

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

IN THE MATTER OF:)	
)	OAH No. 09-0311-CSS
J. A. D.)	CSSD No. 001048186
_____)	

DECISION AND ORDER

I. Introduction

The obligor, J. A. D., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on May 5, 2009. The Obligee children are J., DOB 00/00/94, and H., DOB 00/00/95.

The hearing was held on June 24, 2009. Mr. D. appeared in person; the custodian of record, J. L. I., participated by telephone. Andrew Rawls, Child Support Specialist, appeared for CSSD. The hearing was recorded and the record closed on July 8, 2009.

Based on the record and after careful consideration, Mr. D.'s child support is modified to \$62 per month, effective June 1, 2009, and ongoing.

II. Facts

A. History

Mr. D.'s child support obligation for J. and H. was previously established at \$229 per month for two children in July 1996.¹ On November 12, 2008, Mr. D. initiated a modification review of the order.² On November 17, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Both of them provided income information.⁴ On May 5, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. D.'s modified ongoing child support at \$379 per month for two children, based on Ms. I. having primary custody, effective December 1, 2008.⁵ Mr. D. filed an appeal on

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exhs. 5-6.
⁵ Exh. 7.

May 21, 2009, asserting his current income is not the same as it was in 2008, and also claiming that the obligee J. has been in his custody since May 15, 2009.⁶

B. Material Facts

Mr. D. and Ms. I. are the parents of J. and H. Ms. I. originally had primary custody of the children and Mr. D.'s support obligation was established in 1996. About 2 ½ years ago, J. began living with Ms. I.'s cousin, M. Z., pursuant to an informal agreement between the parties. Mr. Z. did not request child support services, nor did he put J. on public assistance. Ms. I. did not incur any expenses for J. during that time.

On May 15, 2009, J. went to live with Mr. D. The obligor and his girlfriend, K., have three younger children in the home who are 6-11 years of age. K. and the children receive public assistance, but Mr. D. indicated he had not and would not put J. on the grant because he does not want CSSD to collect support for J. from Ms. I.

Mr. D. is unemployed from the construction industry. He had knee surgery in April 2008 and was released from medical care in July 2008. He received unemployment benefits until they ran out. Mr. D.'s usual wage is \$19-\$24 per hour, which he last received in 2007. He is currently involved in a job search but has not had success because he does not have a drivers' license at this time.

H. has continued to remain in Ms. I.'s custody for all the time periods at issue and Ms. I. informed CSSD she wants to withdraw from services. Ms. I. also is not working at this time. Her youngest child, who lives with his father in Anchorage, is spending the summer with her. In addition, Ms. I.'s mother is ill and the custodian is taking care of her. When she is working, Ms. I. usually receives minimum wage and tips.

Mr. D. currently has nearly \$22,000 in child support arrears. His options for the arrears and also regarding the ongoing support obligation were discussed at the hearing. As to the arrears, he may file a default review as allowed by AS 25.27.195(b). As to the ongoing case, the parties seem to agree that they are going to withdraw from services. Mr. D. should be aware, however, that these various options affect his child support obligation differently, so he should be fully informed before taking any specific action.

⁶ Exh. 8.

After the hearing, CSSD prepared a revised child support calculation based on the parties exercising divided custody of J. and H. CSSD used the minimum wage for Mr. D.'s income and for Ms. I.'s, her 2008 tax return.⁷ The calculation results in a child support amount of \$62 per month, to be paid by Mr. D.⁸ CSSD requested that this amount be made effective June 1, 2009, because Mr. D. assumed custody of J. on May 15, 2009, so that is when a "material change in circumstances" occurred in this case. CSSD asserted that a change in circumstances did not occur as of the standard effective date of the modification because a child support amount calculated for 2008 does not meet the necessary 15% change in order to require a modification.

III. Discussion

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." In a modification situation, if the child support amount calculated from an obligor's current income is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that "good cause and material change in circumstances" has occurred and allows a modification to go forward. If the child support amount calculated from current income information does not yield a 15% change, Civil Rule 90.3 does not require that the child support order be modified.

That is what has transpired in this case. Mr. D.'s 2008 income did not result in at least a 15% change in the support amount, so there is no material change in circumstances as of December 1, 2008, when a modification would be effective. Rather, the material change in circumstances occurred on May 15, 2009, when Mr. D. assumed primary custody of J. For that reason, the parties' respective support obligations to each other result in a divided custody calculation of \$62 per month, effective June 1, 2009.

IV. Conclusion

Mr. D. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order is incorrect, as required by 15 AAC 05.030(h). The parties are currently exercising divided custody of J. and H., as of May 15, 2009. CSSD correctly calculated the respective child support obligations of Mr. D. and Ms.

⁷ See Exhs. 12-13.

⁸ CSSD's Post-hearing brief stated the revised child support amount equals \$63, but an examination of the calculation itself reveals it is actually \$62. See Exh. 14.

I. and determined that Mr. D. owes child support in the amount of \$62 per month, effective June 1, 2009. This figure should be adopted.

Either party wishing to withdraw from CSSD's services must do so in writing and, at a minimum, should be fully aware of the legal effect of that decision.

V. Child Support Order

- Mr. D.'s child support is modified to \$62 per month, effective June 1, 2009, and ongoing;
- All other provisions of CSSD's May 5, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 8th day of July, 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 27th day of July, 2009.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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