

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

In the Matter of)	
)	
K U)	OAH No. 16-1287-CSS
_____)	Agency No. 001136363

DECISION AND ORDER

I. Introduction

Custodial parent C N appeals a Decision on Request for Modification Review that the Child Support Services Division (CSSD) issued in K U’s case on October 14, 2016. The Decision granted Mr. U’s request for modification of his child support obligation for his daughter, Z. The same day, CSSD issued a Modified Administrative Child Support and Medical Support Order, reducing Mr. U’s support obligation from \$342 to \$177 per month, effective October 1, 2016.

Ms. N met her burden to show that CSSD made a mistake when it granted Mr. U’s request for a modification. Mr. U’s prior child support amount was based on his work at a full-time job. Mr. U did not provide any information to justify his modification request, and CSSD erred by calculating his potential income based on a part-time, 20 hour per week job. When Mr. U’s support obligation is calculated based on a full-time, minimum wage job, the support amount does not materially change.

As a result, the Decision on Request for Modification Review is reversed, and the October 14, 2016 Modified Administrative Child Support and Medical Support Order is vacated. Mr. U’s child support obligation for Z remains \$342 per month, as set forth in the Modified Administrative Child Support and Medical Support Order dated March 10, 2010. Mr. U may request another modification review if he is prepared to provide information about his income, work history, and related topics.

II. Facts

A. Procedural History

On March 10, 2010, CSSD set Mr. U’s child support for Z at \$342 per month.¹ It made this determination based on Mr. U’s “demonstrated ability” to work a full-time job at \$11 per hour.

¹ Exhibit 1.

This produced annual wages of \$22,880, plus the 2009 PFD of \$1,305, for total income of \$24,185.²

On September 12, 2016, CSSD received Mr. U's verbal request for a modification.³ The next day, it served both parties with a Notice of Petition for Modification of Administrative Support Order.⁴ The notice advised the parties that a modification had been requested, and it directed them to submit income information. CSSD did not receive any responses.⁵

On October 14, 2016, CSSD issued a Decision on Request for Modification Review, granting Mr. U's request for a modification.⁶ It also issued a Modified Administrative Child Support and Medical Support Order that decreased Mr. U's child support amount to \$171 per month, effective October 1, 2016.⁷ CSSD calculated this amount after reviewing Mr. U's very limited history of earning employer-reported wages. Based on this history, CSSD implicitly concluded Mr. U is voluntarily and unreasonably unemployed or underemployed, and it calculated his support amount based on his potential income. It determined that Mr. U could work a minimum wage job, \$9.75 per hour, for 20 hours per week. This produced annual wages of \$10,140, plus the 2016 Alaska PFD of \$1,022, for total income of \$11,162.⁸ This income results in a \$171 monthly support amount.

Ms. N appealed.⁹ She asserted that CSSD should not have modified Mr. U's support amount when he did not provide any documentation or other information to show his income.

The formal hearing took place on November 29, 2016. Ms. N participated by telephone, represented herself and testified on her own behalf. Child Support Specialist Joseph West participated by telephone and represented CSSD. Mr. U did not appear or answer a call to his telephone number of record, and it was not possible to leave a voice message at his telephone number of record. A Notice of Hearing was sent by certified mail to his address of record, but it was returned to the Office of Administrative Hearings unclaimed. The hearing was recorded. All submitted documents were admitted to the record, and the record closed at the end of the hearing.

² Exhibit 1, p. 4.

³ CSSD pre-hearing brief, p. 1.

⁴ Exhibit 2.

⁵ CSSD pre-hearing brief, p. 1.

⁶ Exhibit 3, pp. 7-8.

⁷ Exhibit 3, pp. 1-6.

⁸ Exhibit 3, pp. 5-6.

⁹ Exhibit 4.

B. Material Facts

Mr. U and Ms. N are the parents of Z, who is 11.¹⁰ Z lives out-of-state with Ms. N.

Mr. U is 32 years old.¹¹ He lives in Alaska, in an area that is not economically distressed and in which employment is deemed to be available.¹² However, Mr. U has a spotty work history. Alaska Department of Labor and Workforce Development (DOL) records indicate that he worked for reported wages only sporadically from 2012 through 2015. In 2012, he worked for two employers and earned wages totaling \$4,787.33. From 2013 through 2015, he worked for a different employer and earned \$2,656.31 in 2013, \$1,245.47 in 2014, and \$1,492.52 in 2015.¹³ None of these jobs appear to have been year-round or full-time positions. DOL records do not show any income for 2016.

Ms. N does not communicate directly with Mr. U, and she is not aware of his work history or prospects. Ms. N does maintain a relationship with Mr. U's mother, however. She indicated that Mr. U's mother would have informed her of significant changes in Mr. U's health or ability to work. Because she has not reported any changes, Ms. N believes that Mr. U continues to be able-bodied and capable of working a full-time job.¹⁴ She asserts that he simply chooses not to work or to pay child support.

III. Discussion

As the party who appealed, Ms. N has the burden of proving by a preponderance of the evidence that CSSD should not have granted Mr. U's request for a modification review, and that the Modified Administrative Child Support and Medical Support Order dated October 10, 2016 is incorrect.¹⁵

A parent is obligated both by statute and at common law to support his or her children.¹⁶ 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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a

¹⁰ Exhibit 3, p. 1.

