

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

IN THE MATTER OF)
)
 J. E.)
_____)

Case No. OAH-09-0131-CSS
CSSD Case No. 001146948

DECISION & ORDER

I. Introduction

The obligor, J. E., appeals a decision to deny modification review issued by the Child Support Services Division (CSSD) on February 4, 2009. Mr. E. appeared in person at a hearing on March 23, 2009, as did the custodian, R. J. Erinn Brian represented CSSD by telephone. The child is H. E. (DOB 00/00/06).

Mr. E.'s petition for modification is granted. Mr. E.'s child support obligation is set at \$236 per month for one child, effective September 1, 2008.

II. Facts

Mr. E.'s ongoing support obligation was set at \$372 per month for one child in February, 2008, after a formal hearing, in a decision of February 22, 2008, that adjusted the support amount of the original Amended Administrative Child and Medical Support Order issued on August 20, 2007. This amount of support was based on Mr. E.'s earnings of \$12 per hour working full-time at Wal-Mart. At the hearing, Mr. E. testified that more recently he has been working at the Breeze-In convenience store, but he had been terminated on March 3, 2009.

Mr. E. recently suffered an injury to one of his hands that required surgery. The need for surgery appears to have been related to Mr. E.'s dismissal from the Breeze-In, but precise details and circumstances of the dismissal are unclear. Mr. E. testified that he has not been looking for work, apparently because of his hand injury. After the record closed, Mr. E. submitted a physician's note dated April 7, 2009, stating that "J. may perform any work that does not require use of his left hand for at least 6 months. Time may be extended depending on progress."¹ It appears that Mr. E.'s injury limits his ability to work at this time, but does not completely preclude employment.

Mr. E. and his girlfriend live with Mr. E.'s parents. Mr. E. has two children of his own living with him, one who is three years old and one who is a newborn. Mr. E.'s girlfriend works at a bank; Mr. E. does not know how much she earns and did not provide this information after the hearing. Mr. E. and his girlfriend contribute \$400 per month towards the household rent or mortgage and they pay about \$400 per month for utilities and cell phone service. Mr. E. owns a

2004 Kia Sorrento that he bought in 2007, with a monthly car payment of \$320.78. Mr. E. pays \$142 per month for car insurance, \$120 for gasoline, \$200 for entertainment, and \$100 for personal care. Mr. E. has two credit cards with payments totaling \$50 per month and outstanding balances of \$1,755.

In his 2007 tax return, Mr. E. claimed adjusted gross income of \$19,026. The record does not show the sources of this income. In the pay period ending March 7, 2009, Mr. E. was earning \$11.00 per hour plus some overtime at the B. I. Year-to-date earnings were \$3,153.33. During the one-year period including the last half of 2007 and the first half of 2008, Mr. E.'s wages reported to the Department of Labor were \$13,908.71.

III. Discussion

Modification of a child support obligation is appropriate when there has been a material change in the obligor's circumstances.² Generally, a material change is presumed when the modified support amount is greater than fifteen percent more or less than the existing support amount.³ Support is calculated as a percentage of the obligor's adjusted income from all sources.⁴ Support may be varied from this standard formula only upon a showing by clear and convincing evidence that manifest injustice would result if the support amount were not varied.⁵

This case presents the difficult question of how much Mr. E. earns per year or can reasonably be expected to earn. At \$11.00 per hour full-time, Mr. E. could be expected to earn \$22,800 in a year. Currently he is not working at all, but Mr. E. probably could be working to some degree. The period of Mr. E.'s partial disability will be at least half of this year.

CSSD has recommended that support be based wages reported in the one-year period including the last half of 2007 and the first half of 2008, plus PFD income. This yields a gross annual income of \$15,977, resulting in a support obligation of \$236 per month, which is more than fifteen percent less than the previous support amount. This recommendation is based on a necessarily speculative estimate of Mr. E.'s reasonable earning ability, but it is probably the best estimate available at this point. Though he could be working in some capacity, Mr. E. has suffered a real injury that will limit his ability to work for a substantial period of time. With modest household expense, some household income, and the ability to do some work, Mr. E. has

¹ Copies of this note were provided to CSSD and the custodian. This evidence is admitted to the record.

² Civil Rule 90.3(h)(1).

³ *Id.*

⁴ Civil Rule 90.3(a).

⁵ Civil Rule 90.3(c)(1).

not shown clear and convincing evidence that manifest injustice would result if his support amount were not varied from the Civil Rule 90.3 formula.

IV. Conclusion

CSSD has correctly calculated Mr. E.'s support obligation to be \$236 per month based upon the most reasonable estimate available of Mr. E.'s likely income. The record does not contain clear and convincing evidence that a variation from the standard method of calculating support is necessary. The support order should be modified accordingly.

V. Order

IT IS HEREBY ORDERED that Mr. E.'s monthly child support obligation be set at \$236, effective September 1, 2008. All other elements of the Amended Administrative Child and Medical Support Order issued on August 20, 2007 shall remain in effect. The division shall assign appropriate credits or debits to the parties for amounts paid to provide health insurance coverage for H.

DATED this 5th day of June, 2009.

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 25th day of June, 2009.

By: Signed _____
Signature
Dale Whitney _____
Name
Administrative Law Judge _____
Title

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