

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

In the Matter of	)	
	)	
E J. D	)	OAH No. 16-0544-CSS
<hr style="width:40%; margin-left:0"/>	)	Agency No. 001193891

**DECISION AND ORDER**

**I. Introduction**

C M appeals a modified administrative child support and medical support order issued by the Child Support Services Division reducing E D's child support obligation from \$1,612 to \$1,052 a month for one child. Because Mr. D's income has dropped significantly, a modification is in order. Based on the evidence regarding Mr. D's expected annual earnings and the number of prior children living in his home, his ongoing child support obligation should be set at \$1,176 a month.

**II. Facts**

Mr. D's child support obligation for his daughter H was established in 2013 at \$1,612 a month, based on Mr. D's total gross income of \$190,118.<sup>1</sup> This year Mr. D requested a modification review.<sup>2</sup> Mr. D has transferred to a different position with his employer that pays considerably less than his previous position. He submitted recent paystubs and information from his employer about compensation for the new position.<sup>3</sup>

The division calculated Mr. D's modified child support obligation for H at \$1,052 a month, based on a total gross income figure for Mr. D of \$119,496 a year.<sup>4</sup> Ms. M appealed the modified administrative child support order.<sup>5</sup> She disputed the figure used for Mr. D's income, arguing that it was based on his income during a period in which he took a considerable amount of leave without pay and therefore not representative.

A telephonic hearing was held on June 6, 2016. Y Z represented Mr. D. Lay advocate Brandi Estes represented the division. Ms. M represented herself. At the hearing, the division offered to provide new calculations based on new evidence presented by the parties and

---

<sup>1</sup> Division Exhibit 1 at 1.  
<sup>2</sup> Division Exhibit 2 at 1.  
<sup>3</sup> Division Exhibit 3; Division Exhibit 5.  
<sup>4</sup> Division Exhibit 6 at 6.  
<sup>5</sup> Division Exhibit 7.

testimony at the hearing. The record was held open for the new calculations, and both Mr. D and Ms. M responded to the new calculations. The record closed on June 9, 2016.

### **III. Discussion**

The parties dispute Mr. D's projected annual income. Mr. D also disputes the amount that should be deducted for prior children in the home, and the monthly medical credit. These issues will be addressed below.

Ms. M raised concerns about enforcement of the existing medical support order relating to specific medical expenses incurred for H. However, the agency decision being appealed in this proceeding is the Modified Administrative Child Support and Medical Support Order dated April 21, 2016. Issues relating to the enforcement of this order and the 2013 order are beyond the scope of this proceeding. The scope of this appeal is limited to whether the division's order modifying Mr. D's child support obligation is correct.

#### *A. Mr. D's income*

Mr. D works as an electrician for No Name.<sup>6</sup> He works two weeks on, and two weeks off. This year, the company transferred him to No Name. His hourly wages in the new position are lower than his wages in his previous position. Also, as part of the transfer, he had a considerable amount of leave without pay in early 2016.<sup>7</sup>

Civil Rule 90.3(a) requires calculation of a child support award based on the obligor parent's total income from all sources. According to the commentary to Civil Rule 90.3, income includes overtime as well as bonuses.<sup>8</sup> The relevant income figure is expected future income which will be earned when the support is to be paid.<sup>9</sup> According to the company pay schedule, Mr. D's new position is compensated at a total gross rate of \$152,718 a year.<sup>10</sup> This is the figure the division used in its post-hearing calculation of Mr. D's child support obligation.<sup>11</sup>

The \$152,718 figure is the best estimate of Mr. D's annual income going forward. When Mr. D applied for the modification, he provided the information on his new pay grade and noted that his income would drop by \$30,000. Mr. D's total wages reported to the Department of

---

<sup>6</sup> Exhibit 5 at 1.

<sup>7</sup> Testimony of D.

<sup>8</sup> Commentary to Civil Rule 90.3 at III.A.

<sup>9</sup> Commentary to Civil Rule 90.3 at III.E.

<sup>10</sup> Division Exhibit 3 at 2.

<sup>11</sup> Division Exhibit 11 at 1.

Labor were \$181,387 for 2015, and \$185,972 for 2014. The difference between the pay schedule and past wages is indeed approximately \$30,000. Also, Mr. D's most recent paystub, for the period ending May 22, 2016, shows his pay for that period at approximately \$5,818. Extrapolating from this by multiplying by 26 pay periods produces an estimated annual income figure of \$151,268.

Ms. M argues that Mr. D's actual income for the year will be higher, because of overtime and bonuses. Mr. D may receive a bonus for his work in 2016, but it is not guaranteed. Mr. D provided conflicting testimony about the potential for overtime earnings in his new position, first stating that it did not offer overtime, and then that he might get two to four hours of unscheduled overtime per paycheck. The paystubs he has submitted show overtime hours and unscheduled hours separately, and reveal considerable variation in the classification of hours from one paycheck to the next. However, taken together, they do not indicate that he is likely to earn substantially more than the annual scale for his pay grade, \$152,718. It is possible that Mr. D will receive a bonus for his work in 2016, but if past practice is an indicator, he may not receive that until 2017. Also, as he noted in his post hearing response, "the oil industry is in a period of uncertainty and change." Given this, it is not appropriate to assume that Mr. D will receive a bonus on top of the \$152,718 in 2016.

Mr. D argues that the child support calculation should be based on his actual earnings year to date, less the bonus for work performed in 2015. Extrapolating from year to date earnings less bonus, he argues that the annual income figure should be \$122,391. The \$122,391 figure appears too low, because it is based on a period during which Mr. D had a substantial amount of leave without pay due to his job transfer. It appears that his earnings during the first quarter of 2016, excluding the 2015 bonus, were lower than what he can expect to receive going forward.