¹¹ N testimony.

¹² Exhibit 3, p. 5.

¹³ Exhibit 5.

¹⁴ N testimony.

¹⁵ 15 AAC 05.030(h).

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁷ AS 25.27.190(e).

“material change in circumstances” has been established and the order should be modified.¹⁸ A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁹

In 2010, when it issued the prior child support order, CSSD calculated Mr. U’s income based on his “demonstrated ability” to work a full-time job (2,080 hours per year) at \$11.00 per hour.²⁰ It is not clear whether this determination was based on Mr. U’s actual income or his potential income.²¹ In any event, CSSD either concluded that Mr. U actually worked a full-time job at \$11 per hour, or that he was capable of working such a job. It set his support for Z based on that income, plus his PFD.

In 2016, CSSD granted Mr. U’s request for a modification review because more than three years had passed since his last child support review.²² It modified the order based on Mr. U’s minimal earnings record. However, Mr. U did not provide any information to support his request, and he did not explain what has changed since the 2010 order was issued. More specifically, he did not provide any justification for finding that his child support should be based on a part-time work schedule, 20 hours per week.

When CSSD recalculated Mr. U’s support amount, it implicitly determined that he is voluntarily and unreasonably un- or underemployed.²³ Based on the very limited evidence in the record, this determination is justified. The evidence is that: (1) Mr. U is young and apparently healthy; (2) as of 2010, he worked (or was capable of working) a full-time job at \$11 per hour; (3) he lives in an area in which jobs are available; (4) his reported income is extremely low; and, (5) Mr. U has not provided any explanation or justification for his lack of income. Ms. N also indicated that Mr. U has been convicted of criminal non-support of Z, and he subsequently refused to comply with a superior court order to apply for a PFD.²⁴

When a parent is found to be voluntarily and unreasonably unemployed, his child support amount may be calculated based on his potential income. This can be determined from his “work

¹⁸ CSSD may exercise discretion to modify an award when the change is less than 15% from the previous order if certain conditions are met, including the passage of at least three years since the order was issued or last modified. 15 AAC 125.321(b)(2).

¹⁹ 15 AAC 125.321(d).

²⁰ Exhibit 1, p. 4.

²¹ The child support order indicates that CSSD based its calculation on Mr. U’s actual earnings. However, the accompanying narrative suggests that potential income was involved.

²² See 15 AAC 125.321(b).

²³ See Civil Rule 90.3(a)(4); 15 AAC 125.060 (imputed or potential income is used to determine child support obligation upon a finding of voluntary and unreasonable unemployment or underemployment).

²⁴ N testimony.

history, qualifications and job opportunities.”²⁵ Based on the evidence in the record, Mr. U is qualified for full-time, minimum wage work, and job opportunities in this area exist. He has not explained his limited work history. On these facts, CSSD erred in concluding that Mr. U’s support amount should be based on a 20 hour work week.

When Mr. U’s support amount is calculated based on a 40 hour week (2,080 hours per year) at the \$9.75 minimum wage, the resulting child support amount is not more than a 15% change from Mr. U’s 2010 child support amount.²⁶ Therefore, there is no presumption of a material change of circumstances.²⁷ Since Mr. U did not provide information to justify a reduction based on other circumstances, his child support obligation should not be modified.²⁸

IV. Conclusion

Ms. N met her burden of proving that CSSD erred in granting Mr. U’s request to modify his child support obligation for Z. Mr. U did not provide any income or other information about his circumstances. Based on the limited evidence in the record, Mr. U is voluntarily and unreasonably unemployed or underemployed. When Mr. U’s potential income is based on a full-time, minimum wage job, the resulting child support obligation is less than a 15% change from the prior child support amount. Therefore, Mr. U’s child support order should not have been modified.

Accordingly, the Decision on Request for Modification Review dated October 14, 2016 is reversed, and the Modified Administrative Child Support and Medical Support Order dated October 14, 2016 is vacated. Mr. U’s child support obligation for Z remains at \$342 per month, as provided in the Modified Administrative Child Support and Medical Support Order dated March 10, 2010.

Mr. U may request another modification review at any time, if he is prepared to support the request with additional information regarding his circumstances.

V. Child Support Order

- CSSD’s October 10, 2016 Decision on Request for Modification Review is reversed;

²⁵ Civil Rule 90.3(a)(4).

²⁶ Fifteen percent of Mr. U’s \$342 support amount is \$51.30. A support calculation based on a full-time, minimum wage job results in a \$308 per month obligation, which is a \$34 change. Calculation available from CSSD online child support calculator at: <https://webapp.sU.ak.us/cssd/guidelinecalc/login>.

²⁷ See Civil Rule 90.3(h)(1).

²⁸ See 15 AAC 125.321(b)(2).

- The Modified Administrative Child Support and Medical Support Order dated October 10, 2016 is vacated;
- Mr. U's child support obligation for Z remains \$342 per month, in accordance with the Modified Administrative Child Support and Medical Support Order dated March 10, 2010, which remains in full force and effect.

DATED: December 12, 2016.

By: Signed
Kathryn Swiderski
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 SU, 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 29th day of December, 2016.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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