

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

IN THE MATTER OF: )  
 )  
R. M. ) OAH No. 10-0203-CSS  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of R. M. for the support of N. N. The custodian of record is A. N.

The Child Support Services Division issued an administrative child support order on August 8, 2007, in the amount of \$261 per month. On December 7, 2009, Ms. N. filed a request for modification of the order. On March 22, 2010, the division granted the request and issued an order setting modified ongoing support at \$733 per month per month effective January 1, 2010.

Mr. M. filed an appeal. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on May 20, 2010. Both Mr. M. and Ms. N. participated. Erinn Brian represented the division.

Based on the preponderance of the evidence in the record and the testimony at the hearing, modified child support is set at \$743 per month.

**II. Facts**

In 2008, R. M. earned about \$26,419 as an employee of No Name Communications Systems.<sup>1</sup> Since the third quarter of 2009, R. M. has been employed by CFS, LLC.<sup>2</sup> His regular wage is \$26.44 per hour and his monthly total income is \$4,583.34.<sup>3</sup> His anticipated total wages in 2010 are \$55,008.08<sup>4</sup> and his anticipated total income (including his Alaska Permanent Fund dividend) is \$56,305.08.

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<sup>1</sup> Ex. 4, p. 3; Ex. 7, p. 1 (\$7,626.58 + \$8,986.97 + \$7,157.75 + \$2,474.93 = \$26,246.23).

<sup>2</sup> Ex. 7, p. 1.

<sup>3</sup> Mr. M. is paid \$4,291.67 every two weeks. Ex. 4, pp. 5-10; Ex. 9, pp. 1-6.

<sup>4</sup> \$4,583.34 x 12 = \$55,008.08. Based on his hourly wage, with 2,080 hours of work per year (52 x 40 = 2,080), his annual income would be slightly less (\$26.44 x 2,080 = \$54,995.20).

Mr. M. is entitled to deductions from his income for federal income tax (\$4,548),<sup>5</sup> Social Security and Medicare (\$4,207.56),<sup>6</sup> retirement contributions (\$2,751.84),<sup>7</sup> and unemployment insurance (\$170.50).<sup>8</sup> His anticipated 2010 annual adjusted income is \$44,627.18.<sup>9</sup>

## II. Discussion

In 2007, the Child Support Services Division established R. M.'s support obligation for N. N. and issued a child support order in the amount of \$261 per month, based on estimated annual total income of \$18,148.<sup>10</sup> At that time, Mr. M. was earning \$11 per hour.<sup>11</sup> In 2009, Mr. M. obtained new employment, at a wage of \$26.44 per hour. On March 22, 2010, the division issued a modified administrative support order in the amount of \$733 per month, based on annual total income of \$56,300.<sup>12</sup>

Mr. M. appealed, noting that the division's calculation, which was computer-generated, did not show a credit for health insurance he was providing, that it did not show a deduction for Medicare tax or his contributions to a retirement account, and that the deductions for federal income tax and state unemployment insurance were incorrect.

Prior to the hearing, the division determined that a deduction of 5% for contributions to a retirement account should have been provided.<sup>13</sup> At the hearing, the administrative law judge explained that the credit owed for insurance payments is determined by the division outside of the hearing process. Mr. M. may contact his caseworker to ensure that the correct credit is provided.

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<sup>5</sup> See IRS Publication 15, page 56 (\$379 per month withholding for an individual who is married and claims 2 withholding allowances). Since Mr. M.'s ultimate actual tax liability is unknown, the number of exemptions he claims for withholding purposes is disregarded. He is entitled to claim two exemptions for withholding purposes.

<sup>6</sup> The combined tax rate for Social Security and Medicare is 7.65%. Ex. 11. At that rate, his monthly withholding is \$350.63 ( $\$4,538.34 \times .0765 = \$350.63$ ).

<sup>7</sup> Mr. M. contributes \$114.66 every two weeks to a 401(k) account. See Ex. 4, pp. 5-10; Ex. 9, pp. 1-6.

