obligor is liable to the state for the amount of public assistance granted to a child to whom the obligor owes a duty of support.¹⁰ Arrears begin accruing as of the first month in which state assistance was provided on behalf of the child (or children).¹¹

Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹² Civil Rule 90.3 presumes that if the newly calculated child support amount is more than 15% higher or lower than the previous order, the requirement for "good cause and material change of circumstances" has been met and the support amount may be modified.

Ms. P.'s belief that CSSD incorrectly calculated the amount of child support was established at the hearing, based largely on the testimony of Mr. M. After the hearing, CSSD recalculated the amount of child support that Mr. M. should pay: the calculation was based on the facts that Mr. M. earns \$22 per hour when he works; he usually works seven to eight hours

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ *Id.*

⁸ Exhibits 5, 6.

⁹ *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁰ AS 25.27.120(a) referring to AS 47.07 (medical assistance for needy persons) and AS 47.27 (Alaska Temporary Assistance Program for eligible families).

¹¹ 15 AAC 125.105(a)(1).

¹² AS 25.27.190(e).

per day; Mr. M. is laid off during the winter months; and, he is expected to collect unemployment for sixteen weeks at \$320 per week.

CSSD prepared revised calculations after the hearing. Using the foregoing information, CSSD estimated Mr. M.'s total annual income at \$35,789, including wages of \$28,600, the PFD of \$2,069, and unemployment benefits of \$5,120, all of which resulted in a calculation of \$671 per month for two children and \$497 per month for one child.¹³ Also, the arrears for X. increased from \$22 to \$174 for the period through March 2008.¹⁴

IV. Conclusion

Ms. P. met her burden of proving by a preponderance of the evidence that CSSD's child support calculation was incorrect. Based upon the financial information provided by Mr. M. at the hearing, his modified ongoing child support amount is \$671 per month. This amount is correct and should be adopted.

V. Child Support Order

1. Mr. M. is liable for modified ongoing child support in the amount of \$671 per month for two children (L. and X.), effective April 1, 2008;
2. Mr. M. is liable for arrears for X. in the amount of \$174 for the month of March 2008;
3. All other provisions of the August 6, 2008, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 2nd day of March, 2009.

By: Signed
James T. Stanley
Administrative Law Judge

¹³ Exhibit 10, p. 1.

¹⁴ *Id.*

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 20th day of March, 2009.

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

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