

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

In the Matter of)	
)	
T B. K)	OAH No. 17-0606-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 001175303

DECISION AND ORDER

I. Introduction

T K appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on May 9, 2017. The modified order increased his child support obligation for his two children to \$1,578 per month, effective April 1, 2017, based on primary custody with the children’s mother. Mr. K asserted that CSSD overstated his expected 2017 income when it calculated his modified support amount.

Through the hearing process, Mr. K provided sufficient information to show that his 2017 income is likely to be less than the \$93,098.98 that CSSD initially calculated. Mr. K probably will work for several different employers in 2017. Nonetheless, his gross income should equal his 2016 earnings. Therefore, his modified child support obligation should be based on his 2016 wages, \$70,363.26, plus the PFD. This income results in a monthly support obligation of \$1,233 for two children (\$913 for one child). The modified child support order should be adjusted to reflect these amounts.

II. Facts

T K and Q K are the parents of M and C.¹ M will turn 18 in August 2017, and that is the last month in which Mr. K is obligated to pay child support for her. C is 15 years old. Both parents live in No Name City.

A. Procedural Background

In September 2016, CSSD set Mr. K’s ongoing monthly obligation for M and C at \$484.43, based on Mr. K’s anticipated wages of \$75,593.54 and after accounting for the parties’ 50/50 shared custody arrangement.² In February 2017, the parents signed a Stipulation and Order to Modify Custody, assigning Q K primary custody of both children.³

Because of the change in custody, CSSD initiated a modification review. On March 14, 2017, it served the parties with a Notice of Petition for Modification of Administrative Support

¹ Exhibit 1, p. 1.
² Exhibit 1.
³ Exhibit 2.

Order.⁴ Mr. K provided responsive financial information, including three paystubs from his job with No Name Services, his 2016 federal income tax return (Form 1040), and his 2016 W-2 statement from No Name Services.⁵ He also provided affidavits stating that he received a 2016 PFD, and he expects to receive the 2017 PFD.⁶

Based on the wage information from the most recent of the paystubs, the two-week period ending February 12, 2017, CSSD determined that Mr. K's 2017 gross wages will total \$93,098.98.⁷ Including the PFD, and after applicable deductions, this income results in a monthly child support obligation of \$1,578 for two children.⁸

CSSD issued its Modified Administrative Child Support and Medical Support Order on May 9, 2017.⁹ It set Mr. K's monthly child support amount at \$1,578 for two children (\$1,169 for one child), effective April 1, 2017, based on primary custody with Ms. K.

Mr. K appealed.¹⁰ He indicated that he worked for No Name Services through April 2017, but he started a new, lower-paying job on May 1, 2017. Mr. K asserted that his new position is only temporary, and he will be looking for a new job within three or four months. Due to his uncertainty about his future employment situation, he argued that his child support amount should be based on his 2016 wages from No Name Services, \$61,337.28, plus the PFD, for total gross income of \$62,359.28.

The hearing took place by telephone on June 21, 2017. T K and Q K represented themselves and testified on their own behalf. Child Support Specialist Kimberly Sledgister represented CSSD. The hearing was recorded. All offered exhibits were admitted into evidence. The record closed at the end of the hearing.

B. Material Facts

In 2016, Mr. K worked for No Name Services as a driver. He worked a two-week on, one-week off schedule, earning \$25 to \$25.40 per hour.¹¹ His 2016 gross wages from that employer totaled \$61,337.28.¹² According to Alaska Department of Labor data, Mr. K also earned \$9,165.84

⁴ Exhibit 3.

⁵ Exhibit 4.

⁶ Exhibit 5.

⁷ Exhibit 4, p. 1; Exhibit 6, pp. 5-6. That paystub shows year-to-date gross wages of \$14,322.92. To this, CSSD added average bi-weekly gross income of \$3,580.73 for each of the remaining 22 pay periods of the year. ($\$14,322.92 / 4$ pay periods = \$3,580.73 average per pay period.)

⁸ Exhibit 6, p. 6.

⁹ Exhibit 6.

¹⁰ Exhibit 7.

¹¹ T K testimony; Exhibit 4, pp. 1-3; Exhibit 7, p. 5. From December 2016 through at least mid-February 2017, Mr. K's hourly wage was \$25. His final paycheck shows hourly pay of \$25.40.

¹² Exhibit 4, p. 7 (2016 W-2 form). *See also* Exhibit 8.

in 2016 wages from No Name Business 1, Inc., during the first quarter of 2016. The Department of Labor shows his combined 2016 gross wages from both employers was \$70,363.26.¹³ It shows similar wages for 2015, when Mr. K earned \$72,812.39 from two employers, No Name Business 1, Inc. and the State of Alaska.

Mr. K recalled earning wages from No Name Business 1 in 2015, but not in 2016. He questioned the accuracy of the report regarding the 2016 No Name Business 1 income, but he was not sure he remembered the timing of that income correctly. Based on the evidence in the record, the Department of Labor data more likely than not correctly summarizes Mr. K's 2016 wage income.

Due to cut-backs in the industry, No Name Services encouraged its drivers to look for other jobs during the summer of 2017. The employer hoped to re-hire the drivers after the slow summer season. Mr. K found a temporary position as a water truck operator at the No Name Business 2. He took the job, expecting to work for the summer and then return to No Name Services.¹⁴ Mr. K terminated his employment with No Name Services on April 27, 2017.¹⁵ His last paycheck shows year-to-date gross pay of \$27,557.14.¹⁶

He started his current job at the No Name Business 2 on May 1, 2017.¹⁷ He earns \$19.80 per hour, working the same two-week on, one-week off schedule, with twelve-hour workdays. The position is classified as temporary, so Mr. K cannot be sure how long it will last. The letter confirming the offer of temporary employment indicates "end date unknown."¹⁸ However, Mr. K has heard unofficial reports that the job may end as soon as July 2017.

