

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

IN THE MATTER OF:)
)
W. W.)
)
) OAH No. 10-0597-CSS
) CSSD Case No. 001121034
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of W. W. for the support of J. J.-W. The custodian of record is D. J..

On March 10, 2010, the Child Support Services Division issued a modified administrative child support order in the amount of \$235 per month, effective September 1, 2009.¹ On August 12, Mr. W. requested modification of the order.² On October 20, the division denied the request.³ Mr. W. filed an appeal and requested an administrative hearing.

The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on December 14, 2010. Mr. W. and Ms. J. participated and provided testimony. Andrew Rawls represented the division.

Mr. W.'s presumptive support obligation for 2010, determined according to Civil Rule 90.3(a), is \$182 per month. This a change of more than 15% from the existing order. Mr. W. did not provide clear and convincing evidence of circumstances that render the presumptive support obligation unjust. Modified ongoing support is set at \$182 per month effective September 1, 2010.

II. Facts

W. W.'s child support obligation was established in 2003 and set at the minimum amount of \$50 per month because he was incarcerated. After he was released from prison, Mr. W. had a son, born in 2007, and lived for a period of time with his mother in Atlanta. Mr. W. found work in Missouri, and in January, 2010, he moved there with his son and started working for a cleaning service. Mr. W. was hired at \$7.25 per hour and since spring has earned \$7.75 per hour.

¹ Ex. 1.
² Ex. 2.
³ Ex. 5.

He regularly works 34 hours per week.⁴ His average weekly wage in 2010 and continuing into 2011 has been about \$274.⁵ His weekly take-home pay, exclusive of child support deductions, is about \$250. His total annual income in 2010 was about \$12,878,⁶ and his anticipated total annual income in 2011 is about \$14,248.⁷ His monthly income available for household living expenses plus child support is approximately \$1,075.⁸

In addition to J. and his son who lives with him, Mr. W. may have one additional child, younger than either of his known children; Mr. W.'s paternity for that child has not yet been established.⁹ Mr. W. does not receive child support from the mother of his son in his home, although he has applied for services to establish a support order.¹⁰

Mr. W. lives alone in rented premises with his three-year-old son. His current monthly household living expenses are about \$1,035, including rent (\$450), utilities (\$80); food (\$150), waste disposal (\$15), public transportation (\$50), personal care items (\$70), clothing (\$70), and child care (\$150). Mr. W. believes he could make monthly payments of \$150 for child support, exclusive of arrears.¹¹

The custodial parent, D. J. lives with her mother, who is unable to work, has no income, and will be leaving the household in 2011, and her two children, J. and a younger child. The division has opened a child support case for the younger child, but has not yet established a support order. Ms. J.'s monthly take-home pay is about \$1,600. Her monthly household expenses are about \$1,711, including rent (\$764), electricity (\$117), food (\$300), Internet, cable TV and phone (\$118), cell phone (\$60), transportation (\$160),¹² personal care items (\$150), and

⁴ Testimony of W. W.; Ex. 3.

⁵ Mr. W.'s pays

⁶ For the 16 weeks of work shown on his paystubs, Mr. W.'s average weekly wage was \$274.40 ($\$4,390.39 \div 16 = \274.40). His take-home pay averaged about \$250 per week ($\$3,998.53 \div 16 = \249.91). Mr. W. worked approximately 47 weeks in 2010, based on his testimony that he was unemployed before moving to Missouri in January and that he started work in February, and his year-to-date earnings from his first paystub, which suggest (based on his average weekly wage) that he had worked about 11 weeks prior to that pay period ($13 \times \$274 = \$3,014$; $\$3,014 + \$527 = \$3,541$, as compared with YTD earning of \$3,457 on his May 6, 2010 paystub).

⁷ $\$274 \times 52 = \$14,248$.

⁸ $\$250 \times 4.3 = \$1,075$.

⁹ Testimony of Mr. W.

¹⁰ Testimony of Mr. W.

¹¹ Mr. W. testified as to his expenses and the amount he believed he could pay.

