

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

In the Matter of	)	
	)	
K B. M	)	OAH No. 17-0814-CSS
_____	)	Agency No. 001183185

**DECISION AND ORDER**

**I. Introduction**

Custodial parent M K appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on July 12, 2017. The modified order reduced K M’s child support obligation for the parties’ son, U, to \$171 per month.

Through the updated income information provided during the hearing, Ms. K met her burden to show that the child support order should be adjusted. Based on the evidence and after careful consideration, Mr. M’s modified support obligation should be set at \$505 per month, effective June 1, 2017 and ongoing.

**II. Facts**

*A. Material Facts*

K M and M K are the parents of five-year-old U.<sup>1</sup> Ms. K lives in No Name City 1 and exercises primary physical custody.

Mr. M is also an Alaska resident. He is eligible for the 2017 PFD.<sup>2</sup> He is trained as a journeyman plumber and pipefitter, and he is a member of the No Name Union, Local 000. However, over the past year and a half, he has obtained very little work through the union in No Name City 1. In 2016, his wage income totaled \$3,165.<sup>3</sup> To get by, Mr. M has lived with his father, who has provided rent-free housing and other financial assistance.

From January through May 2017, Mr. M was unemployed. During that time, he received \$1,770 in unemployment income.<sup>4</sup> Through the union, he learned of available jobs in No Name City 2, Nevada. In early June 2017, he traveled to No Name City 2, where he found employment

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Mr. M and the CSSD hearing representative agreed that Mr. M is eligible for the PFD, though it is expected to be garnished to pay past-due child support.

<sup>3</sup> Exhibit 6. His 2015 gross wages totaled \$45,147.58. *Id.*

<sup>4</sup> Exhibit 6.

with No Name Mechanical through the Nevada union hall. Mr. M worked this job from June 9<sup>th</sup> to July 18<sup>th</sup>, when he was laid off. By staying in contact with the local union, he was re-hired by No Name Mechanical on July 26<sup>th</sup> and he continues to work there.

In his job, Mr. M works as a pipefitter on the No Name construction project. He works a forty-hour weekly schedule, earning \$32.78 per hour, paid weekly.<sup>5</sup> Based on this information, his weekly gross income totals \$1,311.20.<sup>6</sup> Mr. M pays monthly union dues of \$36.75.

Due to the nature of construction work, Mr. M's job security is not guaranteed. As he experienced in July, he can be laid off without warning. However, the No Name project is expected to be ongoing for another one-and-a-half to two years.<sup>7</sup> Barring contract disputes or other disruptions, work is likely to remain available throughout 2017. While he is on the job, Mr. M is likely to work some overtime hours, but that too is unpredictable.<sup>8</sup>

Mr. M does not plan to stay in Nevada. He is living transiently in hotels and working there solely for the job.<sup>9</sup> He plans to keep working there for the foreseeable future, so he can catch up on his child support obligations and save for a down payment on a home in Alaska.

#### *B. Procedural History*

Mr. M's child support obligation for U was last reviewed in 2013, when it was set at \$816 per month.<sup>10</sup> Based on information showing Mr. M's changed income, CSSD served both parents with a Notice of Petition for Modification of the child support order in May 2017.<sup>11</sup> The same month, Mr. M submitted documentation showing his limited 2016 income. He also submitted a notarized child support guidelines affidavit indicating that he had received no wage or other income from January through mid-May 2017.<sup>12</sup>

On July 12, 2017, CSSD issued a decision granting the request for a modification.<sup>13</sup> The same day, it issued the Modified Child Support and Medical Support Order that is the subject of

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<sup>5</sup> M testimony. Mr. M initially indicated that he earns \$32.38 per hour. Later in the hearing, he clarified that his hourly rate is \$32.78.

<sup>6</sup> 40 hours x \$32.78/hour = \$1,311.20.

<sup>7</sup> M testimony.

<sup>8</sup> *Id.*

<sup>9</sup> While in Nevada, Mr. M does not appear to be incurring any unusual or extraordinary living expenses. His monthly hotel bill in No Name City 2 is roughly \$1,050. Although he lived rent-free in No Name City 1, his hotel expense is consistent with the housing costs ordinarily incurred by most individuals.

