

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

In the Matter of)	
)	
B R. U)	OAH No. 15-0633-CSS
_____)	Agency No. 001187014

DECISION AND ORDER

I. Introduction

In April 2015, the State of Alaska Child Support Services Division (CSSD) issued an order increasing B U's child support obligation for his daughter, O, from \$346.00 per month to \$765.00 per month. Mr. U appeals, claiming that the modified order overstates his income in light of his variable work schedule. Following a fair hearing and upon review of the evidence, this decision concludes that, after allowable deductions, Mr. U's ongoing support obligation for O is properly set at \$653.00 per month, effective April 1, 2015.

II. Facts

B U and D Q are the parents of O, born September 23, 2012.¹ O lives with Ms. Q.² Mr. U lives with his wife, Z U, their son K, age 10, and Ms. U's son L, age 20. Mr. U works for the State of Alaska Facility X as an engineer.³

On March 12, 2013, the Child Support Services Division (CSSD) issued an Administrative Child Support and Medical Support Order, establishing Mr. U's monthly support obligation for O at \$346.00 per month.⁴ On March 9, 2015, Ms. Q requested a modification. CSSD notified Mr. U of the Petition to Modify, and asked him to provide certain types of income documentation.⁵ In response, Mr. U sent copies of his two most recent paystubs from his employer, the State of Alaska.⁶

On April 29, 2015, the Division issued a Modified Administrative Child Support and Medical Support Order increasing Mr. U's monthly support obligation to \$765.00, beginning

¹ Ex. 1, p. 1.

² Ex. 1, p. 1.

³ Testimony of B U.

⁴ Ex. 1, p. 1. The Order also found that Mr. U owed \$2,442 in past due support from the time of O's birth through the date of the Order. *Id.*, p. 2.

⁵ Ex. 2, p. 1.

⁶ Ex. 3. The March 27, 2015 paystub showed \$2,247.65 in taxable earnings, and the April 10, 2015 paystub showed \$1,630.54 in taxable earnings. *Id.*

April 1, 2015.⁷ The explanation provided within the Order was that Mr. U’s annual income for 2015 had been calculated “based on [his] annual income of \$62,247.84 reported by [his] employer.”⁸ The Division included the Permanent Fund Dividend as additional income, and gave Mr. U a deduction for “Retirement.”⁹

Mr. U filed an appeal on May 8, 2015.¹⁰ The bases for his appeal were two-fold: first, Mr. U explained that he is “not a full-time employee;” second, Mr. U voiced concerns related to the possibility that a well-publicized potential state government shutdown might impact his earnings.¹¹ Mr. U also submitted additional income documentation – two additional paystubs, his 2014 W-4, his 2014 tax return, and a 2014 Statement of Earnings for unemployment insurance benefits – along with his appeal.¹²

A hearing was held and recorded on June 9, 2015. Mr. U and Ms. Q participated telephonically, and Joseph West appeared in person on behalf of the Division. At the hearing, Mr. U provided clarifying testimony on the nature of his employment situation and the presence of an older biological child in his home.

Mr. U works as an engineer on the Alaska Facility X, a position he has held for the last year. His schedule varies seasonally. During the winter months, when boats are at the No Name Facility in No Name, he generally works 84 hours every two weeks. During the summer months, where seniority affects his ability to obtain specific job assignments, his schedule is less certain.

Mr. U testified that he works a week-on/week-off schedule during summer months, typically working 12-hour days during his “on” weeks. However, he is not guaranteed work every week, due to his relative lack of seniority and status as a “relief worker.” In fact, he is only “guaranteed” 80 hours per month. Despite these uncertainties, however, Mr. U estimated that his annual income in 2015 would be “close to” if not exactly \$62,000.¹³

Because of the additional clarifying information provided in Mr. U’s testimony, and because the Division’s hearing exhibits had not included an actual support calculation worksheet, the record was held open to allow Mr. U to submit additional records to CSSD,

⁷ Ex. 4, p. 1.
⁸ Ex. 4, p. 5.
⁹ Ex. 4, p. 5.
¹⁰ Ex. 5.
¹¹ Ex. 5, p. 1.
¹² Ex. 6.
¹³ Testimony of B U.

and for CSSD to submit a revised support calculation based on that updated information. On June 16, Mr. U submitted to CSSD a Child Support Guidelines Affidavit, a May 20, 2015 paystub, a June 3, 2015 paystub, his 2014 W-2, his 2014 Tax Return, and the birth certificate of his son, K.¹⁴ CSSD then submitted to the OAH a revised child support calculation based on Mr. U's testimony and post-hearing submissions.

