

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

IN THE MATTER OF:)	
)	OAH No. 09-0239-CSS
T. P.)	CSSD No. 001066851
_____)	

DECISION AND ORDER

I. Introduction

The obligor, T. P., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 13, 2009. The children are A., DOB 00/00/94; B., DOB 00/00/98; C., DOB 00/00/01; D., DOB 00/00/02; and E., DOB 00/00/03.

The formal hearing was held on May 28, 2009. Mr. P. appeared by telephone; Ms. X. did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on June 5, 2009.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record and after careful consideration, Mr. P. is liable for public assistance arrears for B. totaling \$546 for the period from July 2007 through May 2008. His child support is modified to \$653 per month, effective June 1, 2008, and further modified to \$50 per month, effective January 1, 2009, due to his incarceration. Ms. X. has withdrawn from CSSD's services, so Mr. P.'s child support is suspended as of June 1, 2008, and shall remain suspended so long as Ms. X. does not receive public assistance benefits on behalf of the children or apply for child support services.

II. Facts

A. Procedural Background

Mr. P.'s child support obligation for A., C., D. and E. was set at \$392 per month in February 2008.¹ CSSD subsequently established Mr. P.'s paternity of B.² and on CSSD issued a Notice of Petition for Modification of Administrative Support Order so as to add B. to the original order for the other children.³ Mr. P. did not respond to the request for income

¹ Exh. 2.
² Exhs. 1 & 3.
³ Exh. 5.

information.⁴ On April 13, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that added B. and set Mr. P.'s modified ongoing child support at \$698 per month for five children, effective June 1, 2008.⁵ Mr. P. filed an appeal on April 21, 2009, asserting he is incarcerated and cannot afford to pay all of the arrears.⁶ Ms. X. withdrew from child support services on June 9, 2009.⁷

B. Material Facts

Mr. P. and Ms. X. are the parents of A., B., C., D. and E. Ms. X. and the children are currently living with Mr. P.'s sister. Ms. X. received public assistance benefits for the children from July 2007 through May 2008.⁸

Mr. P. was incarcerated from June 18, 2007 – August 10, 2007; February 15, 2009 – February 24, 2009, and March 18, 2009 to the present. His 2008 income included earnings of \$17,922.81, unemployment benefits of \$3,232, and the PFD of \$2,069, all of which total \$23,223.81.⁹ A support amount calculated using CSSD's online child support calculator¹⁰ equals \$653 per month for five children.¹¹

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹² 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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹³ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. A modification is effective beginning the month after the parties are served with notice that a

⁴ Pre-hearing brief at pg. 1.

⁵ Exh. 6.

⁶ Exh. 7.

⁷ Post-hearing brief at pg. 1.

⁸ Exh. 6 at pg. 11.

⁹ CSSD attributed unemployment benefits of \$4,932 to Mr. P., exhibit 6 at pg. 7, but there is no documentation of that amount in the record. Rather, the wage records CSSD submitted during the hearing indicate Mr. P. received unemployment benefits of \$3,232 in 2008. Exh. 8 at pgs. 1-2.

¹⁰ <https://webapp.state.ak.us/cssd/guidelinecalc.jsp>

¹¹ Attachment A.

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹³ AS 25.27.190(e).

modification has been requested.¹⁴ The person who filed the appeal, in this case, Mr. P., has the burden of proving by a preponderance of the evidence that the agency's child support determination is incorrect.¹⁵

CSSD calculated Mr. P.'s modified child support at \$698 per month for five children, based on his actual 2008 earnings.¹⁶ CSSD appears to have used an incorrect amount for the unemployment benefits he received during the year, so the 2008 calculation has been corrected to \$653 per month for five children, based on information provided by CSSD during the hearing.¹⁷ The 2008 calculation is now correct.

Mr. P. did not know how long he would be incarcerated because he has still not gone to trial. As a result, CSSD set his 2009 and ongoing child support at \$50 per month, as stated at the hearing and on page 4 of the Modified Administrative Child Support and Medical Support Order.¹⁸ However, the order section of the modification, seen at page 1 of exhibit 6, does not refer to the \$50 per month amount that was to go into effect on January 1, 2009, so that will be set forth specifically in the order section of this decision.

Mr. P. claimed at the hearing that he and Ms. X. and the children lived together during all the months at issue in 2008, except when he was out of state for work. He said he could provide a statement from Ms. X. after the hearing that he was in the home in 2008. Ms. X. did not provide a statement after the hearing, but she withdrew from child support services on June 9, 2009, thereby causing all of the arrears from June 1, 2008, forward to be suspended from collection.¹⁹ As an alternative to a statement from the custodian, CSSD examined the public assistance database for information about Mr. P. In a post-hearing brief, CSSD reported that an entry in the database dated May 17, 2006, refers to Mr. P. and states he began working at Cable Tech on May 9, 2006.²⁰

Mr. P. has not met his burden of proving by a preponderance of the evidence that he was living in the home during 2008. The public assistance database indicates that he was in the home

¹⁴ 15 AAC 125.321(d).

¹⁵ 15 AAC 05.030(h).

¹⁶ Exh. 6 at pg. 7.

¹⁷ See Exh. 8 and Attachment A.

¹⁸ See Exh. 6 at pg. 4.

¹⁹ In the event Ms. X. once again applies for public assistance benefits for the children or for CSSD's services, the agency might reinstate those arrears.

²⁰ Post-hearing brief at pg. 1.

in 2006, but that was two years earlier. Also, Ms. X. did not submit a statement that he was in the home in 2008. The reasons are unknown and she did withdraw from services, but the lack of a statement from her means there is no evidence corroborating Mr. P.'s testimony on this issue.

IV. Conclusion

Mr. P. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). He received less unemployment benefits than CSSD used in his child support calculation. That amount been corrected and the calculation in Attachment A should be adopted as the modified child support amount effective June 1, 2008. As of January 1, 2009, Mr. P.'s child support should be set at \$50 per month because he has been incarcerated most of the year thus far. Finally, Ms. X. has withdrawn from services so Mr. P.'s support obligation should be suspended as of June 1, 2008, the first month that arrears are owed to her.

V. Child Support Order

- Mr. P. is liable for public assistance arrears for B. totaling \$546 for the period from July 2007 through May 2008;
- Mr. P.'s child support is modified to \$653 per month, effective June 1, 2008, and further modified to \$50 per month, effective January 1, 2009, due to his incarceration;
- Ms. X. has withdrawn from CSSD's services, so Mr. P.'s child support is suspended as of June 1, 2008, and shall remain suspended so long as Ms. X. does not receive public assistance benefits on behalf of the children or apply for child support services;
- All other provisions of the April 13, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 25th day of June, 2009.

By: Signed
Kay L. Howard
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 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 13th day of July, 2009.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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