

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

In the Matter of)	
)	
S C. M)	OAH No. 17-0315-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 001068697

DECISION AND ORDER

I. Introduction

B N appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division reducing S M’s child support obligation for one child from \$361 to \$297. Mr. M requested the modification, but did not provide actual income information. The division calculated Mr. M’s modified child support obligation based on full-time employment at minimum wage in California, where he now lives. Ms. N argued that he should be making more, based on his Class A commercial driver’s license and median local wages for occupations using that credential. At and after the hearing, Mr. M explained that he was employed seasonally, and he provided information about his actual earnings and unemployment compensation. The division revised its calculations based on this information.

Based on the division’s revised calculations, Mr. M’s child support obligation should be decreased from \$361 a month to \$313 a month, effective January 1, 2017.

III. Facts

In 2005, Mr. M was ordered to pay \$487 a month in child support for his two children, F and Z, who were in the custody of their mother, B N.¹ F is now nearly 20 years old, and so Mr. M no longer has an ongoing child support obligation for F. In 2016, Mr. M requested a modification of his child support obligation.² The division notified both parents of the petition for modification on December 28, 2016, and requested income information.³ Ms. N provided income information.⁴ Mr. M did not, so the division calculated his annual income at \$20,800, based on the California minimum wage and full-time employment.⁵ Based on this, it modified

¹ Exhibit 1 at 1.
² Division’s Pre-Hearing Brief at 1.
³ Exhibit 2.
⁴ Exhibit 3.
⁵ Exhibit 4 at 7.

his monthly support obligation for one child, reducing it from \$361 for one child to \$297 for one child.⁶

At the hearing, Mr. M explained that he is employed seasonally, from March or April to October. He makes \$17 an hour changing oil, replacing taillights, and performing other basic service on semi-trailer trucks. He explained that employment opportunities in the small community where he lives are limited, and that he has been applying for other jobs during the off-season without success. During the off-season, he collects unemployment compensation, a total of \$876 in 2016.⁷ His total actual employer-reported wages for 2016 were \$21,102.⁸

A telephonic hearing was held on April 19, 2017. Mr. M and Ms. N participated. Child Support Specialist Kimberly Sledgister presented the division's case. The record was held open for additional information from Mr. M, new calculations from the division, and any response to the new calculations. The record closed on May 5, 2017.

III. Discussion

Mr. M's child support obligation was established in 2005 at \$487 a month for two children. When F aged out of the child support system, Mr. M's ongoing monthly obligation dropped from \$487 for two children to \$361 for one child. Mr. M's daughter Z is only 15, and Ms. N has primary custody of Z, therefore Mr. M has an ongoing support obligation for Z. Part of the difference between the 2005 order and the 2017 modified order is that the modified order concerns an ongoing obligation for only one child instead of two.

The rest of the difference is attributable to a decrease in Mr. M's income. Mr. M's obligation for one child in 2005 was calculated at \$361, based on annual gross income of \$26,068.⁹ The division's modified child support order dated March 9, 2017 set Mr. M's child support obligation for Z at \$297 a month, based on estimated annual income of \$20,800.¹⁰

Ms. N contests the reduction in Mr. M's child support obligation, arguing that the costs of caring for Z have increased since the original order. Ms. N also argued that Mr. M's earnings should be higher than the estimate used by the division. Specifically, she pointed out that Mr. M has a Class A commercial driver's license and that he was employed in California driving a

⁶ Exhibit 1 at 1; Exhibit 4 at 4.

⁷ Testimony of M; M Exhibit.

⁸ Exhibit 7. *See also* Mr. M's federal income tax return, filed after the hearing, listing \$21,101 in wage income.

⁹ Exhibit 1 at 1, 10.

¹⁰ Exhibit 4 at 6 - 7.

dump truck.¹¹ She provided median wage figures for construction laborers and operation engineers and other construction equipment operators in the area where Mr. M now lives, which are higher than minimum wage.¹²

Alaska Rule of Civil Procedure Rule 90.3 governs the calculation of child support in this case. Civil Rule 90.3 sets child support as a percentage of the obligor parent's adjusted annual income. For one child, the obligation is 20 percent of adjusted income.¹³ A court may calculate child support based on a determination of the potential income of a parent who is voluntarily and unreasonably underemployed.¹⁴

When the division originally calculated Mr. M's modified child support obligation, it did not have actual income or employment information for him.¹⁵ Therefore, it used a figure of \$20,800, assuming the California minimum wage and full-time employment, to calculate an obligation for one child of \$297.¹⁶ Subsequently, the division obtained Mr. M's actual 2016 gross wage figure, \$21,102, from the Alaska Department of Labor, based on reports from Mr. M's California employers.¹⁷ This figure is consistent with the wages Mr. M reported on his 2016 federal tax return.¹⁸

Mr. M is not unreasonably underemployed. He is making \$17 an hour, slightly more than the \$16.89 median hourly wage for construction laborers in the No Name metropolitan statistical area.¹⁹ Further, he credibly testified that he works seasonally and that he has been unable to find a job during the off season. For these reasons, it is appropriate in this case to attribute additional potential income based on voluntary and unreasonable underemployment.

The division recalculated Mr. M's modified monthly child support obligation for Z after the hearing, based on Mr. M's actual 2016 wages as well as his unemployment insurance compensation for 2016.²⁰ After deductions, the division calculated Mr. M's obligation for Z at \$313. The division's revised calculations reflect Mr. M's actual income, and correctly apply the

¹¹ Exhibit 5 at 2 - 6.

¹² Exhibit 5 at 21.

¹³ Alaska Rule of Civil Procedure 90.3(a)(1) and (2).

¹⁴ Alaska Rule of Civil Procedure 90.3(a)(4).

¹⁵ Exhibit 4 at 6.

¹⁶ Exhibit 4 at 8, CSSD Pre-Hearing Brief at 2.

¹⁷ Exhibit 7.

¹⁸ M Exhibit.

¹⁹ Testimony of M; Exhibit 5 at 21.

²⁰ Exhibit 9.

formula in Civil Rule 90.3(a). Therefore, Mr. M's ongoing child support obligation for Z should be set at \$313 a month.²¹

IV. Conclusion

Mr. M's ongoing child support obligation for Z is \$313 a month, based on his actual income in 2016.

A modification is effective beginning the month after the parties are served with notice that a modification has been requested.²² The division provided notice of the petition for modification in this case in December 2016, so this modification is effective as of January 1, 2017.²³ The child support amount in this order was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Mr. M's child support obligation for Z is \$313 a month, effective January 1, 2017 and ongoing.

2. All other provisions of the division's Modified Child Support and Medical Support Order issued on March 9, 2017 remain in effect.

Dated: May 23, 2017.

Signed

Kathryn L. Kurtz
Administrative Law Judge

²¹ The division raised an issue relating to a monthly medical debit in its Pre-Hearing Brief. Ms. N testified at the hearing that she no longer has the health insurance that resulted in a \$51 medical debit, and she has not had that insurance since 2009. Because the medical debit was not included in the division's calculations supporting the March 9, 2017 order, or the division's revised calculations submitted to the record in this case on April 24, 2017, no adjustment is necessary.

²² 15 AAC 321(d).

²³ Exhibit 2.

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 8th day of June, 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.]