Considering all of the available evidence, the best estimate of Mr. D's annual income going forward is the \$152,718 called for on the pay schedule. The \$117,424 annual income figure used in the division's original calculation was too low because it was based on recent paystubs that included leave without pay. Ms. M has suggested that Mr. D might receive more

than \$152,718, which is possible, but she has not demonstrated by a preponderance of the evidence that he is likely to make more than \$152,718.<sup>12</sup>

*B. Deduction for prior children in the home*

Mr. D is entitled to a deduction for in-kind child support for children from prior relationships in his custody.<sup>13</sup> The division's order allowed Mr. D a deduction for only one child in the home. In April, Mr. D had three children in the home. The eldest turned 18 and graduated from high school in May.<sup>14</sup> Generally, the support obligation ends when a child turns 18.<sup>15</sup> Mr. D's support obligation should be calculated with a deduction for the actual number of prior children in his home. He had three children in the home through May, 2016, and two children in the home thereafter.

To calculate the amount of the deduction for in-kind child support for children in the home, the division makes a separate child support obligation calculation based on the obligor's income and the number of children in the home.<sup>16</sup> The division calculated Mr. D's deduction for two children in the home in accordance with Civil Rule 90.3(a)(2) by multiplying Mr. D's adjusted annual income of \$100,018 by 27 percent for two children.<sup>17</sup> The percentage of income for three children under Civil Rule 90.3(a)(2) is 33 percent. Thirty-three percent of \$100,018 is \$33,006. This figure is divided by 12 to arrive at a monthly child support figure of \$2,751 for three children.

In calculating Mr. D's monthly deduction for prior children in the home, the division applied a monthly medical "credit." Mr. D is entitled to a credit against his child support obligation for H for the amount he pays each month for health insurance coverage for her. However, he is also entitled to the full amount of the deduction for the prior children in his home, with no reduction for the medical insurance premium he pays for those children.

---

<sup>12</sup> The person appealing the division's decision has the burden of demonstrating that the decision is incorrect. 15 AAC 05.030(h).

<sup>13</sup> Civil Rule 90.3(a)(1)(D).

<sup>14</sup> D's Response to CSSD's Submission to Record at 2. Unfortunately, the briefing is not clear as to when the child turned 18. Exhibit D, an email from CSSD to Mr. D, suggests that his support obligation should be calculated based on three dependent children in the home in April and May 2016, and two dependent children in the home thereafter.

<sup>15</sup> An exception may be granted for an unmarried 18-year-old who is actively pursuing a high school diploma or equivalent level of technical or vocational training and living at home. See AS 25.24.140(a)(3). However, since this child has already graduated from high school, the exception would not apply.

<sup>16</sup> Civil Rule 90.3(a)(1)(D)(i).

<sup>17</sup> Division Exhibit 11 at 2.

Reduction of the monthly deduction for children in the home by an \$84.40 monthly medical "credit" was incorrect.

Mr. D is entitled to a deduction for three prior children in the home of \$2,751 for the months of April and May, 2016. He is entitled to a deduction of \$2,250 for two prior children in the home for June, 2016 and ongoing. He is entitled to a monthly medical credit against his support obligation for H, which the division has set at \$42.20.

Based on these revisions to Mr. D's credit for prior children in the home, Mr. D's support obligation is \$1,076 for the months of April and May, 2016, and \$1,176 for June, 2016 and ongoing.<sup>18</sup> These figures are more than 15 percent lower than Mr. D's child support obligation under the 2013 order. This indicates that a material change in circumstances has occurred and Mr. D's child support obligation should be modified.<sup>19</sup> If circumstances change again in the future, any of the parties may request a modification.

### **C. Effective date of modification**

The modification of Mr. D's support obligation is effective April 1, 2016.<sup>20</sup> The effective date of a modification is the first day of the month following the date on which the notice of petition for modification was served on the non-requesting parent.<sup>21</sup> The division sent the notice of petition for modification to Ms. M on March 11, 2016.<sup>22</sup> Therefore, the modification is effective on April 1, 2016, not January 1, 2016 as argued by Mr. D.<sup>23</sup>

## **IV. Conclusion**

Mr. D's child support obligation should be modified. Modified child support should be set at \$1,076 for April and May, 2016, based on annual gross wages of \$152,717.64 and a deduction for three prior children in the home. Since one of those children has turned 18 and graduated from high school, Mr. D's support obligation for H should increase to \$1,176 a month effective June 1, 2016, based on annual gross wages of \$152,717.64 and a deduction for two prior children in the home. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3.

---

<sup>18</sup> See calculations made using division's online calculator, attached.

<sup>19</sup> Civil Rule 90.3(h)(1).

<sup>20</sup> Division Exhibit 6 at 1.

<sup>21</sup> 15 AAC 125.321(d).

<sup>22</sup> Division Exhibit 2 at 1; Division Exhibit 4. Division Exhibit 4 at 3.

<sup>23</sup> D's Response to CSSD's Submission to Record at 3. Mr. D argued that the modification should be calculation from the date Mr. D first applied for the modification.

**V. Child Support Order**

- Mr. D's modified child support obligation for H is set at \$1,076 a month for April and May, 2016.
- Mr. D's modified child support obligation for H is set at \$1,176 a month for June, 2016, and ongoing.
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated April 21, 2016 remain in effect.

Dated: June 15, 2016.

*Signed* \_\_\_\_\_  
Kathryn L. Kurtz  
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 within 30 days after the date of this decision.

DATED this 1<sup>st</sup> day of July, 2016.

By: *Signed* \_\_\_\_\_  
Signature  
Bride A. Seifert \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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