<sup>10</sup> Exhibit 1.

<sup>11</sup> Exhibit 2.

<sup>12</sup> Exhibit 3. The affidavit incorrectly omitted Mr. M's 2017 unemployment benefit income.

<sup>13</sup> Exhibit 4.

this appeal.<sup>14</sup> The modified order was based on the potential income Mr. M would earn if he worked a minimum wage job, \$9.80 per hour, 20 hours per week, plus the PFD. This total gross income, \$11,214, resulted in a monthly child support amount of \$171 for one child.<sup>15</sup>

Ms. K requested a formal hearing.<sup>16</sup> She asserted that Mr. M's recent stretch of unemployment was the result of a lifestyle choice, since he could have found non-union work when union jobs were scarce. She also argued that the modification failed to account for his current Nevada employment and income.

The formal hearing took place on August 17, 2017. Ms. K and Mr. M both appeared telephonically and represented themselves. Child Support Specialist Kimberly Sledgister also appeared telephonically and represented CSSD. The hearing was recorded. All submitted documents were admitted, and the record closed at the end of the hearing.

### **III. Discussion**

In a child support matter, the person who files an appeal bears the burden of proof.<sup>17</sup> Ms. K filed this appeal, so she must prove by a preponderance of the evidence that the July 12, 2017 Modified Administrative Child Support and Medical Support Order was incorrect.<sup>18</sup> She met this burden, because the modified order issued before CSSD was aware of Mr. M's new employment.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>19</sup> 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. M's former obligation was \$816 per month, so a change of \$122.40 per month or more will satisfy this standard.<sup>20</sup>

A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>21</sup> In this case, CSSD issued the notice of petition for modification of the prior child support order in May 2017. Therefore, the modification is effective as of June 1, 2017.

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<sup>14</sup> *Id.*

<sup>15</sup> *See* Exhibit 4, p. 7.

<sup>16</sup> Exhibit 5.

<sup>17</sup> 15 AAC 05.030(h).

<sup>18</sup> 2 AAC 64.290(e).

<sup>19</sup> AS 25.27.190(e).

<sup>20</sup> \$816 x 15% = \$122.40.

<sup>21</sup> 15 AAC 125.321(d).

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.<sup>22</sup> By its nature, this determination is a somewhat uncertain endeavor, since the relevant calculation includes an assessment of expected future income.<sup>23</sup>

In this case, the evidence supports a finding that Mr. M is likely to earn income from work in Nevada for 26 weeks of 2017. At his weekly \$1,311.20 rate, this results in expected 2017 wages totaling \$34,091.20. Including the PFD and his \$1,770 in unemployment income, his 2017 total gross income is likely to be \$36,883.20.<sup>24</sup> This calculation reflects Mr. M's expected actual income. It takes into consideration the sometimes uncertain nature of his employment, balancing that fact with Mr. M's lack of any earned income for the first five months of 2017, as well as with his likely opportunities for some overtime hours at his present job.

Mr. M is entitled to a deduction from income for his union dues. After other deductions to account for matters such as federal income taxes, Social Security and Medicare, Mr. M's expected income results in a primary custody calculation of \$505 per month for one child.<sup>25</sup>

#### **IV. Conclusion**

Ms. K met her burden to show that the July 12, 2017 Modified Administrative Child Support and Medical Support Order should be adjusted. For the reasons discussed above, Mr. M's child support obligation for U should be set at \$505 per month, effective June 1, 2017 and ongoing. This calculation was made pursuant to Civil Rule 90.3(a) without variation.

#### **V. Child Support Order**

- Mr. M is liable for child support for U in the amount of \$505 per month, effective June 1, 2017 and ongoing;

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<sup>22</sup> Civil Rule 90.3(a). *See also* 15 AAC 125.020, 15 AAC 125.030.

<sup>23</sup> Civil Rule 90.3, Commentary III.E.

<sup>24</sup> The PFD amount is based on the 2016 distribution, \$1,022.

<sup>25</sup> *See* Attachment A (from CSSD online calculator at <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated July 12, 2017, remain in full force and effect.

DATED: August 21, 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 6<sup>th</sup> day of September, 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.]