

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

IN THE MATTER OF:)
) OAH No. 09-0327-CSS
D. D. H.) CSSD No. 001121867
_____)

DECISION AND ORDER

I. Introduction

On June 18, 2009, CSSD filed a Motion to Dismiss the appeal in this child support case. Oral argument on the motion was held on July 1, 2009. Mr. H. appeared by telephone; the custodian, K. J. H., did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on July 1, 2009.

Based on the record as a whole, and after careful consideration, CSSD's motion to dismiss the appeal is denied as moot and CSSD's January 31, 2009, Modified Administrative Child Support and Medical Support Order is affirmed.

II. Facts

A. Procedural history

Mr. H.' child support obligation was set at \$50 per month for K. in 2003.² On July 10, 2008, CSSD issued a Notice of Petition for Modification of Administrative Support Order so as to add the child D. to Mr. H.' order for K. and to set a current ongoing support amount for both children.³ Mr. H. did not respond to the notice.⁴ On January 31, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that added D. to Mr. H.' order and modified the child support amount to \$50 per month, effective August 1, 2008 and then further modified his support amount to \$295 per month, effective January 1, 2009.⁵ Mr. H. filed an

¹ Calls were placed to both of Ms. H.' telephone numbers of record, but the woman who answered the first said Ms. H. is no longer living at that number and the second number was a facsimile machine.

² Exh. 1.

³ Exhs. 2 & 3.

⁴ Pre-hearing brief at pg. 1.

⁵ Exh. 4. That portion of CSSD's modified order that shows the effective date of the order is covered by a postal service mailing receipt, but according to 15 AAC 125.321(d), the effective date should be August 1, 2008, even though CSSD's pre-hearing brief says the order was effective September 1, 2008.

appeal and requested a formal hearing on June 3, 2009, a period of 116 days after he was served with the modified order.⁶ CSSD filed the Motion to Dismiss on June 19, 2009.

B. Material facts

Mr. H. and Ms. H. are the parents of K. and D. The parties live in separate residences on property owned by Mr. H.' parents. The children live with Ms. H.

Mr. H. is an apprentice carpenter. He most recently worked for A. M. doing framing at \$15-\$17 per hour. He started almost immediately after being released from his 2008 incarceration in October 2008, but was laid off on March 3, 2009 and is currently receiving unemployment benefits. Mr. H. has no idea when he may return to the job and he is not a union member, so he has had to look for other work on his own. He has submitted resumes and applications to potential construction, North Slope and mechanical employers and is also willing to work in the electrical or landscaping fields.

Mr. H. has minimal but necessary expenses which include \$500 per month for rent and utilities; \$200 per month for food; \$80 for a fill-up of his 1995 Chevrolet diesel pickup; \$25 per month for personal care items; and he has a debt of \$2,000 remaining on his outpatient treatment.

III. Discussion

A. Motion to dismiss

CSSD initiated a modification of Mr. H.' child support order after Ms. H. began receiving public assistance benefits for the parties' second child in March 2008. The modification order was issued according to CSSD's regulations, when the agency issues a Modified Administrative Child Support and Medical Support Order, the parties have 30 days to file an appeal.⁷ If the parent does not request a formal hearing within this time period, his or her appeal rights expire, and the underlying order remains in effect unless and until another modification is initiated.

CSSD issued the Modified Administrative Child Support and Medical Support Order on January 31, 2009, and served it on Mr. H. on February 7, 2009. Mr. H. did not appeal CSSD's order until June 3, 2009, a period of 116 days after he was served, or 86 days after his 30-day appeal time expired. His appeal was untimely, but Mr. H. appeared and presented evidence regarding the facts of his case and CSSD requested that its modification order be affirmed, so the

⁶ Exh. 5.

⁷ 15 AAC 05.010(b)(6).

substance of Mr. H.' appeal should be addressed. Therefore, the motion to dismiss is denied as moot and the merits of CSSD's Modified Administrative Child Support and Medical Support Order will be addressed below.

B. Modification order

A parent is obligated both by statute and at common law to support his or her children.⁸ 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."⁹ 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. H.' child support previously was set at \$50 per month for the parties' first child, K. Pursuant to the petition for modification, CSSD added D. to Mr. H.' order for K. and set his modified child support at \$50 per month for August 2008 through December 2008, based on his 2008 incarceration. For 2009 and ongoing, CSSD estimated Mr. H. would earn \$14,872, which is an estimate of the annual income for someone who is earning the minimum wage.¹⁰ The child support amount calculated from these earnings is \$295 per month.¹¹

CSSD's calculations are correct. The \$50 per month portion of the order reflects the fact that Mr. H. was incarcerated for much of 2008 and thus appropriately sets his child support at the minimum amount allowed by statute for the rest of the year. For 2009, CSSD used the Alaska minimum wage of \$7.15 per hour for the child support calculation rather than Mr. H.' wage of \$17 per hour that he was earning at A. M. This is a reasonable figure to use, given that Mr. H. is currently unemployed.

The obligor's position is that his child support should be lowered because he is unemployed, but Mr. H. has not established that his unemployment is anything other than a temporary circumstance that will improve when he finds another job. Civil Rule 90.3(a) directs CSSD to calculate child support from an obligor parent's annual income. This method of calculation results in a consistent child support amount for each month at issue. In this case, Mr. H.' monthly child support was calculated from his estimated income in 2009 that, because it is

⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁹ AS 25.27.190(e).

¹⁰ Exh. 4 at pg. 7. CSSD did not include a PFD because Mr. H. would not be eligible due to his incarceration.

based on a lower hourly wage, includes the reduction in income due to his unemployment. Moreover, the Alaska Supreme Court discourages adjustment of support amounts for obligors who are temporarily unemployed.¹²

Mr. H. may lack the ability to pay the total child support amount every month while he is unemployed, but there is no evidence that he is permanently unemployed. Mr. H. may incur some arrears while he is unemployed, but he should be able to start paying those off once he starts working again.

IV. Conclusion

Mr. H.' appeal was untimely but the merits of his appeal were addressed at the hearing, so CSSD's Motion to Dismiss should be denied as moot. Mr. H. 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 his child support at \$50 per month from August 2008 through December 2008, and \$295 per month, effective January 1, 2009. CSSD's order for modification should be adopted.

V. Child Support Order

- CSSD's June 18, 2009, Motion to Dismiss is denied as moot;
- CSSD's January 31, 2009, Modified Administrative Child Support and Medical Support Order is affirmed.

DATED this 1st day of July, 2009.

By: Signed
Kay L. Howard
Administrative Law Judge

¹¹ *Id.*

¹² *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

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 20th 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.]