CSSD's post-hearing submission re-calculated Mr. U's annual gross income based on the year-to-date income reflected in his paystubs, and based on his testimony about his work schedule.¹⁵ As described in its June 16, 2015 submission, CSSD counted ten weeks of summer earnings – that is, twenty weeks of week-on/week-off work, with wages earned during ten of those weeks – and assumed forty regular hours and 44 hours of overtime for each of the ten weeks. At Mr. U's regular wage of \$26.04, with time-and-a-half for overtime, this amounts to \$27,602 for this period of time. For the remaining 32 weeks, CSSD applied the winter schedule described by Mr. U, with forty hours per week at the regular wage of \$26.04, for a total of \$33,331.

Using these revised calculations, and also crediting Mr. U for the presence of an older biological child in the home, CSSD calculated Mr. U's revised child support obligation to O at \$653 per month. Although the undersigned's June 15 Interim Order expressly allowed either parent ten days to respond to the Division's Revised Calculation, the record closed without further submission or participation by either parent.

III. Discussion

A. Applicable Law

The amount of child support received by a child is based on the parent's ability to pay.¹⁶ As the obligor, Mr. U has the burden of proving his earning capacity.¹⁷

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁸ If the newly calculated child support amount is more than 15% different than the previous order, Civil Rule 90.3(h) assumes "material change in

¹⁴ Ex. 10

¹⁵ Hearing Submission, June 16, 2015.

¹⁶ Alaska Civil Rule 90.3, Commentary I B. Civil Rule 90.3 contains the guidelines for calculating child support in Alaska. The rule applies to all proceedings in which support is to be determined, whether in court or before CSSD, the administrative agency.

¹⁷ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁸ AS 25.27.190(e).

circumstances” exists and the order may be modified. Mr. U’s support was set at \$346 per month in 2013. A child support calculation of \$397.90 or higher would be sufficient to modify his child support obligation at this time.¹⁹ A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of April 1, 2015.²⁰

As the person who filed the appeal in this case, Mr. U has the burden of proving by a preponderance of the evidence that the agency’s Modified Administrative Child Support and Medical Support Order is incorrect.²¹

B. CSSD’s Revised Calculation Accurately Determines Mr. U’s “Income from All Sources.”

Mr. U does not dispute the amount of income used by CSSD; rather, he disputes the way it was calculated. Child support determinations calculated under Civil Rule 90.3(a) from a parent’s actual income are presumed to be correct. Civil Rule 90.3(a)(1) provides that an obligor’s child support amount is to be calculated from his or her “total income from all sources,” minus mandatory deductions such as taxes, certain retirement contributions, support for a prior biological child living in the home, and Social Security.

CSSD’s initial calculation was based on annual wages of \$62,248.84, apparently as reported by Mr. U’s employer. With deductions for retirement, this resulted in a child support obligation for one child in the amount of \$765 per month.²² After the hearing, the Division adjusted the calculation to reflect the obligor’s testimony regarding his work schedule and to provide further deductions for support for a prior child in the home.²³ The resulting child support amount is now correctly calculated at \$653 per month.²⁴

Mr. U agreed that he is likely to earn \$62,000 in 2015, but he continues to argue that CSSD’s calculation is incorrect because he is not promised full-time work and so cannot be sure of his annual income. When calculating child support, the obligor’s annual gross income must be established. Determining an obligor’s annual income for purposes of child support is “necessarily... speculative because the relevant income figure is expected future income.”²⁵

¹⁹ \$346 x 115% = \$397.90.

