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

IN THE MATTER OF:)
C. Z.)

OAH No. 10-0403-CSS CSSD Case No. 001123336

DECISION AND ORDER

I. Introduction

This case concerns the obligation of C. Z. for the support of R. R. B. The custodian of record is D. B.

The Child Support Services Division issued an administrative child support order in 2004 in the amount of \$573 per month based on default income information.¹ In May, 2010, Mr. Z. filed a request for modification of the order. Mr. Z. did not timely submit income information and the division denied the request.

Mr. Z. filed an appeal. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a hearing on August 31, 2010. Both Mr. Z. and Ms. B. 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 \$303 per month.

II. Facts

C. Z. is a partially disabled veteran who works as a driver for C. C. S. in Ketchikan. His wage is \$12.79 per hour, and he works an average of 32 hours per week. Mr. Z. has a high school degree and a limited work history; he has not worked consistently in recent years. His average earnings in 2007-2009 were less than \$3,000 per year.² In addition to wages, Mr. Z. receives \$243 per month as a veteran's disability payment.

Mr. Z. has a medical condition that restricts his ability to be on his feet for long periods of time. He was scheduled for surgery in October to alleviate his symptoms. Following the surgery he will be on crutches for six to eight weeks and will be unable to work at his present job during that time.

¹ Ex. 1, pp. 4, 11. Mr. Z. has been provided an application to vacate the default order.

² Ex. 6, p. 1.

II. Discussion

Under 15 AAC 125.070(a), the presumptive support obligation is generally based on annual income during the time the order will be in effect.³ In this case, Mr. Z. was employed at a wage of \$12.79 per hour at the time of the hearing. However, he was scheduled for surgery in October, with a likely period of unemployment of up to eight weeks.

Mr. Z. is a high school graduate with a limited work history, who may have a continuing disability even after his surgery. Moreover, Mr. Z. did not begin working for C. S. S. until around May 1, and there is no assurance that he will be able to return to work with that employer after he recuperates from his surgery. Under these circumstances, his anticipated annual income should not be based on full time, year-round employment at the same wage he was earning while employed by C. C. S.

Mr. Z. earns total wages of about \$1,760 per month in his current position, which is substantially full time. Mr. Z. began work about May 1, and he is scheduled for surgery at the end of October, and will be out of work for about two months after that – essentially, for November and December. Thus, Mr. Z.'s anticipated actual total wages for the 2010 calendar year are about \$10,560 (six months' work). Looking ahead to a full year from the date the modification is effective, and assuming that he is able to return to work at his current employer, his anticipated actual wages for the first full year the modified order is effective will be about \$17,600 (ten months). But if Mr. Z. is unable to return to his former employer, it is reasonable to anticipate income at no more than the minimum wage, in light of his education and work history; this would yield actual total wages for the first full year of the modified order of \$16,956, which is substantially equivalent to full time work for a full year at the minimum wage (\$16,120).

Under the circumstances of this case, the most reasonable prediction for Mr. Z.'s future anticipated total annual wage income is for full time work at the minimum wage. Based on those wages, and including his veteran's disability payments and an Alaska Permanent Fund dividend, Mr. Z.'s child support obligation is \$303, as shown in Appendix A, attached.

³ See 15 AAC 125.030(a) ("total income...is the expected annual income that the parent will earn or receive when the child support award is to be paid."); 15 AAC 125.050(c) ("the agency will base the support obligation on the total annual income that the parent is likely to earn or receive when the child support is to be paid."). The agency will modify the order if anticipated annual income is 15% greater or less than the existing order. *See* 15 AAC 125.070(b)(1).

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 less than the existing order. The existing order should therefore be modified.

CHILD SUPPORT ORDER

The Administrative Child Support and Medical Support Order dated July 20, 2004, is **MODIFIED** as follows; in all other respects, the Administrative Child Support and Medical Support Order dated July 23, 2009, is AFFIRMED:

Modified ongoing child support is set at \$303 per month, effective June 1, 2010.

DATED: October 22, 2010.

Signed

Andrew M. Hemenway 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 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 22nd day of October, 2010.

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

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