

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

IN THE MATTER OF:)

I. P. II)

OAH No. 09-0503-CSS

CSSD No. 001095381

DECISION AND ORDER

I. Introduction

The Obligor, I. P. II, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on August 24, 2009. The Obligee child is I., who is 14 years of age.

The hearing was held on October 8, 2009. Mr. P. participated by telephone; the custodian, T. R. B., appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on November 5, 2009.

Based on the record and after due deliberation, Mr. P.’s child support is modified to \$437 per month, effective March 1, 2009, and ongoing.

II. Facts

A. Background

Mr. P.’s child support obligation for I. was set at \$307 per month in January 2008.¹ Ms. B. requested a modification on January 27, 2009.² On February 4, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. P. provided income information.⁴ On August 24, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. P.’s modified ongoing child support at \$459 per month, effective March 1, 2008.⁵ Mr. P. appealed on September 11, 2009, asserting that his hours had been reduced at work, he is now paying into a 401(k) retirement plan, and his Native corporation dividends should be split into taxable and non-taxable portions.⁶

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Exh. 4.
5 Exh. 5.
6 Exh. 6.

B. Material Facts

Mr. P. has been employed by A. A. as a R. S. Agent since August 2007. As of August 13, 2009, his annual anniversary date, the obligor's hourly wage was increased to \$11.32 per hour. In March 2009, the obligor began paying 4% of his income into a retirement program.⁷ On September 21, 2009, Mr. P.'s supervisor stated in writing that he currently is scheduled to work 30 hours per week.⁸ The effective date of this reduction in work hours is unknown. There is no information in the letter that explains when this particular work schedule began or how long it would last.⁹

Mr. P. earned \$6,508.78 during the first quarter of 2009; \$4,538.74 in the second quarter; and \$6,673.63 in the third quarter.¹⁰ CSSD used these figures to estimate his total income from wages in 2009 to be \$23,628.20.¹¹ In addition to his income from earnings, Mr. P. receives regular Native corporation dividends. In 2008, the obligor received taxable dividends from his corporation in the amount of \$5,750.¹² He also received nontaxable dividends of \$2,137 in 2008.¹³ CSSD used Mr. P.'s estimated earnings for 2009, his taxable and nontaxable dividend income, and the Permanent Fund dividend to estimate his total gross income at \$32,820.20.¹⁴ CSSD inserted this gross income figure into its online child support calculator, which results in a child support amount for one child of \$437 per month.¹⁵

⁷ Exh. 11 at pg. 1.

⁸ Exh. 6 at pg. 3.

⁹ The obligor worked 50 hours in the pay period beginning August 22, 2009, and ending on September 4, 2009. Exhibit 6 at page 4. This equals 25 hours per week.

¹⁰ Exh. 13 at pg. 1.

¹¹ CSSD added the three quarters together, which totals \$17,721.15. CSSD then divided this figure by three quarters to determine the average quarterly income, then multiplied the result times four quarters to estimate his total annual income for 2009. *See* CSSD's post-hearing brief at page 1.

¹² Exh. 4 at pg. 6.

¹³ Exh. 4 at pgs. 6 & 7.

¹⁴ Exh. 15.

¹⁵ *Id.*

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁶ 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."¹⁷ 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. If the 15% change has not been met, CSSD is not required to modify the child support obligation.

According to CSSD's regulations, a modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁸ In this case, the notice was issued on February 4, 2009,¹⁹ so the modification is effective on March 1, 2009. 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.²⁰

Mr. P.'s child support was set at \$307 per month in January 2008. In response to the petition for modification, CSSD extrapolated Alaska Department of Labor and Workforce Development information to estimate his annual income at \$32,051.04, and from that figure modify Mr. P.'s child support to \$459 per month.²¹

During the hearing process, the obligor's most recent earnings information was received, and from it CSSD estimated Mr. P.'s actual 2009 income at \$32,820.20, only slightly higher than the figure CSSD used for the modification. However, because the obligor is entitled to a deduction for paying into his retirement fund, and because some of his Native corporation dividends are not taxable, CSSD's online child support calculator determined his child support obligation to be \$437 per month, which is \$27 per month lower than the original modified amount.²² This revised child support figure is 42.5% higher than Mr. P.'s prior support

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁷ AS 25.27.190(e).

¹⁸ 15 AAC 125.321(d).

¹⁹ Exh. 3.

²⁰ 15 AAC 05.030(h).

²¹ Exh. 5 at pg. 6.

²² *See* Exh. 5 at pg. 6.

obligation, so it meets the requirement that a modified child support amount be at least a 15% change from the prior order.²³

Mr. P. claims that his work hours have been reduced to 30 hours per week, but this claim has not been substantiated in the record. His supervisor submitted a letter that indicates Mr. P. is currently working 30 hours per week, but the supervisor gave no information as to when this current schedule began, nor, more importantly, how long it would last. Also, there is no indication whether this reduction in hours was voluntary or dictated by his employer. Mr. P. stated the bidding for work shifts is based on seniority and he bids on whatever shifts are available. The obligor testified that more hours are available to him during the summer, which appears to be corroborated by his third-quarter earnings, which is the highest quarterly income he has received thus far in 2009.²⁴ Had the supervisor provided more information, it would have been appropriate to estimate Mr. P.'s income for the fourth quarter of 2009 based on 30 hours of work per week. In the absence of such clarifying information, however, CSSD correctly used the obligor's specific quarterly figures to estimate his total 2009 income.

It should also be noted that Mr. P.'s 2008 Native corporation dividends were used as the basis of determining his 2009 income from that source. In the absence of any evidence regarding any payments made thus far in 2009, the 2008 figures should be used.

IV. Conclusion

Mr. P. met his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h), but only minor adjustments to the modified child support amount CSSD originally calculated were necessary. Mr. P.'s child support is now correctly calculated at \$437 per month, effective March 1, 2009 and that figure should be adopted.

V. Child Support Order

- Mr. P. is liable for modified ongoing child support in the amount of \$437 per month, effective March 1, 2009;

²³ CSSD prepared a draft child support calculation for February 2009, but the reason for this is unclear, since the modification is effective March 1, 2009.

²⁴ See Exh. 13 at pg. 1.

- All other provisions of CSSD's August 24, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 24th day of November, 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 11th day of December, 2009.

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

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