

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

IN THE MATTER OF: )

S. L. Y. )

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) OAH No. 09-0463-CSS

) CSSD No. 001019925

**DECISION AND ORDER**

**I. Introduction**

The obligor, S. L. Y., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on August 18, 2009. The children are M. and C.

The formal hearing was held on September 22, 2009. Mr. Y. participated in person; the custodian, T. E. Y., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 25, 2009.

Based on the record and after careful consideration, Mr. Y. is liable for arrears for C. of \$93 per month for the period from November 2007 through November 2008, all of which totals \$1,209. His ongoing child support obligation is modified to \$393 per month for two children, effective December 1, 2008, and further modified to \$329 per month for two children, effective January 1, 2009, and ongoing.

**II. Facts**

**A. Procedural Background**

Mr. Y.’s child support obligation for J. and M. was set at \$195 per month in 1996.<sup>1</sup> J. emancipated in September 2007.<sup>2</sup> On November 5, 2008, CSSD issued a Notice of Petition for Modification of Administrative Support Order so as to add C. to the original order that now just involved support for M.<sup>3</sup> Mr. Y. did not respond to the request for income information.<sup>4</sup> On August 18, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that added C. and set Mr. Y.’s modified ongoing child support at \$357 per month for two

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<sup>1</sup> Exhs. 1 & 2.

<sup>2</sup> Pre-hearing brief at pg. 1.

<sup>3</sup> Exh. 3.

<sup>4</sup> Pre-hearing brief at pg. 1.

children, effective December 1, 2008.<sup>5</sup> Mr. Y. filed an appeal on August 18, 2009, asserting his employer went out of business, he is not currently working, he has no place to live and needs a reduction in support.<sup>6</sup>

### **B. Material Facts**

Mr. Y. formerly worked for Cline's Tesoro, followed by The Brews Brothers, LLC. On May 20, 2009, he was laid off from the Brews Brothers because the company went out of business. He was unemployed and received unemployment benefits until September 15, 2009, when he was hired by Carr's in the Sears Mall. He worked 28 hours the first week, full-time beginning on September 22, 2009. Mr. Y. earns \$7.50 per hour.

Mr. Y. lost his housing after being laid off in May 2009 and he remains homeless. He stays with friends when he can and hopes to obtain housing soon. He does have contact with the children, but they are not able to stay overnight while he is still homeless.

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>7</sup> 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."<sup>8</sup> 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 modification has been requested.<sup>9</sup> The person who filed the appeal, in this case, Mr. Y., has the burden of proving by a preponderance of the evidence that the agency's child support determination is incorrect.<sup>10</sup>

CSSD calculated Mr. Y.'s modified child support at \$357 per month for two children, based on his 2007 income.<sup>11</sup> A child support calculation using his 2008 income yields a figure

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<sup>5</sup> Exh. 4.

<sup>6</sup> Exh. 5.

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

<sup>8</sup> AS 25.27.190(e).

<sup>9</sup> 15 AAC 125.321(d).

<sup>10</sup> 15 AAC 05.030(h).

<sup>11</sup> Exh. 4 at pg. 6.

of \$393 per month.<sup>12</sup> Although the monthly figure is higher, CSSD should have used Mr. Y.'s 2008 income to calculate his 2008 child support amount.

As to the child support amount for 2009, CSSD was tasked with preparing a calculation using its best estimate of Mr. Y.'s actual income for the year. As directed, CSSD's post-hearing submission shows the division used the wages he earned prior to his layoff of \$7,941.92; his unemployment benefits of \$3,159; and the total wages from his new job of \$4,650, projected from September 15, 2009, through the end of the year. These figures yield total annual income of \$17,055.92, including the 2009 PFD, and a child support amount of \$329 per month for two children.<sup>13</sup>

#### **IV. Conclusion**

Mr. Y. 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). His income for 2008 yields a child support amount of \$393 per month, which is charged just for December 2008. Also, Mr. Y.'s actual income for 2009 was estimated and this figure resulted in a child support amount of \$329 per month for 2009 and ongoing. These amounts should be adopted.

#### **V. Child Support Order**

- Mr. Y. is liable for arrears for C. of \$93 per month for the period from November 2007 through November 2008, all of which totals \$1,209;
- Mr. Y.'s child support is modified to \$393 per month for two children, effective December 1, 2008;
- Mr. Y.'s child support is further modified to \$329 per month for two children, effective January 1, 2009, and ongoing;

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<sup>12</sup> Exh. 8.

<sup>13</sup> Post-hearing brief at pg. 2.

- All other provisions of the August 18, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 9th day of October, 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 October, 2009.

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

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