

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

IN THE MATTER OF:)
)
I K. R)
)
_____) OAH No. 11-0425-CSS
CSSD Case No. 001107860

DECISION AND ORDER

I. Introduction

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

On April 2, 2002, the Child Support Services Division issued a child support order for ongoing support in the amount of \$50 per month.¹ On June 1, 2011, Ms. A requested modification of the order.² On October 11, 2011, the division issued a modified administrative child support order for ongoing support in the amount of \$431 per month, effective July 1, 2011. Mr. R filed an appeal and requested an administrative hearing.

The Office of Administrative Hearings conducted a telephonic hearing on November 15, 2011. Both Mr. R and Ms. A participated and provided testimony. Erinn Brian represented the division.

By the time of the hearing, Mr. R had been laid off from the job he had at the time the division issued the modified support order. In order to reflect the reduction in his anticipated income due to that layoff, the effective date of the modified order is moved forward to February 1, 2012, and the monthly amount is adjusted to \$368.

II. Facts

In 2008, I R worked for Doyon Drilling and earned an hourly wage of about \$27,³ for total annual wages of \$61,600.⁴ In 2009, he worked for Doyon Drilling for the first two quarters of the year, and was unemployed thereafter. In 2009, he earned total annual

¹ Exhibit 1.

² Exhibit 2.

³ Mr. R testified that his wage rate at Doyon was about \$27 per hour.

⁴ Exhibit 6, p. 1.

wages of \$28,393⁵ and received \$10,383 in unemployment insurance compensation.⁶ In 2010, I R was unemployed all year and he received \$16,041 in unemployment insurance compensation.⁷

In the second quarter of 2011, Mr. R got a job working as a union laborer out of the Pipefitters Union for No Name Alaska as a floorhand on a drilling rig, earning about \$17 per hour for regular time and about \$26 per hour for overtime.⁸ He was laid off due to lack of work on August 18, 2011.⁹ During 2011 his total wages were \$14,516.41, and he received \$4,242.00 in unemployment insurance compensation.¹⁰ With his Alaska Permanent Fund dividend (\$1,174), his total income in 2011 was \$19,932.41.¹¹ Mr. R expects that he will be rehired in January. His total anticipated income in 2012, including wages (\$23,392.00) and unemployment compensation (\$2,400.00), and his Alaska Permanent Fund dividend (\$1,174) is \$26,966.00.

Mr. R is married. He and his wife have a son, age 5, and a baby less than one year old. The family lives in his mother's house, and Mr. R pays rent to the extent he has funds available.

C A lives in with her boyfriend and their 15-month old son in a rented apartment in Fairbanks. Her boyfriend is employed full time and earns about \$32 per hour.

M A lived with Ms. A until the fall of 2011, when she went to live temporarily with her grandmother in No Name for the first part of the school year. She will return to Fairbanks to live with her mother and attend school in Fairbanks after the Christmas break.

⁵ Exhibit 6, p. 1.

⁶ Exhibit 6, p. 2.

⁷ Exhibit 6, p. 2.

⁸ Exhibit 5, pp. 2-4.

⁹ Exhibit 5, p. 5.

¹⁰ Exhibit 6, pp. 1-2. This includes unemployment compensation received through October 29, and anticipated unemployment compensation in the amount of \$200 per week from November 5-December 31. The \$200 amount is based on his most recent weekly payment, for October 29, in that amount. *See* Exhibit 6, p. 1

¹¹ This includes his wages through the first three quarters, unemployment compensation through October 29, and anticipated unemployment compensation in the amount of \$200 per week from November 5-December 31. The \$200 amount is based on his most recent weekly payment, for October 29, in that amount. *See* Exhibit 6, p. 1

