

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

IN THE MATTER OF:)
)
M D. A) OAH No. 11-0461-CSS
) CSSD Case No. 001099526
_____)

CORRECTED DECISION AND ORDER¹

I. Introduction

This case concerns the obligation of M D. A for the support of M M. The custodian of record is F S.

On April 14, 2010, the Child Support Services Division issued a child support order for ongoing support in the amount of \$337 per month.² On August 28, 2011, Mr. A requested modification of the order.³ On October 27, 2011, the division denied the request.⁴ Mr. A filed an appeal and requested an administrative hearing.

The Office of Administrative Hearings conducted a telephonic hearing. Both Mr. A and Ms. S participated and provided testimony. Erinn Brian represented the division.

By the time of the hearing, Mr. A had been laid off from the job he had at the time the division denied his request for modification. However, Mr. A did not show that a temporary period of unemployment will result in a reduction of more than 15% in his child support obligation. Therefore, the division's decision to deny his request for modification is affirmed.

II. Facts

M D. A has been steadily employed since 2008 as a server at X restaurants, first in Alaska and later in Colorado. In 2008, his total wages were \$28,993.⁵ In 2009, he earned wages of \$29,183.⁶ Since April, 2010, Mr. A has lived in Colorado where he

¹ This decision corrects the name of the party as stated in the last sentence of the second paragraph above. No other changes have been made. See 2 AAC 64.350(a).

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit 5.

⁵ Exhibit 7, p. 1.

⁶ Exhibit 7, p. 1. When the division reviewed Mr. A's support order in 2010, it found that his total wages in 2009 were only \$22,455.95. Exhibit 1, p. 6. Both determinations were based on what the division states was reflected in the Department of Labor and Workforce Development's wage data for him for that year. *Id.* The reason for the discrepancy is unknown. However, because the more recent information is

earned \$4.34 per hour plus tips. He earned wages (including tips) of \$18,487 in 2010, and his total income, including unemployment compensation (\$3,364) and an Alaska Permanent Fund dividend (\$1,281), was \$23,132.⁷ In 2011, through September 4, Mr. A earned wages (including tips) of \$15,113.60,⁸ equivalent to total annual wages of \$22,333. He did not receive any unemployment compensation or have any other income.⁹

On November 8, 2011, Mr. A was dismissed from his position due to his status as a felony offender and a registered sex offender. He has a high school diploma and no specific training or specialized skills, except as a cable technician (a capacity he has worked in before). He has submitted applications for work as a restaurant server and as a cable television technician, and describes his work history as involving customer service. He anticipates being found eligible for unemployment insurance compensation in the amount of \$337 per week. Mr. A testified that in the past his criminal history has not been a serious and substantial barrier to employment, and that he anticipates being able to find employment within a reasonable time.

III. Discussion

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,¹⁰ that is, total income after allowable deductions.¹¹ The division may modify a support obligation when there has been a material change in circumstances.¹² When the child support obligation changes by an amount greater than 15% of the existing order, a material change of circumstances is presumed and the division will modify the order.¹³ But even if the amount has not changed by at least 15%, the division will modify the order if "other circumstances exist that justify a modification of the support obligation."¹⁴

supported by an affidavit and a spreadsheet showing the source and amount of income for each quarter, it is deemed more reliable.

⁷ Exhibit 4, p. 1.

⁸ Exhibit 4, pp. 9, 11.

⁹ See Ex. 4, p. 11.

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

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

¹² Civil Rule 90.3(h)(1).

¹³ 15 AAC 125.325(b)(1). See Civil Rule 90.3(h)(1).

¹⁴ 15 AAC 125.325(b)(2)(B).

In this case, the existing order was set in 2010, based on 2009 wages of \$22,455. But Mr. A's actual income in 2009 was apparently substantially greater than that. Thus, even though his income in 2010 and 2011 may be substantially less than it was in 2009, his child support obligation remains what it was previously, because his total income in 2010 and 2011 was very close to the amount of income that was attributed to him when the support order was issued in 2010.

Looking forward to 2012, even if Mr. A remains unemployed for a significant period of time, his total income may not change significantly from what it was in 2010 and 2011. Mr. A testified that he is eligible for unemployment compensation benefits in the amount of \$337 per week, which is equivalent to annual income of \$17,524. Colorado income statistics indicate that the average annual income in the Colorado Springs area for a home electronics installer is \$28,803, and that the average annual income for a customer service representative is \$30,126.¹⁵ Given these wages, it is reasonable to anticipate that even if Mr. A remains unemployed for as long as six months, his total annual income in 2012 will be within 15% of the income attributed to him when the existing support order was issued.

IV. Conclusion

Mr. A has not shown that his presumptive support obligation has changed by 15% or more. The division's decision to deny his request for modification is therefore **AFFIRMED**. Mr. A's support obligation remains \$337 per month.

DATED: January 23, 2012.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

¹⁵ Colorado wage information is available from the Colorado Department of Labor and Employment, at www.coworkforce.com/lmi/oes/oesmain.asp (last accessed January 23, 2012). The administrative law judge takes official notice of official government wage statistics maintained in publicly available databases. *See* 15 AAC 125.050(a) ("the agency will use the best information available, including any information available to it through automated sources such as information maintained by the Department of Labor and Workforce Development"). A party objecting to taking official notice of this information may do so in a proposal for action. *See* 2 AAC 64.300.

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 Corrected 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 8th day of February, 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.]