

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

In the Matter of)	
)	
F O)	OAH No. 17-0274-CSS
<hr style="width:40%; margin-left:0;"/>)	Agency No. 001113676

DECISION AND ORDER

I. Introduction

F O appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on March 8, 2017. The modified order set Mr. O's child support obligation for his son, also named F, at \$919 per month.

By producing updated information about his expected 2017 income during the hearing process, Mr. O met his burden to show that the contested child support order was incorrect. Based on the evidence and after careful consideration, Mr. O's support obligation should be adjusted to \$793 per month, effective January 2017.

II. Facts

A. Material Facts

F O (Mr. O) and G J are the parents of sixteen-year-old F (F).¹ The younger F lives with Ms. J in California.

Mr. O lives in No Name City 1. Since 2013, he has worked for No Name in No Name City 2. The job requires him to work two weeks at a time, followed by two weeks off. He currently works as a driver, and he earns \$27.62 per hour. He is paid every two weeks. Because of his work schedule, Mr. O earns significant overtime pay during the weeks he is on the job. Except for Sundays, he works 12 hours per day during each of his work rotations. However, he does not work at all on the first Sunday of his rotation, and he works 8 hours on the second Sunday of the rotation.²

During the last several months of 2016 and the first two months of 2017, Mr. O worked additional rotations in No Name City 2 to provide coverage when other employees were sick or otherwise unavailable.³ As a result, he earned additional income that he is not likely to duplicate in other months of 2017. Following the hearing in this case, he submitted two recent paystubs

¹ Ms. J is also identified in the agency record as G O. She indicated at the hearing that she is now known as G J.
² Mr. O testimony.
³ See Exhibit 8.

that he said would more accurately reflect his likely 2017 work schedule and income.⁴ The first paycheck covered the two-week period from February 26 to March 11, 2017. In that time, Mr. O earned gross wages of \$3,103.05, including overtime pay.⁵ The second paycheck covered March 12, 2017 to March 25, 2017. Mr. O's gross pay in that period totaled \$2,060.39.⁶

The average of these two paychecks is \$2,581.72. That average paycheck amount translates to expected gross annual income of \$67,124.72.⁷ Among other deductions from this gross wage, Mr. O contributes 7.5% of his gross wages to a retirement plan at No Name. He also pays for health insurance that covers F. However, Mr. O did not submit documentation showing the additional cost he pays for that coverage.

Mr. O received a 2016 Alaska PFD, and he expects to receive that income again in 2017. In 2016, he worked a part-time second job at a bingo hall in No Name City 3. It was an on-call position, and his hours varied.⁸ Mr. O terminated this employment in October 2016, because he felt it required too much time, effort and expense to commute from No Name City 1 to No Name City 3 for the work. He does not expect to earn any income from that work in 2017.

B. Procedural History

Mr. O's child support obligation for F was last reviewed in 2004, when it was set at \$201 per month.⁹ In November 2016, CSSD received Ms. J's written request for a modification review.¹⁰ The request came in the form of an intergovernmental transmittal from the State of California, because California is the state enforcing CSSD's child support order.¹¹

On December 19, 2016, CSSD issued both parents a Notice of Petition for Modification of Administrative Support Order.¹² The notice informed the parties of their obligation to provide CSSD with income information. CSSD did not receive anything from Mr. O at that time.¹³

On March 8, 2017, CSSD issued a decision granting the request for a modification.¹⁴ The same day, it issued the Modified Child Support and Medical Support Order that is the subject of

⁴ Exhibit 11.

⁵ Exhibit 11, p. 2.

⁶ Exhibit 11, p. 1.

⁷ $\$2,581.72 \times 26 \text{ pay periods} = \$67,124.72.$

⁸ O testimony. *See also* Exhibit 8 (Management Company income).

⁹ Exhibit 1.

¹⁰ Exhibit 2.

¹¹ Exhibit 2; CSSD hearing representative statement.

¹² Exhibit 3.

¹³ Exhibit 4; CSSD pre-hearing brief, p. 1. Ms. J provided her income information.

¹⁴ Exhibit 5.

this appeal.¹⁵ The modified order was based on Mr. O's 2016 gross wages from both No Name and the bingo hall job, which came to \$70,852.44.¹⁶ Mr. O requested a formal hearing.¹⁷ He asserted that he has an open case in superior court to challenge his paternity of F. He also indicated that he no longer works his part-time job, and CSSD failed to appropriately adjust his income. He submitted several paystubs along with his appeal.¹⁸

The formal hearing took place on April 6, 2017. Mr. O and Ms. J both appeared telephonically and represented themselves. Child Support Specialist Brandi Estes represented CSSD. The hearing was recorded. After the hearing, Mr. O submitted two additional paystubs to show his typical work schedule and wage income.¹⁹ CSSD then provided a revised child support calculation, which resulted in a support obligation of \$793 per month.²⁰ Ms. J agreed with the updated calculation.²¹ Mr. O submitted a statement questioning why the revision did not include a medical credit.²² The hearing record closed on April 14, 2017.

III. Discussion

In a child support matter, the person who files an appeal bears the burden of proof.²³ Mr. O filed this appeal, so he must prove by a preponderance of the evidence that the March 8, 2017 Modified Administrative Child Support and Medical Support Order was incorrect.²⁴ Because of the additional evidence produced during the hearing process, Mr. O met his burden, as discussed below.

