

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

IN THE MATTER OF:)	
)	OAH No. 09-0181-CSS
M. J. V.)	CSSD No. 001098265
_____)	

DECISION AND ORDER

I. Introduction

The Obligor, M. J. V., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 27, 2009. The Obligee child is R., DOB 00/00/1999.

The hearing was held on April 20, 2009. Mr. V. appeared in person; the custodian, C. M. D., did not participate. Erinn Brian and Andrew Rawls, Child Support Specialists, appeared for CSSD. The hearing was recorded; the record closed on April 20, 2009.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the evidence as a whole and after careful consideration, CSSD's February 27, 2009, Modified Administrative Child Support and Medical Support Order is affirmed, with one adjustment: the modified ongoing child support amount is set at \$331 per month, not \$334 per month.

II. Facts

A. History

Mr. V.'s child support obligation for R. previously was set at \$224.99 per month in 2001.¹ CSSD initiated modification of the order on October 2, 2008, by sending the parties a Notice of Petition for Modification of Administrative Support Order.² Mr. V. provided income information.³ On February 27, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. V.'s modified ongoing child support at \$334 per month, effective November 1, 2009.⁴ Mr. V. filed an appeal on March 19, 2009, asserting he is

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.

unemployed and due to the change in the economy his earnings have been greatly diminished.⁵ After reviewing Mr. V.'s last paystubs, CSSD revised the calculation to \$331 per month, which reflects the obligor's retirement contributions.⁶

B. Material Facts

Mr. V. is currently unemployed. Formerly he was the Executive Housekeeper at a local motel for eight years. A new manager was hired but he and Mr. V. did not see eye to eye, so the obligor quit his job in July 2008. He began looking for other employment but testified that because of the economy and the fact that he is 53 years old, it has been impossible for him to find other employment. He has applied at hotels, security agencies and even fast food restaurants. He testified the Army even wanted him back until it found out how old he is.

Mr. V. is now receiving \$640 per month in unemployment benefits. He lives with a friend named J. and they split household expenses. Mr. V. has regular monthly expenses of \$78 for natural gas; \$75 for electricity; \$200 for food; \$232 for the payment on a 1997 Pontiac minivan, for which he owes \$3,200; \$170 for vehicle maintenance (this expense is currently higher because the obligor has to purchase tires); \$78 for insurance; \$80 for gasoline; \$50 for personal care items and \$70 for alcohol and/or tobacco.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁷ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."⁸ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a material change in circumstances has occurred and the order may be modified.

Mr. V.'s child support previously was set at \$224.99 per month. Pursuant to the petition for modification, CSSD calculated his modified child support at \$331 per month, based on his

⁵ Exh. 5.

⁶ Exh. 6. By revising the calculation to \$331 per month, CSSD has abandoned the calculation of \$334 per month that was in the original modification order.

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ AS 25.27.190(e).

2008 earnings of \$16,397.30, plus unemployment benefits of \$4,624, and the 2008 Permanent Fund dividend, all of which equals \$23,090.30 in total annual income for 2008.

At the hearing, CSSD requested that the modification order be affirmed because it appears Mr. V. is voluntarily unemployed. The obligor has the burden of proving his or her earning capacity.⁹ If CSSD finds a parent to be voluntarily and unreasonably unemployed or underemployed, it may calculate the child support amount from the parent's "potential income," which should be based on his or her "work history, qualifications and job opportunities."¹⁰

It is not necessary to find Mr. V. is voluntarily unemployed in order to affirm the modification. The calculation of modified child support was made based on Mr. V.'s actual income for 2008, so income does not have to be imputed to him for the year. Granted, Mr. V. is currently unemployed, but he has not established that his unemployment is anything other than a temporary circumstance that will improve when he finds another job. The obligor may lack the ability to pay the total child support amount every month while he is unemployed, but there is no evidence that Mr. V. is permanently unemployed. He will no doubt incur some arrears while he is unemployed, but Mr. V. should be able to start paying those off once he starts working again.

IV. Conclusion

Mr. V. did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. CSSD correctly calculated Mr. V.' modified child support at \$331 per month, and that figure should be adopted.

V. Child Support Order

- CSSD's February 27, 2009, Modified Administrative Child Support and Medical Support Order is affirmed, with one slight adjustment: the modified ongoing child support is set to add \$331 per month, effective November 1, 2008, and ongoing.

DATED this 3rd day of June, 2009.

By: Signed
Kay L. Howard
Administrative Law Judge

⁹ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁰ Civil Rule 90.3(a)(4).

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 22nd day of June, 2009.

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

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