

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

In the Matter of:)	
)	OAH No. 14-1125-CSS
S M. J)	CSSD No. 001109168
_____)	

DECISION AND ORDER

I. Introduction

Custodial parent N C. U appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. J’s case on June 12, 2014. The four obligee children are K, 17, M, 15, T, 14, and N, 12.

The hearing was held on July 28, 2014. Both parties participated by telephone, along with James Pendergraft, Child Support Specialist, who represented CSSD. The hearing was recorded. The record initially closed on August 15, 2014, but Ms. U filed a payment history for Mr. J’s case on August 20, 2014, and asked that it be considered. The record was reopened to accept her documents, which have been marked as Exhibit 11.

Based on the evidence and after careful consideration, Mr. J’s child support obligation for the parties’ four children is modified to \$810 per month, effective June 1, 2014.

II. Facts

A. Procedural History

Mr. J’s child support obligation for K, M, T and N was set at \$1,552 per month in June 2013.¹ On May 12, 2014, Mr. J requested a modification review.² On May 19, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ On June 12, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that reduced Mr. J’s child support to \$676 per month, effective June 1, 2014.⁴ Ms. U appealed on July 1, 2014.⁵ Prior to the hearing, CSSD filed an income report for Mr. J from the Alaska Department of Labor.⁶

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 5.
⁵ Exh. 6.
⁶ Exh. 7.

B. Material Facts

Mr. J has had a varied work history. He previously worked as a no name for No Name at the No Name outside of No Name City. In 2011, he earned \$112,638.⁷ He left the no name in mid-2012 and has been working primarily as a carpenter since then. Mr. J explained he left the no name for several reasons, chief among them that his brother had died and that he wanted to be at home more. Apparently he was suspended and then fired from the no name.

Since he left no name, Mr. J has only been able to find seasonal employment. He worked as a carpenter for No Name Services for the last few months of 2012, and in June 2014, began working for the No Name business in No Name City, where they are remodeling sixteen apartment units. He is paid \$27.47 per hour for a standard 40-hour work week. Mr. J has also been looking for full-time work for other housing agencies.

Mr. J lives with his girlfriend, Z, who has been employed in the past but it currently receiving unemployment benefits. They are expecting their first child in early 2015.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”⁸ 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. J’s child support has been \$1,552 per month since June 2013. Thus, a child support calculation that is at least \$232.80 higher or lower than \$1,552 would be sufficient to warrant modification in this case.⁹

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.¹⁰ In this case, the notice was issued on May 19, 2014, so any modification of Mr. J’s child support obligation for the children would be effective as of June 1, 2014.¹¹

In a child support matter, the person who files the appeal has the burden of proving that CSSD’s order is incorrect.¹² Ms. U filed the appeal, so she must prove by a preponderance of the

⁷ *Id.*
⁸ AS 25.27.190(e).
⁹ \$1,552 x 15% = \$232.80.
¹⁰ 15 AAC 125.321(d).
¹¹ *See* Exh. 4.
¹² 15 AAC 05.030(h).

evidence that the Modified Administrative Child Support and Medical Support Order dated June 12, 2014 is incorrect.¹³

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,” minus mandatory deductions such as taxes and Social Security.

After the hearing, Mr. J submitted his most recent paystubs, which CSSD used to estimate his current annual income and calculate his support obligation for the children. CSSD predicted that as a seasonal employee, Mr. J would work on the average of seven months per year, and the agency calculated his child support on that basis. Using his wage of \$27.47 per hour, at 40 hours per week for approximately 7 months, CSSD estimated Mr. J’s annual income at \$30,766.40.¹⁴ When this figure is inserted into CSSD’s online child support calculator,¹⁵ it results in a child support amount of \$810 per month for four children (\$743 for three children, \$608 for two children, \$450 for one child).¹⁶ This calculation includes all of Mr. J’s mandatory deductions.

Ms. U asserted in her appeal that Mr. J’s child support should not be lowered. She submitted his account statement showing there have been periods of time during which he has not made payments, and that he is currently approximately \$30,000 in arrears.¹⁷

Based on all the evidence in this appeal, CSSD correctly calculated Mr. J’s modified child support. The calculation is based on his actual income, and takes into consideration the fact that he is currently working only seasonally. There has been no claim in this case that Mr. J is voluntarily and unreasonably underemployed. That is one of the only ways that his child support could remain the same as calculated based on his No Name income. However, even if that claim had been made, the facts as presented would not appear to support a finding that Mr. J is voluntarily and unreasonably underemployed. It would have to be proven that Mr. J had engaged in voluntary conduct “for the *purpose* of becoming or remaining unemployed.”¹⁸ The testimony does not establish that occurred in Mr. J’s case.

¹³ 2 AAC 64.290(e).

¹⁴ CSSD’s Submission to Record at pg. 1. The annual income figure includes the PFD and Native corporation dividends. See Exh. 10.

¹⁵ <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

¹⁶ Exh. 10.

¹⁷ Exh. 11.

¹⁸ *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998) (emphasis added).

In the event Mr. J is able to secure a full-time job, another modification should be initiated so as to bring the child support amount current with his increased income.

IV. Conclusion

Ms. U met her burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated June 12, 2014 is incorrect. Based on his current seasonal employment, Mr. J's child support is now correctly calculated at of \$810 per month for four children (\$743 for three children, \$608 for two children, \$450 for one child). This figure should be adopted. There was no variance requested or granted under Civil Rule 90.3(c).

V. Child Support Order

- Mr. J's child support obligation for K, M, T and N is modified to \$810 per month for four children (\$743 for three children, \$608 for two children, \$450 for one child), effective June 1, 2014;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated June 12, 2014, remain in full force and effect.

DATED this 9th day of September, 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 26th day of September, 2014.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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