

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

In the Matter of: )  
 )  
D L. M )  
 )  
 ) OAH No. 12-0147-CSS  
 ) CSSD Case No. 001059020  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of D L. M for the support of J T. J. The custodian of record is E J, J's grandmother.

On May 9, 2000, the Child Support Services Division issued a child support order establishing Mr. M's support obligation in the amount of \$172 per month.<sup>1</sup> On December 30, 2011, Ms. J requested modification of the order.<sup>2</sup> On April 24, 2012, the division issued a modified administrative child support order for ongoing support in the amount of \$1,071 per month, effective February 1, 2012.<sup>3</sup> Mr. M filed an appeal and requested an administrative hearing, asserting that the amount of the modified order was incorrect, and that because none of the parties to the case is currently living in Alaska the case should be closed.<sup>4</sup>

The Office of Administrative Hearings conducted a telephonic hearing on June 27, 2012. Both Mr. M and Ms. J participated and provided testimony. Andrew Rawls represented the division.

Prior to the hearing, based on income information provided by Mr. M, the division recalculated modified support as \$836 per month.<sup>5</sup> Mr. M did not show good cause to terminate the review process and refer the case to another state. Providing a deduction from his income for his union dues, modified support is set at \$820 per month.

**II. Facts**

Mr. M's support obligation for J was established in 2000. J is in the custody of his grandmother, E J. In May, 2011, Ms. J and J moved from Alaska to Arizona. At that

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Exhibit 5.  
<sup>4</sup> Exhibit 6.  
<sup>5</sup> Exhibit 8.

time, D M was living in Alaska. He was still living in Alaska in December, 2011, when Ms. J filed the request for modification that is at issue in this case.

In March, 2012, while Ms. J' request for modification was still pending before the division, Mr. M moved to Nevada. From there, he commutes by automobile to his work station in California, an 80 mile round trip. Mr. M is employed as a civilian by the federal Department of Defense, working as a firefighter.

In 2009-2011, Mr. M's earned average annual wages of approximately \$95,229.<sup>6</sup> Mr. M's 2012 income is estimated to be \$70,762, consisting of his wages plus an Alaska Permanent Fund dividend.<sup>7</sup> He pays \$80 per month in union dues and is liable for the California state income tax.<sup>8</sup> Providing deductions for those amounts, and for his federal income tax and contributions to a retirement account, his anticipated adjusted annual income in 2012 for child support purposes is \$49,206.12.<sup>9</sup>

Mr. M's monthly net take home pay, exclusive of his child support and his thrift savings plan deductions, is approximately \$4,465.<sup>10</sup> Mr. M is married and has an infant child; his wife is unemployed and cares for their child.<sup>11</sup> His monthly household expenses total approximately \$2,280, including rent (\$1,150), food (\$800), utilities (\$180), and telephone (\$150).<sup>12</sup> Mr. M owns a 2008 GMC truck with a monthly loan payment of \$416.13.<sup>13</sup> Gasoline, maintenance and insurance for his vehicle, and a second car, come to about \$590 per month.<sup>14</sup> His personal care expenses are about \$200 a month, and he spends about \$150 per month for entertainment.<sup>15</sup> He owes about \$10,000 in credit card debt, and is making monthly payments of about \$200.<sup>16</sup> His stated

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<sup>6</sup> Exhibit 9

<sup>7</sup> The division projected Mr. M's 2012 income based on his May 19, 2012, wage statement. *See* Exhibit 8, p.1. Mr. M testified it "looked right." The division included an Alaska Permanent Fund dividend in its calculation. Although Mr. M no longer resides in Alaska, he was a resident during 2011 and much of the 2012 dividend application period, and may be eligible for the 2012 dividend

<sup>8</sup> Testimony of C. M; Exhibit 7, p. 1.

<sup>9</sup> *See* Appendix A.

<sup>10</sup> For the three two-week paystubs submitted by Mr. M, his net pay was \$2,089.45 in one two week period and \$2,070.16 in the other two week periods. *See* Ex. 7. His total net pay for the six weeks covered by those paystubs was \$6,229.77, or \$1,038.29 per week. This is equivalent to about \$4,465 per month ( $\$1,038.29 \times 4.3 = \$4,464.65$ ).

<sup>11</sup> Testimony of C. M.

<sup>12</sup> Exhibit 11; Exhibit 12, pp. 2, 5, 6.

<sup>13</sup> Exhibit 11; Exhibit 12, p. 3.

<sup>14</sup> Exhibit 11.

<sup>15</sup> Exhibit 11.

<sup>16</sup> Exhibit 11; Exhibit 12, p. 4.

household and personal expenses, exclusive of child support, total about \$3,836.<sup>17</sup> In addition to Mr. M's household and personal obligations, his wife owes student loans with a total monthly payment of about \$200.

