

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

In the Matter of)	
)	
K F)	OAH No. 16-1241-CSS
<hr style="width:45%; margin-left:0"/>)	Agency No. 001171764

DECISION AND ORDER

I. Introduction

K F appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division increasing Mr. F’s child support obligation for his child Z from \$226 to \$311 a month.

Because the evidence does not show that there has been a material change in circumstances since Mr. F’s ongoing monthly child support obligation was last set, the request for modification is denied and the modified administrative child support and medical support order dated September 7, 2016 is vacated.

II. Facts

In August, 2014, the division issued a modified administrative child support and medical support order setting Mr. F’s child support obligation at \$226 a month.¹ In June, 2016, Mr. F requested that the division modify his support obligation. He provided paystubs to support his request.² His former employer provided verification of his employment and wages, and a notice of termination.³

The division granted the request for modification.⁴ It recalculated Mr. F’s support obligation based on his earnings as reported to the Department of Labor and Workforce Development for the third quarter of 2015 through the second quarter of 2016, a total of \$21,840.⁵ With deductions for federal income taxes, FICA, and unemployment insurance, his adjusted annual income was \$18,631. Based on this, the division calculated a new monthly child support obligation of \$311.⁶

¹ Exhibit 1.
² Exhibit 2.
³ Exhibits 4 and 5.
⁴ Exhibit 6 at 7.
⁵ Exhibit 6 at 5 - 6; Exhibit 8 at 1.
⁶ Exhibit 6 at 6.

A telephonic hearing was held on November 22, 2016. Mr. F did not appear and did not answer the telephone call placed to his telephone number of record, so the hearing was held in his absence. A voicemail message was left for Mr. F, but Mr. F has not subsequently contacted the Office of Administrative Hearings. J T, the custodial parent, did not participate. Child Support Specialist Kimberly Sledgister represented the division. The record closed on December 2, 2016.

III. Discussion

Civil Rule 90.3 allows modification of a child support obligation if the party requesting the modification shows that a material change of circumstances has occurred. A material change of circumstances "will be presumed" if the modified support obligation is 15 percent greater or less than the existing support obligation.⁷ In a child support hearing, the person who filed the appeal, in this case, Mr. F, has the burden of proving by a preponderance of the evidence that the division's order is incorrect.⁸

In his appeal, Mr. F argued that his child support obligation should not be increased. He pointed out that he was currently unemployed, and in the process of applying for unemployment insurance benefits. He argued that he could not afford to pay \$311 a month. Specifically, he noted that in 2015 he had "a really good job that I only had for 6 weeks."⁹

Child support calculations should be based on expected future income."¹⁰ Although a person's actual earnings over the past year may be indicative of that person's likely future earnings, this does not appear to be true in the case of Mr. F. The division based its calculations on Mr. F's actual earnings from third quarter 2015 through second quarter 2016, a total of \$21,619.¹¹ Mr. F's explanation that this figure was artificially inflated by the good job he held for only six weeks is supported by his recent earnings history.¹² Mr. F earned \$7,714 from one employer during the third quarter of 2015, and \$2,272 from another employer the same quarter, for a total of \$9,985. However, his earnings in other quarters over the last three years are significantly lower. Also, he went from having a steady job with one employer in 2014 to working for six different employers in 2015 and four employers in 2016. Mr. F's earnings for the fourth quarter of 2015 through the third quarter

⁷ Civil Rule 90.3(h)(1).

⁸ 15 AAC 05.030(h).

⁹ Exhibit 7.

¹⁰ Commentary to Civil Rule 90.3 at III.E. *See also* 15 AAC 125.030.

¹¹ Exhibit 6 at 5.

¹² Exhibit 8.

of 2016 were \$14,417. His earnings for calendar year 2016 through the third quarter totaled only \$9,663, and Mr. F reported that he is currently unemployed. Consequently, his annual earnings for 2016 and going forward are likely to be considerably lower than \$21,619.

Because Mr. F's income and employment situation has become erratic and his higher earnings in the third quarter of 2015 are not indicative of his likely future earnings, a three-year average of his earnings is a better indicator of future earnings than the four quarters used by the division.¹³ Mr. F's annual earnings over the last three years average \$14,661. This corresponds to an estimated child support obligation of \$217 a month.¹⁴ This is only nine dollars less per month than the existing obligation of \$226. This does not constitute a material change in circumstances sufficient to warrant a change in Mr. F's support obligation.

IV. Conclusion

Mr. F met his burden of proving that the modified administrative child support and medical support order dated September 7, 2016 is incorrect. The weight of the evidence does not support the conclusion that a material change in circumstances has occurred that would result in a change of 15 percent or more in Mr. F's support obligation. The request for modification should therefore be denied, and the modified order dated September 7, 2016 should be vacated.

V. Child Support Order

1. Mr. F's request for modification is denied.
2. The Division's Modified Administrative Child Support and Medical Support Order issued on September 7, 2016 is vacated.
3. Mr. F's ongoing child support will remain at \$226 per month in accordance with the Division's Modified Administrative Child and Medical Support Order dated August 11, 2014, which remains in effect.

Dated: December 21, 2016.

Signed _____
Kathryn L. Kurtz
Administrative Law Judge

¹³ See Civil Rule 90.3 Commentary III.E. ("The determination of future income may be especially difficult when the obligor has had very erratic income in the past. In such a situation, the court may choose to average the obligor's past income over several years.")

¹⁴ Estimate calculated using the division's online calculator, with wages subject to FICA of \$14,661 and no permanent fund dividend or other 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 6th day of January, 2017.

By: Signed
Signature
Kathryn L. Kurtz
Name
Administrative Law Judge
Title

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