

On April 11, 2010, both children went to live with Mr. L in Oregon.⁵ By that time, Mr. L had accumulated arrears on his support order of approximately \$67,000.⁶ On August 12, 2011, the Oregon child support agency prepared a petition for modification of Mr. L's Alaska support order (CSSD No. 001099490), which was received by the division on September 6, 2011.⁷

On April 12, 2012, J returned to Alaska to live with her mother.⁸ On November 29, 2012, the division issued notice of a petition to modify Ms. L's support order (CSSD No. 001116340).⁹ On December 31, 2012, the division issued a modified administrative support order in CSSD Nos. 001099490, modifying Mr. L's support obligation to \$131 per month effective December 1, 2012.¹⁰

On January 9, 2013, the Oregon child support agency prepared a second petition for modification, this one identifying both Alaska orders.¹¹ On the same date, Mr. L completed a form to appeal the division's December modification order.¹² The division received the petition and the appeal on January 14.¹³ On January 29, the division issued an order modifying Ms. L's support obligation to \$0.00 per month, effective December 1, 2012.¹⁴

Mr. L has a high school education. He has no driver's license as a result of legal action.¹⁵ He receives public assistance and food stamps. Since 2011, Mr. L has worked as a maintenance service person on rental properties in Portland, Oregon, in exchange for housing.¹⁶ The estimated value of the rental property is \$1,495 per month.¹⁷

In 2011, Ms. L worked as an apartment manager 50 hours per week and earned \$12 per hour.¹⁸ She left that job in April, 2011, and obtained a job cleaning buildings for

⁵ Ex. 6.

⁶ Ex. 3, pp. 7-10.

⁷ Ex. 3.

⁸ Testimony of N. L, K. L.

⁹ Ex. 4. The record does not disclose the reason for the delay of more than one year in issuance of a notice of a petition for modification.

¹⁰ Ex. 5, p. 1.

¹¹ Ex. 7.

¹² Ex. 6, p. 1.

¹³ Ex. 7, p. 1; Pre-Hearing Brief, p. 2.

¹⁴ Ex. 9, p. 3.

¹⁵ Testimony of N. L.

¹⁶ Testimony of N. L.

¹⁷ Ex. 3, pp. 1, 18, 22.

¹⁸ Testimony of K. L.

\$1,200 per month.¹⁹ Ms. L broke her leg in October, 2011, and lost that job; she received \$7,893 in unemployment compensation in 2012.²⁰ In 2013 she received \$888 in unemployment compensation through February and has since been unemployed.²¹ She is a full time student and supports herself with student loans and food stamps.²²

III. Discussion

This modification proceeding was initiated by a Uniform Interstate Petition for Modification under the Uniform Interstate Family Support Act (UIFSA).²³ Both of the administrative support orders issued by the Division were modified effective December 1, 2012. The Division and the parties agree that both orders are within the scope of this appeal. Because the case involves divided custody, the income of both parents must be determined.

The presumptive support obligation when one parent has primary custody is based on the applicable percentage of the non-custodial parent's adjusted annual income: 20% for one child, and 27% for two children.²⁴ The presumptive support obligation in a divided custody case is based on the applicable percentage of the adjusted annual income of both parents, and the amount of time the children spend with each.²⁵ In a divided custody case, the division must also consider whether the presumptive support obligation is manifestly unjust.²⁶

1. N L Income

Mr. L's income in 2012 and continuing has consisted of in-kind compensation for his services as a maintenance worker. The value of the compensation is \$1,495 per month. Thus, his income is \$17,940 per year for both 2012 and 2013.

2. K L Income

Ms. L's income in 2012 consisted of unemployment compensation in the amount of \$7,893 plus an Alaska Permanent Fund dividend of \$878, for total income of \$8,771.

¹⁹ Testimony of K. L.

²⁰ Testimony of K. L.; Ex. 11, p. 1.

²¹ Notice of Filing; Ex. 11 p. 2.

²² Testimony of K. L.

²³ See AS 25.25.101-.923. The division has adopted a regulation providing that UIFSA cases are processed under its standard provisions for establishing a support order. 15 AAC 125.720(a).

²⁴ 15 AAC 125.070(a); Civil Rule 90.3(a).

²⁵ 15 AAC 125.070(c); Civil Rule 90.3(b)(2).

²⁶ 15 AAC 125.070(c); 15 AAC 125.075(a)(2)(C); 15 AAC 125.080; Civil Rule 90.3(b)(2); Commentary at V(D).

She has been unemployed since breaking her leg in October, 2011. Ms. L testified that her broken leg remains a chronic condition that has not healed. However, she was able to pursue her studies as a full time student beginning in the spring semester of the 2012-2013 academic year, and she provided no medical evidence to establish that her chronic leg condition was disabling as of December, 2012. Under these circumstances, she has not shown that her medical condition has prevented her from working since the effective date of the modification order.

Accordingly, Ms. L's anticipated income beginning in December, 2012 is more appropriately determined based on her earning capacity, which is at least equivalent to full time employment at the minimum wage. Full time employment at the minimum wage, calculated on the basis of 2080 of work (52 weeks x 40 hours per week) is \$16,120 (2080 x \$7.75). Together with an Alaska Permanent Fund dividend, Ms. L's anticipated annual income beginning in December, 2012, is \$16,998 (\$16,120 + \$878).

3. *Presumptive Support Obligation*

The modified support orders were based on the parties' actual income. Mr. L's actual income is not in dispute. However, Ms. L's anticipated income beginning in December, 2012, and ongoing is more accurately based on a minimum wage calculation.

Mr. L's monthly child support obligation, applying a primary custody calculation, as calculated by the division's online child support calculator is \$299 per month for one child and \$404 per month for two children. Ms. L's monthly child support obligation, applying a primary custody calculation, as calculated by the division's online child support calculator, is \$254 per month for one child and \$342 per month for two children.

Given these amounts, a divided custody calculation yields an obligation of \$30.65 from Mr. L to Ms. L, as shown on Appendix A. The parties' financial situation from the effective date of the modified support orders remains unchanged. Because there will not be a 15% or more change in their respective support obligations, the 2012 calculation applies to 2013 as well.

4. *Manifest Injustice*

Under the specific circumstances of this case, imposition of the presumptive support obligation for divided custody is not manifestly unjust. The parties have

substantially equal resources, and at the hearing Ms. L did not seek any ongoing support from Mr. L.

IV. Conclusion

Modified support on Ms. L's order should be set at zero. Modified support on Mr. L's order should be set at \$30 per month.

CHILD SUPPORT ORDER

1. The Modified Administrative Child Support Order in CSSD No. 001099490 dated December 31, 2012, setting modified support for N L effective December 1, 2012, is **AMENDED** as follows; in all other respects, the Administrative Child Support Order dated December 31, 2012 is **AFFIRMED**:

Modified ongoing child support is set at \$30 per month.

2. The Modified Administrative Child Support Order in CSSD No. 0001116340 dated January 29, 2013, setting modified support for K L effective December 1, 2012, is **AFFIRMED**. Modified ongoing child support remains at \$0 per month.

DATED: May 22, 2013.

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 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 10th day of June, 2013.

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

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