III. Discussion

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,¹² that is, total income after allowable deductions.¹³ The division determines an ongoing support obligation based on the total income that the parent is likely to earn or receive when the child support is to be paid,¹⁴ using the best information available to it, including: (1) current income; (2) actual income during the prior calendar year; (3) partial year income; (4) prior wage rates; (5) the parent's job skills, training, work history and education; (6) average income in the parent's occupation; (7) the availability of employment in the parent's locality; (8) the minimum wage; and (9) the ability to work.¹⁵

In this case, Mr. R's total income in 2011 can be accurately calculated based on his actual earnings, since his income through the date of the hearing was established by the evidence, and he anticipated being unemployed through the remainder of the year. The division initially calculated his support obligation based on anticipated 2011 income of \$28,869, using income information through the second quarter.¹⁶ Since Mr. R was laid off in the third quarter, however, his actual 2011 income was substantially less than the division anticipated: about \$19,932. His presumptive child support obligation for 2011, based on the updated income information obtained at the hearing, is \$298 per month, as shown on Appendix A.

The various factors relevant to the determination of Mr. R's anticipated 2012 earnings yield the following indicators: (1) current income, \$0; (2) prior calendar year income, \$20,039; (3) partial year (2012) income, \$0; (4) prior wage rate, \$17 per hour; (5) general laborer, no specific training or skills other than on-the-job, regular work history with seasonal or other periodic unemployment; (6) average wage rate for similar occupations, \$22.03-\$26.00;¹⁷ (7) unemployment rate in Fairbanks, 6.3%;¹⁸ (8) minimum

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

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

¹⁴ 15 AAC 125.050(c).

¹⁵ 15 AAC 125.050(c)(1)-(9).

¹⁶ See Exhibit 4, p. 8.

¹⁷ The administrative law judge takes official notice of the wage rate statistics maintained by the Department of Labor and Workforce Development, available online at laborstats.alaska.gov. A party objecting to official notice may state their objection in a proposal for action. See 2 AAC 64.300. The department's data states that the average hourly wage for a general construction laborer in Fairbanks is

wage in Alaska, \$7.75; (9) no work restrictions. The best information available about Mr. R's likely income in 2012, however, is his own testimony and his prior work experience. His testimony is that he was laid off from a job that paid \$17 per hour due to lack of work in August, 2011, but that he anticipated being rehired at the same position in January, 2012. Based on his prior wage of \$17 per hour, while he is working Mr. R's weekly wage in 2012 will be about \$680 and his monthly wage will be about \$2,924. His anticipated total income for the full year depends on when he is rehired, and for how long.

The amount of time that Mr. R will be unemployed in 2012 is unknown, but it is reasonable to anticipate a period of unemployment of four months, consistent with his anticipated return to work date, his 2011 experience, the common practice of seasonal layoffs in much of the Alaskan construction-related employment, and the project-dependent nature of employment in the oil field. Assuming work for eight months, Mr. R's anticipated 2012 total income is \$26,966, based on eight months' work at \$2,924 per month, plus unemployment compensation of \$200 per week for three months (12 weeks), plus an Alaska Permanent Fund dividend (\$1,174).¹⁹ His presumptive support obligation, based on that anticipated income, is \$368 per month, as shown on Appendix B, attached.

The presumptive 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.²⁰ The obligor must provide clear and convincing evidence of manifest injustice.²¹ In determining whether manifest injustice exists, all of the relevant circumstances should be considered.²²

¹⁷ \$22.03. Statewide, the average hourly wage for a roustabout is \$22.09, and for oil field service unit operator it is \$26.00. *See* laborstats.alaska.gov (accessed January 3, 2012).

¹⁸ This is the seasonally unadjusted rate for November, 2011. *See* laborstats.alaska.gov (accessed January 3, 2012).

¹⁹ An alternative approach would be to average Mr. R's income over a number of prior years. However, in Mr. R's case this approach is not appropriate. His employment at Doyon Drilling in 2008-2009 was at higher wage, with more overtime, than his more recent employment with Flowing Alaska. In addition, in 2010 Mr. R was unemployed throughout the year. Because his circumstances in 2008-2010 are significantly different from what it is reasonable to anticipate for 2012, his earnings in 2008-2010 are not the best available predictors of his 2012 income.