After he left No Name Services, it disbanded its trucking operation altogether. Some of the driving positions were moved to a company called No Name Business 3 Transportation. At the time of the hearing, Mr. K was uncertain whether he might be hired by No Name Business 3, or whether he would have to find other employment once his temporary job ends. He expressed significant doubts about his future employment prospects, asserting that the slowing industry means greater job uncertainty and potentially reduced wages.

Ms. K argued that Mr. K's 2017 income is likely to be consistent with his income in recent years, in the low \$70,000 range, and it could be as high as the \$93,000 that CSSD initially

¹³ Exhibit 8.

¹⁴ T K testimony; Exhibit 7, p. 3.

¹⁵ Exhibit 7, p. 6.

¹⁶ Exhibit 7, p. 5.

¹⁷ Exhibit 7, p. 3.

¹⁸ *Id.*

calculated. She asserted that Mr. K is an experienced and well-respected driver, and he will have other high-paying job opportunities, even if his No Name Business 2 job ends and if he is not hired by No Name Business 3. Specifically, she noted that Mr. K has an early start date with the No Name Business 4, which means he will have good job opportunities through that source, where jobs can pay \$30 per hour or more.¹⁹

III. Discussion

In child support matters, the person who files an appeal bears the burden of proof.²⁰ Mr. K filed this appeal, so he must prove by a preponderance of the evidence that CSSD made a mistake when it calculated his modified child support amount.²¹

A child support order may be modified upon a showing of “good cause and material change in circumstances.”²² A change from shared to primary custody constitutes a material change of circumstances. The modification of a child support amount becomes effective the month after the parties are served with the petition. CSSD served the notice of petition in this case in March 2017, so the modification is effective April 1, 2017.

A parent is obligated both by statute and at common law to support his or her children.²³ Civil Rule 90.3(a) provides the formula for calculating child support awards where one parent has primary physical custody. The calculation is based on the noncustodial parent’s “total income from all sources,” minus specified deductions. In determining total income from all sources, Civil Rule 90.3 requires an assessment of the amount the parent can be expected to earn during the period for which the support is being paid. By its nature, this is a somewhat uncertain endeavor, since the relevant calculation is expected future income.²⁴

The determination of Mr. K’s expected 2017 income is somewhat challenging, because of the uncertainty about his employment once his current job ends. He may be hired by No Name Business 3, the successor to his previous employer; he may find a permanent position at the No Name Business 2; or, he may need to find entirely new employment. Regardless, the evidence is that job opportunities are available, and Mr. K is likely to be employed full-time throughout 2017. If he experiences any period of unemployment, it is likely to be temporary

¹⁹ Ms. K’s current boyfriend is also a driver, and she compared her boyfriend’s pay and job opportunities to those that would be available to Mr. K. Mr. K disagreed that his circumstances are comparable. He also responded that those jobs would keep him away from home and his children for unacceptably long periods of time.

²⁰ 15 AAC 05.030(h).

²¹ 2 AAC 64.290(e).

²² AS 25.27.190(e).

²³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

²⁴ Civil Rule 90.3, Commentary III.E.

and quite short-term. In addition, other available jobs are likely to pay similar wages to those Mr. K earns at the No Name Business 2, or better.

During the hearing, the CSSD representative calculated that Mr. K would earn gross wages of \$73,458 if he worked a full year at his No Name Business 2 schedule and wages.²⁵ However, Mr. K earned less than this sum in 2016, when he earned a higher hourly wage. Due to this discrepancy, this decision adopts Mr. K's 2016 gross wage figure as the most reliable predictor of his likely 2017 income.

Considering Mr. K's current wages and job opportunities, as well as his 2017 income from the No Name Services job, he is likely to continue earning the same income he earned in 2016. This includes gross wages of \$70,363.26, plus the 2017 PFD, for total gross income of \$71,385.26. After deductions for matters such as federal taxes and Social Security, this income results in a monthly child support obligation of \$1,233 for two children (\$913 for one child).²⁶ If Mr. K's actual income significantly differs from the expectations stated above, either party may request another modification review.

IV. Conclusion

Through the evidence provided during the hearing process, Mr. K showed that his expected 2017 income is likely to be less than CSSD initially calculated, and his modified support obligation for M and C should be adjusted. Pursuant to Civil Rule 90.3(a), his child support should be set at \$1,233 per month for two children (\$913 per month for one child), effective April 1, 2017 and ongoing. No variance was requested or granted.

V. Child Support Order

- Mr. K is liable for modified child support for M and C in the amount of \$1,233 per month for two children (\$913 per month for one child), effective April 1, 2016 and ongoing;
- All other provisions of the Administrative Child Support and Medical Support Order dated May 9, 2017, remain in full force and effect.

DATED: June 30, 2016.

By: Signed
Kathryn Swiderski
Administrative Law Judge

²⁵ This calculation assumes 84-hour workweeks at \$19.80 per hour regular pay. [(40 reg. hours x \$19.80 reg. pay) + (44 overtime hours x \$29.70 overtime pay)] x 35 work weeks per year = \$73,458.

²⁶ Attachment A (calculation from CSSD online calculator at <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

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 14th day of July, 2017.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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