E J is disabled and lives alone with J. She subsists on a monthly disability payment of \$694 and food stamps.<sup>18</sup>

### **III. Discussion**

#### **A. Mr. M's Presumptive Support Obligation**

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,<sup>19</sup> that is, total income after allowable deductions.<sup>20</sup> 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 existing order may be modified.<sup>21</sup>

In this case, the division initially calculated Mr. M's support obligation based on his income in 2011 and the first quarter of 2012. However, at the end of the first quarter of 2012 Mr. M left Alaska and transferred to a new position in Nevada, where his anticipated income is substantially less than it was in prior years in Alaska. The division's revised calculation reflects Mr. M's anticipated 2012 income based on his paystubs from his current position, and is more accurate. Mr. M does not object to the division's calculation of his anticipated income. The division's revised calculation of Mr. M's adjusted income, however, did not include a deduction for Mr. M's union dues. Adding that deduction yields the support obligation shown on Appendix A.

#### **B. Reduction For Manifest Injustice**

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.<sup>22</sup> The obligor must provide clear and convincing evidence of manifest injustice.<sup>23</sup> In determining whether manifest injustice exists, all of the relevant circumstances should be considered.<sup>24</sup>

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<sup>17</sup> See notes 12-16.

<sup>18</sup> Testimony of D. J.

<sup>19</sup> 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

<sup>20</sup> 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

<sup>21</sup> Civil Rule 90.3(h)(1).

<sup>22</sup> 15 AAC 125.075(a)(2).

<sup>23</sup> 15 AAC 125.075(a); see Civil Rule 90.3(c)(1).

<sup>24</sup> See 15 AAC 125.080.

As noted above, Mr. M's current monthly take home income (\$4,465) is nearly sufficient to cover all of his stated expenses (\$3,836) plus his support obligation of \$820 per month. His wife's personal obligation for student loans does not take precedence over Mr. M's support obligation, and Mr. M has the ability to cover the difference between his disposable income and his support obligation by reducing his current monthly contribution to a savings plan. In any event, in light of Ms. J' very limited income, even if imposing the full support obligation would require a reduction in Mr. M's monthly expenses, he has not shown that it would be manifestly unjust to impose that burden on him in order to provide his child with the amount of support to which he is entitled.

C. Absence of Parties

Mr. M asserts that because none of the parties to the support order is presently residing in Alaska, the division should have closed the case and not modified the order.

Modification of a support order issued by the division after the parties leave the state is governed by 15 AAC 125.730. Under subsection (a) of the regulation, if the agency receives a request to modify an order after all of the parties to the order (obligor custodian, and child) have left the state, the agency will decline to modify the order and will instead refer the request for modification to the state where the non-requesting party resides. In this case, at the time the division received the request for modification, Mr. M was still living in Alaska, and therefore the division appropriately proceeded to initiate the modification process.

After the modification process has been initiated, subsection (b) of the regulation governs:

If all of the parties leave [Alaska] after the agency sends the notice of petition for modification but before the review or modification is complete, the agency will complete the review and modification unless the agency finds that good cause exists to terminate the review process and refer the request to a tribunal in another state.<sup>25</sup>

In this case, Mr. M left Alaska after the notice, but before the modification was complete. Thus, absent a showing of good cause to terminate the review process, it was appropriate for the agency to continue the modification process.

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<sup>25</sup> 15 AAC 125.730(a).

In determining whether there is good cause to terminate the review process and refer the request for review to another state, the agency considers:

- (1) whether another tribunal has personal jurisdiction over the parties and subject matter jurisdiction to consider the request for review or modification;
- (2) whether another tribunal would be a more convenient forum for the parties, including having better access to witnesses and other evidence relevant to the review or modification request;
- (3) the effect of any delay caused by a referral to another tribunal, including the effect on the applicable effective date of the proposed modification; and
- (4) the cause of the parties' departure from this state, including any evidence that the change of residence was intended to delay the review or modification process.<sup>[26]</sup>

Considering these factors, Mr. M has not shown good cause to terminate the review process and refer the case to another state. In particular, all of the information necessary to rule on the request has been made available (and thus there is no need to resort to another tribunal to obtain information), and referring the case elsewhere at this juncture would unnecessarily delay completion of the modification process and would potentially change the effective date of the modification.

#### **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. M's anticipated income in 2012.

#### **CHILD SUPPORT ORDER**

The Modified Administrative Child Support and Medical Support Order dated April 24, 2012, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated April 24, 2012, is **AFFIRMED**:

Modified ongoing child support is set at \$820 per month, effective February 1, 2012.

DATED: July 24, 2012.

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

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<sup>26</sup> 15 AAC 125.730(b).

## 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 14<sup>th</sup> day of August, 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.]