²⁰ 15 AAC 125.075(a)(2).

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

²² *See* 15 AAC 125.080.

Mr. R asserted that because he is unemployed he cannot presently make monthly payments in the amount previously set by the division. But Mr. R anticipates returning to work early in 2012, and in light of his anticipated return to work, upon his return to work he will be able to meet his modified support obligation. The amount of the order is not manifestly unjust.

Generally, a modification is effective on the first day of the month after service of the petition for modification.²³ However, the effective date may be advanced upon a showing of good cause.²⁴ In this case, there is good cause to move the effective date forward. First, Mr. R was laid off from his job due to lack of work in August, and the division issued the modification order in October. Because the effective date of the modification was June 1, Mr. R was immediately in arrears. Given his tight family budget, he will have limited ability to catch up after an initial arrears resulting from an unexpected increase, even after he returns to work.²⁵ Second, the modified order is a 500% increase from Mr. R's prior support order and in light of his current other obligations Mr. R will need to make financial adjustments to meet his newly-ordered support obligation.²⁶ Third, it is true that Mr. R has for at least the last three years paid only \$50 per month in child support, which is far less than what his support obligation would have been, had the order been based on his actual income during that time. However, Mr. R's ongoing support obligation is based on his current ability to pay rather than to compensate for any prior underpayments, and he is currently unemployed. A

²³ 15 AAC 125.321(d).

²⁴ State, Child Support Enforcement Division v. Dillon, 977 P.2d 118 (Alaska 1999); Boone v. Boone, 960 P.2d 1579 (Alaska 1998).

²⁵ See In Re J.L.E., at 3, OAH No. 08-0607-CSS (Commissioner of Revenue 2009) (modified order issued in October, effective prior May, obligor unemployed one month or more; effective date set to November); In Re J.R.H., at 3-4, OAH No. 08-0422-CSS (Commissioner of Revenue 2008) (modified order issued in July, effective prior May, obligor unemployed in January, anticipates return to work in October; effective date set to October); In Re R.G.O., at 1-2, OAH No. 08-0122-CSS (Commissioner of Revenue 2008) (modified order issued in January, effective prior November, obligor unemployed from February through mid-April; effective date set to May).

²⁶ See In Re T.T.T., at 4, OAH No. 09-0081-CSS (Commissioner of Revenue 2009) (no period of unemployment, but good cause to delay effective date in light of substantial shortfall in currently available income, in order to allow time to adjust household finances); In Re J.A.H., at 2, OAH No. 07-0680-CSS (Commissioner of Revenue 2008) (400% increase, effective date delayed).

delayed effective date may be appropriate to take into account a significant period of unemployment even if the prior order was set too low.²⁷

IV. Conclusion

The presumptive support obligation has changed by 15% or more, and it not manifestly unjust. The support order should be modified to reflect Mr. R's anticipated 2012 income, with a delayed effective date to accommodate his unemployment beginning August, 2011, which is anticipated to end in January, 2012.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated October 11, 2011, is **AMENDED** as follows; in all other respects, the Modified Administrative Child Support and Medical Support Order dated October 11, 2011, is **AFFIRMED**:

Modified ongoing child support is set at \$368 per month, effective February 1, 2012.

DATED: January 3, 2012.

Signed

Andrew M. Hemenway
Administrative Law Judge

²⁷ See In S.F.R., at 4, OAH No. 08-0310-CSS (Commissioner of Revenue 2008) (moving effective date forward notwithstanding obligor's higher income before service of modification petition, stating: "Giving significant weight to a disparity between the obligor's income and his monthly child support obligation during periods of time that precede the service of the modification petition would run counter to the prohibition on retroactive modification.").

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 23rd day of January, 2012.

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

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