

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

In the Matter of)	
)	
E G. J)	OAH No. 17-1174-CSS
_____)	Agency No. 001132842

DECISION AND ORDER

I. Introduction

E J appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 29, 2017. The modification increased Mr. J’s child support obligation for his son, Z, to \$490 per month, effective September 1, 2017. The prior obligation was \$234 per month. The custodian of record is B Y.

Through the updated income information provided during the hearing, Mr. J met his burden to show that the modified child support order should be adjusted. Based on the evidence in the record and after careful consideration, Mr. J’s modified support amount is set at \$126 per month, effective September 1, 2017 and ongoing.

Despite Mr. J’s argument to the contrary, CSSD’s child support order is the only order governing Z’s case and CSSD retains continuing, exclusive jurisdiction to modify it. The Idaho child support services agency has an open case to enforce CSSD’s order, because the child and custodial parent live in Idaho. However, Idaho has not issued a competing child support order, and Idaho law does not apply to the support calculation.

II. Facts and Proceedings

A. Material Facts

Mr. J and Ms. Y have one child, Z, age 13.¹ Z lives in Idaho with Ms. Y, who has primary physical custody. Mr. J lives in Anchorage. He has two other children from prior relationships who are older than Z: one is an adult and the other is 14.

Mr. J is trained as a carpenter and has extensive experience working in that field. He typically finds work through the carpenter’s union. He had stable employment for at least two years, in 2014 and 2015.² However, that work ended in 2016, and Mr. J has struggled to find steady work since then. In 2017, he worked two short-term jobs for different employers, earning a total of

¹ Exhibit 1.
² Exhibit 7.

\$10,963.24 in gross wages.³ He was terminated from his most recent employment in September 2017.

Since September, Mr. J has actively sought out other work, but so far without success. His efforts have included contacting his prior employers, sending out resumes to potential employers, keeping his name on the union's out-of-work list and watching for opportunities there, and searching online sites for potential jobs. He attributes his ongoing joblessness to the fact that winter is the slow season for construction, and there is significant competition for relatively few available jobs.

In December 2017, Mr. J expects to receive unemployment income of \$122. He was approved for the 2017 PFD, though CSSD took the payment to pay past due child support.

Because he has not been employed for several months, Mr. J's financial circumstances are tight. He is barely making his \$800 monthly rent payments. He receives Food Stamp assistance, and he is looking into other assistance programs. He frequently relies on help from his girlfriend, who works out of town, to make ends meet. Mr. J's financial difficulties are compounded by his approximately \$66,000 combined past due child support balance on Z's case and his older child's case. He observed that his present financial circumstances make it impossible to pay down his arrears while also meeting his ongoing support obligations.

Given Mr. J's ongoing efforts to find work in his field, CSSD agreed he is not voluntarily and unreasonably unemployed. It also agreed that the modified support order at issue overstated his expected 2017 income. It had no objection to a recalculation based on Mr. J's actual income over the year: \$10,963.24 in gross wages, \$122 in unemployment income, and the \$1,100 PFD.

B. Procedural History

CSSD last revised Mr. J's child support obligation for Z in August 2010, when it set his ongoing amount at \$234 per month.⁴ Mr. J requested a modification review in late July 2017.⁵ In August 2017, CSSD sent both parents notice of the petition to modify the child support order.⁶ Neither parent provided income information. However, Mr. J's employer at the time informed CSSD that he earned \$25 per hour and worked 30-40 hours per week.⁷

To determine Mr. J's expected 2017 income, CSSD assumed Mr. J worked 30 hours per

³ *Id.*

⁴ Exhibit 1.

⁵ Exhibit 2.

⁶ Exhibit 3.

⁷ Exhibit 4.

week for 52 weeks of the year. This resulted in expected wage income of \$39,000.⁸ It included his PFD as income and allowed a prior child deduction for the support Mr. J pays for his 14-year-old child from a prior relationship. After adjusting for other deductions, such as federal income taxes and Social Security/Medicare, CSSD calculated a \$490 per month support obligation for Z.

On September 29, 2017, CSSD issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal. The order increased Mr. J's obligation to \$490 per month, beginning September 1, 2017.⁹ Mr. J appealed.¹⁰

The hearing took place by telephone on December 7, 2017. Mr. J represented himself and testified on his own behalf. Ms. Y could not be reached at her telephone number of record and did not participate. Child Support Specialist Kimberly Sledgister represented CSSD. The record remained open after the hearing, so the parties could submit evidence addressing Mr. J's claims that a tribunal in Idaho has issued a child support order superseding CSSD's order and that CSSD lacked authority to modify its 2010 order. All submitted documents were admitted to the record, which closed on December 15, 2017.¹¹

III. Discussion

A. CSSD's Authority to Modify the Support Order

Mr. J objected that CSSD has no authority to modify his support obligation for Z. Since Z and his mother live in Idaho, Mr. J argued that Idaho has jurisdiction and Idaho law should apply. He reasoned that the cost of living is lower in Idaho, and Idaho's child support formula therefore would result in a lower ongoing obligation. He also contended that a tribunal in Idaho has already asserted jurisdiction and issued a child support order that superseded CSSD's order.

