

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

In the Matter of:)	
)	OAH No. 14-0286-CSS
B M)	CSSD No. 001152025
_____)	

DECISION AND ORDER FOLLOWING SUPPLEMENTAL HEARING

I. Introduction

B M appealed a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division setting his child support for his child D L. K at \$405 per month. Following an initial hearing, Administrative Law Judge Jeffrey Friedman issued a proposed decision that Mr. M's child support be set at \$165 per month. Commissioner of Revenue Angela Rodell returned the decision to the Office of Administrative Hearings for a hearing on two issues: (i) the correct amount of Mr. M's child support for his older children; and (ii) whether his estimated annualized income needed to be adjusted for overtime or time off. Following a supplemental hearing, Mr. M's ongoing child support for D should be modified to \$236 per month.

II. Facts

At the first hearing, Mr. M's annual income was determined to be \$16,987.50. This was based on his wage rate for employment at No Name Restaurant, \$8.25 per hour, for 50 weeks of employment. It did not include any overtime.

Also at the first hearing, Mr. M's child support payment for his older children was determined to be \$423 per month. This figure was based on Mr. M's testimony that his legal obligation was \$423. The Division indicated in a proposal for action, however, that the actual amount paid by Mr. M was only \$111.00 per month.

A supplemental telephonic hearing was held on June 9, 2014, to address the issues identified by the Commissioner. Mr. M represented himself. Child Support Specialist James Pendergraft represented the Division. D's aunt, O N, represented D's grandmother and current custodian, C K. The testimony of Mr. M at the hearing revealed that

- Since the time of the last hearing, he had obtained employment at No Name Store, so that for a time, he worked two jobs;

- Because of criminal charges pending against him, he subsequently lost both jobs; at No Name Restaurant, he was put in temporary suspended status, pending his criminal trial in the fall;
- He expected the criminal matters to be resolved in his favor in the fall;
- He was actively trying to obtain seasonal employment in the fishing industry, similar to his employment in previous years.

At the hearing, no party had evidence regarding the actual child support payments made by Mr. M for his older children. Mr. M testified that two amounts were taken out of his check, and that the check stubs were marked “Child Support I, and Child Support II.”

The record was held open until June 27, 2014. Mr. M agreed to provide Mr. Pendergraft with evidence of actual payments of support for his older children. Mr. Pendergraft agreed to research the issue of Mr. M’s actual payments. All parties were given the opportunity to provide a proposed child support determination no later than June 27, 2014. No party provided any additional information. The Division, however, provided a new affidavit of payments consistent with its proposal for action.

III. Discussion

A. Income: Mr. M’s income at No Name Restaurant based on 39 hours per week, 52 weeks per year is the best estimate of his earning potential

At the first hearing, Mr. M’s income was determined based on employment at \$8.25 per hour, 39 hours per week for 50 weeks per year. The commissioner has requested resolution of the question of potential for overtime and number of weeks of employment.

Although Mr. M’s employment picture is more complicated now than it was at the time of the first hearing, the parties agreed that his current unemployment is temporary. All parties agreed that at this time, the best estimate of Mr. M’s earning potential remains his earning capacity based on his former employment at No Name Restaurant.

Mr. M testified that the estimate of 39 hours per week was the best estimate from his employer for average year-round employment—higher in summer, lower in winter. The parties agreed that based on this average, there was no need to increase the earning capacity for overtime. The parties also agreed, however, that because this number was a year-long *average*, it was appropriate to use a 52-week year to compute Mr. M’s income. At \$8.25 per hour, for 39

hours per week for 52 weeks, plus a permanent fund dividend, Mr. M's gross income potential is \$17,631.00.

B. Deductions: the only evidence of actual payment of child support for Mr. M's prior children is the affidavit of James Pendergraft

Under Civil Rule 90.3(a)(1)(C), any child support for prior children that is "required by other court or administrative proceedings and actually paid" should be deducted from Mr. M's gross income before determining his child support for D. The difficulty here is in determining what Mr. M has *actually paid* on behalf of his older children.

The supplemental hearing was conducted for the purpose of obtaining evidence on what Mr. M has actually paid. Although Mr. M has testified that his child support obligation for the older children is \$423 per month, he has not come forward with any evidence that he actually pays this amount. The Division indicated that in 2013, over a five month period, Mr. M paid \$555.01, making his actual payments \$111.00 per month. The record was held open for the parties to update this evidence. Mr. M was to provide his actual check stubs showing actual child support deductions. Mr. Pendergraft was to research actual payments as logged into child support databases (including, if necessary, data from another state). Disappointingly, neither party has provided any new evidence.

Therefore, at this time, the best evidence of child support actually paid for older children is the \$111.00 that was identified in the Division's affidavit. Allowing this amount as a deduction, together with other deductions allowed by law, yields an adjusted annual income of \$14,142.24. The monthly child support amount for one child based on this income is \$236.00 per month.

IV. Conclusion

Mr. M's current income of \$8.25 per hour for 39 hours per week, 52 weeks per year, should be used to calculate his modified support obligation. The deduction allowed for child support paid for older children should be \$111.00 per month. His child support obligation calculated under the guidelines in Civil Rule 90.3 is \$236.00 per month.

V. Child Support Order

- Mr. M's ongoing child support obligation for D is set at \$236 per month effective November 1, 2013.

- All other provisions of the January 22, 2014, Modified Administrative Child Support and Medical Support Order remain in effect.

DATED this 2nd day of July, 2014.

Signed _____
Stephen C. Slotnick
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 Following Supplemental Hearing 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 14th day of July, 2014.

By: *Signed* _____
Signature
Angela M. Rodell
Name
Commissioner
Title

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