

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

IN THE MATTER OF)
)
 J. F.) Case No. OAH-08-0613-CSS
) CSSD Case No. 001064006

DECISION & ORDER

I. Introduction

The obligor, J. F., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on October 15, 2008.

Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on December 1, 2008. Mr. F. appeared by telephone with an interpreter. The custodian, M. C., appeared in person in Juneau. Andrew Rawls represented CSSD. The child is C. P. (DOB 00/00/94). The administrative law judge affirms the modified order.

II. Facts

Support had previously been set in this case at \$408 per month for one child in 1999. Mr. F. petitioned for a modification review on June 12, 2008, and CSSD served notice of the petition on Ms. C. on June 25, 2008. CSSD modified Mr. F.'s support obligation to \$288 per month for one child, effective July 1, 2008.

CSSD calculated Mr. F.'s annual income to be \$25,648. CSSD arrived at this figure by extrapolation of Mr. F.'s income as reported to the Department of Labor for the first two quarters of 2008. Mr. F. provided copies of his tax returns for 1999 and 2001 through 2007. In 2007 Mr. F. earned \$27,128 in wages, and he reported business losses of \$3,658. In 2006 Mr. F. earned wages of \$30,345 and he reported business income of \$355. Mr. F. did not include a Schedule C that describes his business activities outside of his regular job, and there is no other evidence regarding this small amount of income or loss. Mr. F. did not report any business earnings or losses in the returns prior to 2006.

Mr. F. testified that he works for a drywall company, and that as business slows down in the construction company, he is earning slightly less than he has in the past. CSSD reports that Department of Labor data show that Mr. F. is earning approximately \$1,000 less per quarter than he did in 2007.

Mr. F. has two other children, one of whom is older than C. and one who is younger. In its most recent calculation, CSSD gave Mr. F. credit for the older child he supports, but not for the younger one.

III. Discussion

The previous order had set support at \$408 per month for one child in 1999. In the modified order, CSSD has reduced support to \$288 per month for one child. This reduction appears to reflect the fact that Mr. F. no longer lives in Alaska, and his earnings are more in line with the Lower 48.

In his appeal, Mr. F. wrote, "I ask that you review the modification once more to give me credit for my other responsibilities of my other children & wife." At the hearing, Mr. F. stated that he is behind in his support, and he asks that the modification be applied to previous years so that he can catch up in the amount he owes and be able to support his entire family.

Child support may not be modified retroactively.¹ The effective date of a modification is the first day of the month following the date on which the notice of petition for modification was served on the person who did not request the modification.² Mr. F. petitioned for a modification review on June 12, 2008, and CSSD served notice of the petition on Ms. C. on June 25, 2008. Therefore, the modification must take effect on July 1, 2008. Support for times prior to that may not be changed now.

When calculating support, the obligor is entitled to a deduction for the cost of supporting children from prior relationships, but not from subsequent relationships.³ CSSD has correctly calculated Mr. F.'s support obligation by allowing a credit for the child in Mr. F.'s home who is older than Cecelia, but not for the one who is younger.⁴

CSSD must base support on Mr. F.'s income from all sources, using the best information available to determine what the obligor's income will be.⁵ CSSD's estimate is slightly lower than the amount of income Mr. F. earned from wages, not counting business losses, in 2007. This is a reliable prediction of Mr. F.'s ongoing level of income. If a further decline in the economy substantially reduces Mr. F.'s level of income, another modification may be appropriate in the future.

IV. Conclusion

CSSD has correctly set Mr. F.'s support obligation at \$288 per month for one child, effective July 1, 2008. The decision should be affirmed.

¹ Civil Rule 90.3(h)(2).

² 15 AAC 125.321(d).

³ Civil Rule 90.3(a)(1)(D).

⁴ Exhibit 5, page 6.

⁵ 15 AAC 125.050.

V. Order

IT IS HEREBY ORDERED that the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on October 15, 2008, be AFFIRMED.

DATED this 4th day of December, 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 30th day of December, 2008.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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