It merits observation that Mr. J has paid child support for many years pursuant to CSSD's 2010 child support order for Z. Further, CSSD initiated the modification in this case at Mr. J's request.¹² On July 21, 2017, he signed and submitted a form, specifically asking CSSD to review and modify the order. However, he did not provide CSSD with his updated income information, as he was obligated to do.

⁸ See Exhibit 5, p. 6.

⁹ Exhibit 5.

¹⁰ Exhibit 6.

¹¹ On December 15th, Mr. J submitted an email request to delay issuance of a decision until January 15th. This request is denied. If Mr. J disagrees with this decision, he may seek further appeal through the proposal for action process or through an appeal to superior court.

¹² Exhibit 2.

After the hearing, the CSSD hearing representative communicated with the Idaho Department of Health and Welfare Child Support Services agency. The Idaho agency confirmed that its open case for Z enforces CSSD's child support order; Idaho has not issued a separate child support order.¹³

Mr. J submitted a variety of documents after the hearing, but none showed that a competing child support order exists or that Alaska no longer retains jurisdiction to modify its prior order. The submissions show that three different states' agencies have enforced CSSD's support order at various times (Alaska, Washington, and Idaho), and each state has taken steps to collect child support owed by Mr. J. Mr. J's complaints focus on these collection efforts and the interest that applies to his arrears, which makes it more difficult for him to pay down his past due balance.

The question presented in this appeal involves the determination of Mr. J's ongoing support amount for Z, starting on September 1, 2017. This appeal cannot resolve other concerns he raised regarding his overdue child support balance, income withholding issues, or other arrears collection efforts.

Mr. J, the obligor in this case, is an Alaska resident. Therefore, under Alaska law and the Uniform Interstate Family Support Act (UIFSA), CSSD retains continuing, exclusive jurisdiction to modify its 2010 child support order.¹⁴ In the modification, CSSD properly applied Alaska substantive law.¹⁵

B. Child Support Calculation

In a child support matter, the person who files an appeal bears the burden of proof.¹⁶ Mr. J filed this appeal, so he must prove by a preponderance of the evidence that CSSD's September 29, 2017 Modified Administrative Child Support and Medical Support Order was incorrect.¹⁷ He met this burden.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁸ 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

¹³ CSSD Amended Submission to record dated 12/12/17.

¹⁴ AS 25.25.205(a); *Teseniar v. Spicer*, 74 P.3d 910, 913 (Alaska 2003); *State, Child Support Enforcement Div. v. Bromley*, 987 P.2d 183, 188-89 (Alaska 1999).

¹⁵ AS 25.25.604(a); *Bromley*, 987 P.2d at 188-90.

¹⁶ 15 AAC 05.030(h).

¹⁷ 2 AAC 64.290(e).

¹⁸ AS 25.27.190(e).

established and the order should be modified. Mr. J's former obligation was \$234 per month, so a change of \$35.10 per month or more will satisfy this standard.¹⁹

A modification is effective beginning the month after the parties are served with notice that a modification has been requested.²⁰ In this case, CSSD provided each parent with notice of the petition to modify in August 2017. Therefore, the modification is effective as of September 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.²¹

The evidence in the record supports the parties' agreement that Mr. J's 2017 gross income from all sources totals \$12,185.24. This includes his gross wages of \$10,963.24, the \$1,100 PFD, and \$122 in unemployment income. The record also supports the conclusion that Mr. J is not voluntarily and unreasonably unemployed, so it is appropriate to calculate his support obligation based on actual income figures.

Mr. J is entitled to a \$295 deduction from income for the monthly child support he owes and actually pays on his older child's case.²² After other applicable deductions for matters such as federal income taxes, Social Security and Medicare, Mr. J's income results in a primary custody calculation of \$126 per month for one child.²³ The modified support order should be adjusted to reflect this calculation.

V. Conclusion

CSSD appropriately exercised its authority to modify the child support order it issued in 2010. However, the modified order overestimated Mr. J's expected 2017 income. Through the evidence presented in the hearing process, Mr. J showed that the calculation should be adjusted. Under Civil Rule 90.3(a), his expected income and allowable deductions result in an ongoing support amount of \$126 per month for one child. No variance was granted pursuant to Civil Rule 90.3(c).

¹⁹ \$234 x 15% = \$35.10.

²⁰ 15 AAC 125.321(d).

²¹ 15 AAC 125.050(a); Civil Rule 90.3, Commentary III.E.

²² See Exhibit 5, p. 6.

²³ Attachment A (from CSSD online calculator at <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

IV. Child Support Order

- Mr. J is liable for child support for Z in the amount of \$126 per month, effective September 1, 2017 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated September 29, 2017, remain in full force and effect.

DATED: December 18, 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 3rd day of January, 2018.

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge/OAH
Title

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