²⁰ 15 AAC 125.321(d). In this case, the notice was issued on March 13, 2015. Ex. 2.

²¹ 15 AAC 05.030(h).

²² Ex. 3, p. 1.

²³ CSSD’s Submission to Record.

²⁴ Ex. 9.

²⁵ See Civil Rule 90.3, Commentary III.E.

Although Mr. U testified that he is not “promised” a full week of work each week, he did not provide evidence showing that he has been denied full weeks of work, or that, even if he periodically were, that his actual hours were so far removed from full-time to make CSSD’s overall annual income calculation erroneous.²⁶ Moreover, although he was given the chance to respond to CSSD’s revised calculations, he did not do so. Thus, Mr. U did not meet his burden to show that these revised calculations are incorrect.

In short, CSSD’s revised calculations, submitted June 16, 2015, correctly determine Mr. U’s “income based on all sources,” and correctly calculate his monthly support obligation for O from that amount. Given his expected annual wages of \$60,933, as well as \$1,884 from the Permanent Fund Dividend, Mr. U’s total taxable gross income for Rule 90.3 purposes is \$62,817.00.

C. Mr. U is Entitled to a Deduction for In-Kind Support of His Older Child.

Civil Rule 90.3(a)(1)(D) states that an obligor parent is entitled to a deduction from income for “in-kind support for children from prior relationships in the primary or shared physical custody of the parent.” At the hearing, evidence was presented that Mr. U’s current household includes a nine-year-old son. Mr. U is entitled to a deduction for his support of that prior child. CSSD’s April 29, 2015 modification did not include that deduction, and was in error as to that issue. However, CSSD’s June 16, 2015 post-hearing revised calculation properly provides for the appropriate deduction required under Rule 90.3(a)(1)(D).²⁷

D. Mr. U Did Not Prove He Was Entitled to a Modification Based on Threatened Layoffs of State Employees.

Lastly, as noted above, Mr. U’s hearing request not only raised the issue of his work schedule, but also raised the State budget crisis and its anticipated effects on the No Name system. At the time Mr. U submitted his hearing request, and in the weeks leading up to the hearing, the State of Alaska neared a State government shutdown.

On June 1, 2015, most State employees, including Mr. U, were notified of layoffs scheduled to begin July 2, 2015 if the legislative budget impasse was not resolved. Several

²⁶ The paystubs he submitted likewise do not appear to support Mr. U’s professed uncertainty. For the pay period ending May 22, 2015, Mr. U worked 96 regular hours, and 12 hours of overtime. Ex. 10, p. 4. For the pay period ending May 8, 2015, he worked 37.6 regular hours, and 16 hours of overtime, and took 42 hours of annual leave. Ex. 10, p. 3.

²⁷ Ex. 9.

days before the hearing, however, the Legislature passed a budget and the Governor issued a notice rescinding those layoffs.²⁸ Mr. U presented no evidence to suggest that he was facing any layoff threat other than the now-rescinded statewide layoffs. Accordingly, he did not meet his burden of proof on this issue.

IV. Conclusion

Because CSSD's calculation did not include a deduction for a prior child in the household, Mr. U met his burden of proving by a preponderance of the evidence that CSSD's April 29, 2015 calculation was incorrect. The revised calculations submitted after the hearing, however, are based on his actual income and include the required deduction for supporting his prior child. Mr. U submitted no evidence or argument to rebut those revised calculations, which are adopted herein for the reasons set forth above

V. Child Support Order

1. B R. U is liable for modified child support in the amount of \$653 per month for O, effective April 1, 2015 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated April 29, 2015 remain in full force and effect.

Dated: July 21, 2015

Signed _____
Cheryl Mandala
Administrative Law Judge

²⁸ At the hearing, Mr. U was apparently unaware of these more recent developments, and thus was still concerned about the possibility of an imminent State government shutdown potentially affecting his income.

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 within 30 days after the date of this decision.

DATED this 10th day of August, 2015.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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