A. Preliminary Issues

1. Paternity

Mr. O indicated that he has initiated an action in superior court to challenge paternity of F. For purposes of this modification review, however, his paternity has been established. If a court subsequently issues an order disestablishing paternity, CSSD can act at that time to terminate his child support obligation.²⁵

¹⁵ *Id.*
¹⁶ Exhibit 5, pp. 7-8; Exhibit 8.
¹⁷ Exhibit 6.
¹⁸ Exhibit 7.
¹⁹ Exhibit 11.
²⁰ Exhibit 10.
²¹ J submission dated 4/11/17.
²² O submission dated 4/11/17.
²³ 15 AAC 05.030(h).
²⁴ 2 AAC 64.290(e).
²⁵ *See AS 25.27.166(d).*

2. Health insurance expenses

Mr. O requested an adjustment of his child support obligation for the cost of health insurance he provides for F. As discussed during the hearing, there is insufficient information in the record to address this topic in any detail. Mr. O will need to provide information from his employer that shows his cost for including F on his health plan.

In addition, health care coverage expenses are not included as part of the calculation of a parent's adjusted annual income and the ongoing support amount.²⁶ They come into the equation at a later stage, and the appropriate medical credit is calculated by the enforcing state, which in this case is California. Therefore, once Mr. O submits more detailed information about his health insurance expense for F, California can calculate the applicable medical credit and subtract it from his monthly support amount.

During the hearing, the CSSD hearing representative indicated that Mr. O may submit this information to the California child support enforcement agency or to CSSD. If it comes to CSSD, CSSD will forward it to California. Further, once the California agency processes Mr. O's request, it can administratively adjust his case as of the date Mr. O provided qualifying coverage.

3. Excess support payments

Mr. O asserted that he has often paid child support in excess of the ordered amount, sometimes directly to Ms. J and sometimes through the California child support agency. Because California is enforcing CSSD's support order, California is responsible for the accounting of Mr. O's payments, including any arrears he might owe or overpayments he has made. Mr. O should direct his questions on these issues to the California enforcement agency.

B. Modification of Child Support Obligation

Child support orders may be modified upon a showing of "good cause and material change in circumstances."²⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "material change in circumstances" has been established and the order should be modified. Mr. O's former obligation was \$201 per month, so a change of \$30.15 per month or more will satisfy this standard.²⁸

A modification is effective beginning the month after the parties are served with notice that a modification has been requested.²⁹ In this case, CSSD issued the Notice of Petition for

²⁶ See Civil Rule 90.3(d)(1)(B); Exhibit 5, p. 8.

²⁷ AS 25.27.190(e).

²⁸ $\$201 \times 15\% = \30.15 .

²⁹ 15 AAC 125.321(d).

Modification of Administrative Support Order in December 2016. Therefore, the modification is effective as of January 1, 2017.

Civil Rule 90.3(a) provides that a noncustodial parent's child support amount is to be calculated based on his or her "total income from all sources," minus specified deductions. In determining total income from all sources, the relevant time period is the period for which the support is being paid.³⁰ By its nature, this determination is a somewhat uncertain endeavor, since the relevant calculation includes an assessment of expected future income.³¹

In this case, Mr. O submitted two paystubs that reflect his usual work schedule and income. The paystubs correlate to expected gross 2017 annual wage income of \$67,124.72. This figure is generally consistent with Mr. O's gross income in past years for his work with No Name.³² Including the PFD, but no income from a second job, Mr. O is likely to receive total 2017 gross income of \$68,146.72.³³

In its revised child support calculation, CSSD agreed with the above income calculation.³⁴ It then adjusted Mr. O's income to account for items such as federal income taxes, Social Security and Medicare taxes, and Mr. O's contribution to his retirement plan.³⁵ Civil Rule 90.3 caps the deduction for retirement contributions at 7.5% of the parent's gross wages, or \$419.53 per month in Mr. O's case.³⁶ After these deductions, Mr. O's income results in a primary custody calculation of \$793 per month for one child.³⁷

CSSD's revised calculations correctly account for Mr. O's expected 2017 income and his applicable deductions. They reflect a material change of circumstances, and they therefore should be adopted. Mr. O may receive a further adjustment for his medical insurance expense once he provides the necessary information and the California child support enforcement agency processes his request.

IV. Conclusion

Mr. O met his burden to show that the March 8, 2017 Modified Administrative Child Support and Medical Support Order was incorrect. Based on the information he provided during

³⁰ Civil Rule 90.3(a). *See also* 15 AAC 125.020, 15 AAC 125.030.

³¹ Civil Rule 90.3, Commentary III.E.

³² *See* Exhibit 8.

³³ The 2017 PFD is estimated at \$1,022, the same amount as the 2016 PFD.

³⁴ *See* CSSD post-hearing submission and Exhibit 10.

³⁵ Exhibit 10.

³⁶ Civil Rule 90.3(a)(1)(B).

³⁷ Exhibit 10.

the hearing process, his child support obligation for F should be adjusted to \$793 per month, effective January 1, 2017 and ongoing.

V. Child Support Order

- Mr. O is liable for child support for F in the amount of \$793 per month, effective January 2017 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated March 8, 2017, remain in full force and effect.

DATED: April 20, 2017.

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 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 4th day of May, 2017.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

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