

weeks off. In 2013, his December 31st paystub indicates he received total compensation from the company of \$195,020.51.⁷ However, according to data CSSD retrieved from the Alaska Department of Labor and Workforce Development, his employers reported he earned \$177,468.78 in 2013.⁸

Mr. M was formerly entitled to a deduction from income for supporting a prior child. However, his older daughter graduated from high school in August 2013 and reached the age of eighteen in February 2014. Thus, effective March 2014, Mr. M was no longer legally obligated to pay support for her, and the prior child deduction no longer applies to the calculation in this case.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”⁹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established and the order may be modified. Mr. M’s child support has been \$1,568 since May 2012. Thus, a child support calculation of \$1,803.20 or more would be sufficient to warrant modification in this case.¹⁰

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.¹¹ In this case, the notice was issued on December 30, 2013, so Mr. M’s child support *could* be modified as early as January 1, 2014.¹² However, both parties agreed, and CSSD does not object, to making the modification effective as of March 1, 2014. This eliminates the need to determine a prior child deduction just for the months of January and February of 2014. Thus, by specific agreement of the parties, the modification in this case is effective on March 1, 2014.¹³

⁷ Exh. 4 at pg. 1.

⁸ See Exh. 7. The reason for this discrepancy is unknown, but it appears likely it is due to NN not reporting Mr. M’s pre-tax compensation.

⁹ AS 25.27.190(e).

¹⁰ $\$1,568 \times 1.15 = \$1,803.20$.

¹¹ 15 AAC 125.321(d).

¹² See Exh. 2.

¹³ There is a prohibition in both federal and state law against retroactive modification, meaning one that is effective *before* the date of notice to the nonrequesting party. However, there is no prohibition against a modification becoming effective *after* the notice is served on the nonrequesting party. See Civil Rule 90.3(h)(2).

In a child support matter, the person who files the appeal has the burden of proving that CSSD’s order was incorrect.¹⁴ Mr. M filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated January 31, 2014 was incorrect.¹⁵

A. Total Income from All Sources

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her “total income from all sources.” Although CSSD used Mr. M’s total income figure of \$195,020.51 that was reported on his December 31, 2013 paystub, Mr. M claims his income has gone down since the end of 2013. He stated that not all of the items listed on his paystub should be included as income for the child support calculation because he spent a significant amount of work on a special project in 2013 that was completed at the end of the year. He argues the special project pay does not represent any appreciable income in 2014 and he requests that the total income figure reported to the Alaska Department of Labor and Workforce Development of \$177,468.78 be used to calculate his modified child support amount.

Paystubs for NN employees list numerous different types of pay the employee receives throughout the year.¹⁶ Mr. M’s paystubs list up to 19 different income categories for which he has been paid. The special project categories he identified are as follows:

Project work ST	=	Working on the 2013 special project
Project work OT	=	“ “ “ “ “
Project Lead ST	=	“ ” ” ” ”
Project Lead OT	=	“ ” ” ” ”
Spot Bonus Cash	=	For “doing a good job,” evidently on the special project
Transfer Straight	=	Filling in for a supervisor
Transfer Premium	=	Overtime while filling in for a supervisor
Call Out Straight	=	For call-outs during off-duty time at work
Call Out OT	=	“ “ “ “ “ “
Holdover Premium	=	Overtime during captive pay status

The total amount of Mr. M’s compensation for these special project categories in 2013 was \$17,692.87.¹⁷ Mr. M acknowledged that his 2014 earnings would reflect a very small amount of pay from the special project, but only because he had to wrap up some final tasks. An examination of his February 28, 2014 paystub confirms that during that pay period, he earned a

¹⁴ 15 AAC 05.030(h).
¹⁵ 2 AAC 64.290(e).
¹⁶ See, for example, the paystubs at Exh. 10.
¹⁷ Exh. 4 at pg. 1.

total of \$311.71 for “Project Lead ST” and “Project Lead OT.”¹⁸ Special project pay does not appear on any other of the obligor’s 2014 paystubs.¹⁹

Mr. M’s request not to include the pay he received in 2013 for the special project he worked on should be granted. He has proven by a preponderance of the evidence that his special project pay will not, other than an insignificant amount, be a continuing source of income during the 2014 calendar year. Subtracting the \$17,692.87 special project total from his 2013 final paystub figure of \$195,020.51 results in a total income figure of \$177,327.64. This amount is almost identical to the total income his employers reported he earned to the Alaska Department of Labor and Workforce Development.

B. Child Support Calculation

Mr. M’s ADOL reported income of \$177,468.78 for 2013 is the figure that should be used to calculate his modified child support obligation for L. The 2013 Permanent Fund dividend of \$900 should also be included in his income. In addition to the usual deductions for federal income taxes, Social Security, Medicare, and unemployment insurance, Mr. M is entitled to a monthly deduction of \$1,109.18 for his retirement contribution. This figure is 7.5% of his annual income, the maximum percentage allowed by Civil Rule 90.3(a)(1)(B) for a voluntary retirement contribution.²⁰

When all of these figures are inserted into CSSD’s online child support calculator, it results in a child support amount of \$1,912 per month for one child.²¹ This is not significantly lower than CSSD’s calculation because Mr. M’s adjusted annual income is very close to the \$120,000 income cap above which the standard support percentages do not apply.

IV. Conclusion

Mr. M met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated January 31, 2014 is incorrect. Mr. M’s child support obligation for L has been recalculated using his income data from the Alaska Department of Labor and Workforce Development, and incorporating the usual deductions, as well as a deduction for his retirement contribution. The result is a child support

¹⁸ Exh. 10 at pg. 5.

¹⁹ Exh. 10 at pgs. 2-4.

²⁰ $\$177,468.78 \times 7.5\% = \$13,310.15 \div 12 \text{ months} = \$1,109.18$

²¹ Attachment A.

calculation of \$1,912 per month. This figure is a correct measure of Mr. M's modified child support obligation, and it should be adopted, effective March 1, 2014, pursuant to the agreement of the parties regarding the effective date of this modification. There was no variance under Civil Rule 90.3(c) requested or granted.

V. Child Support Order

- Mr. M's child support obligation for L is modified to \$1,912 per month for one child, effective March 1, 2014, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 31, 2014 remain in full force and effect.

DATED this 4th day of May, 2014.

Signed

Kay L. Howard
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 23rd day of May, 2014.

By: Signed

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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