¹² Ms. J. owns a 1995 Mazda that is fully paid for; she has not automobile insurance and pays \$160 per month for gasoline.

clothing (\$42).¹³ Beginning in 2011, Ms. J. will have child care expenses, but will receive child care public assistance payments.¹⁴

III. Discussion

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,¹⁵ that is, income after allowable deductions for such things as taxes and the cost of supporting older children in the home.¹⁶ Mr. W.'s presumptive support obligation for 2010, based on his actual annual income in 2010, is \$182 per month.¹⁷ His presumptive support obligation for 2011, based on his anticipated annual income in 2011, is \$199.¹⁸

Mr. W.'s existing child support obligation was modified effective October, 2009, based on the \$7.75 wage that Mr. W. had started earning after he moved to Missouri in early 2010, but without providing any deduction for state income tax.¹⁹ When Mr. W. requested modification, the division calculated Mr. W.'s presumptive support obligation for 2010 as \$207, per month, based on full time work at the minimum wage, with a deduction for state income tax.²⁰ However, Mr. W. was unemployed for the first month of the year, when he relocated from Georgia to Missouri, and there has been no showing or finding by the division that this period of unemployment was voluntary and unreasonable. Accordingly, Mr. W.'s actual income in 2010 should be used to determine the presumptive 2010 modified support obligation.

Because Mr. W.'s presumptive modified support obligation for 2010 varies by more than 15% from the existing order effective in 2009, a change in circumstances is presumed and the order should be modified to reflect the change in his income. Mr. W.'s presumptive support obligation for 2011 has not changed by more than 15%, and there has been no material change in circumstances since the prior modification in March, 2010. His 2011 support obligation should therefore remain unchanged.

¹³ Ms. J. testified clothing costs \$500 per year.

¹⁴ Ms. J. testified that the cost of child care will be \$600 per month; she did not provide information regarding the amount of child care assistance she will receive.

¹⁵ 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

¹⁶ 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

¹⁷ See Appendix A. A deduction of \$45.66 per month was provided for Missouri income tax, based on the Missouri calculator available online at <http://dor.mo.gov/calculators/incometax>.

¹⁸ See Appendix B. A deduction of \$52.50 per month was provided for Missouri income tax.

¹⁹ See Ex. 1, p. 6.

²⁰ Ex. 5, p. 3. The division used the Montana minimum wage, for unknown reasons (possibly based on the identification of the state on Mr. W.'s paystubs as "MO").

The support obligation may be reduced if the amount as calculated under 15 AAC 125.070 would result in a manifest injustice due to unusual circumstances.²¹ The obligor must provide clear and convincing evidence of manifest injustice.²² In determining whether manifest injustice exists, all of the relevant circumstances should be considered.²³ Mr. W. testified that he could afford to pay no more than about \$150 per month, exclusive of arrears. It is not manifestly unjust to impose the presumptive support obligation of \$182 per month, particularly in light of the equally strained finances in Ms. J.'s household.

Mr. W.'s primary concern is not with the amount of support, but the amount being withheld from his paycheck, which includes over \$200 per month for arrears. Given that his actual and anticipated income is less than \$15,550, the amount of withholding for arrears will be reduced to \$20 per month.²⁴ In any case, Mr. W. is entitled to seek a reduction in the amount of withholding by requesting relief from his caseworker.²⁵

IV. Conclusion

Mr. W. did not prove by clear and convincing evidence the existence of facts under which the presumptive child support obligation is manifestly unjust. Modified ongoing support should be set at the presumptive amount.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated March 2, 2010, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated March 2, 2010, is **AFFIRMED**:

Modified ongoing support is set at \$182 per month, effective September 1, 2010.

DATED: January 26, 2011

Signed

Andrew M. Hemenway
Administrative Law Judge

²¹ 15 AAC 125.075(a)(2).

²² 15 AAC 125.075(a); *see* Civil Rule 90.3(c)(1).

²³ *See* 15 AAC 125.080.

²⁴ *See* 15 AAC 125.545(c).

²⁵ *See* 15 AAC 125.550.

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 16th day of February, 2011.

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

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