<sup>8</sup> Mr. M. currently pays an employee tax of \$20.41 per month for unemployment insurance. *Id.* However, an employee's annual contribution for unemployment compensation is capped (in 2010) at \$170.50, or \$14.21 per month. See AS 23.30.175(c); Ex. 14.

<sup>9</sup>  $\$56,305.08 - (\$4,548 + \$4,207.56 + \$2,751.84 + \$170.50) = \$44,627.18$

<sup>10</sup> Ex. 1, p. 8.

<sup>11</sup> Ex. 1, p. 4.

<sup>12</sup> Ex. 5, p.6.

<sup>13</sup> Pre-Hearing Brief. Mr. M.'s pay stubs show contributions of 5% to a 401(k) account. See note 7, *supra*.

Following the hearing, the division filed a post-hearing memorandum explaining that the division's computerized calculator provides a deduction for the employee's Medicare tax in combination with the credit for the employee's contribution to Social Security. Combined, the total deduction for Medicare and Social Security is 7.65% of the employee's income.<sup>14</sup>

For the state unemployment tax, as Mr. M. observes, the amount of the deduction provided by the division is less than his current monthly contribution. The division's post-hearing brief explains, however, that the employee's contribution applies only to the first \$34,100 in income, and is taken at the rate of one-half of 1% (.005). Thus, Mr. M.'s total contribution in 2010 will be \$170.50 ( $\$34,100 \times .005 = \$170.50$ ). His monthly deduction is one-twelfth of that amount, \$14.21 ( $\$170.50 \div 12 = \$14.21$ ).

The only remaining issue concerns the appropriate amount of the deduction for federal income tax. On this issue, the division explained that its computerized program provides a deduction based on the standard withholding amount for a taxpayer filing as a single person, after the standard deduction from income.<sup>15</sup> Because individuals' deduction preferences will vary, and actual tax liability depends on multiple factors not reflected in the standard calculations, the calculator does not necessarily reflect either the amount actually being withheld, or the actual anticipated tax liability.

In this case, Mr. M. will file as a married person, jointly. He is entitled to exemptions from withholding for two children. For purposes of child support, the appropriate deduction is the standard amount for a person with that filing status and number of exemptions. Whether Mr. M. has withholding at the standard rate or another amount is his own choice, based on his budget and anticipated tax liability, but should not alter his underlying support obligation. Thus, a deduction of \$379 per month is appropriate for federal income tax.<sup>16</sup>

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<sup>14</sup> CSSD's Post-Hearing Brief. The deduction for Social Security does not apply to income over \$106,800, and the rates for self-employed individuals are higher. *See* Ex. 11.

<sup>15</sup> CSSD's Post-Hearing Brief. *See* Ex. 12, 13.

<sup>16</sup> *See* note 5, *supra*.

Applying the appropriate deductions as described above, Mr. M.'s anticipated 2010 adjusted income is \$44,627.18. His child support obligation is 20% of that amount, or \$8,925.44. The monthly support obligation is \$743.<sup>17</sup>

#### **IV. Conclusion**

The child support obligation as calculated under 15 AAC 125.070 and the child support guidelines of Alaska Rule of Civil Procedure 90.3 is more than 15 percent greater than the existing order. The support order should be modified to reflect current income.

#### **CHILD SUPPORT ORDER**

The Modified Administrative Child Support and Medical Support Order dated December 7, 2009, is **AMENDED** as follows; in all other respects, the Modified Administrative Child Support and Medical Support Order dated December 7, 2009, is **AFFIRMED**:

Modified ongoing child support is set at \$743 per month, effective January 1, 2010.

DATED: July 6, 2010.

*Signed* \_\_\_\_\_  
Andrew M. Hemenway  
Administrative Law Judge

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<sup>17</sup> \$8,925.44 ÷ 12 = \$743.79.

## 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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 26<sup>th</sup> day of July, 2010.

By: Signed \_\_\_\_\_  
Signature  
Andrew M. Hemenway \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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