

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

In the Matter of	)	
	)	
U W. H	)	OAH No. 18-0004-CSS
_____	)	Agency No. 001104174

**DECISION AND ORDER**

**I. Introduction**

U H appealed a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on December 14, 2017. The modification increased Mr. H’s child support obligation for his daughter M to \$515 per month, effective September 1, 2017.<sup>1</sup> The custodian of record is J G.

Through the hearing process, Mr. H provided additional information about his income and ongoing child support obligation for an older child. CSSD agreed the child support order for M should be adjusted to reflect this information, which resulted in a support obligation of \$468 per month. This calculation is based on Mr. H’ actual income and allowable deductions. It is therefore adopted, effective September 1, 2017 and ongoing.

**II. Facts and Proceedings**

*A. Relevant factual background*

Mr. H and Ms. G have one child, M, a 17-year-old junior in high school.<sup>2</sup> M lives in Alaska with Ms. G, who exercises primary custody.

Mr. H lives in Florida. He has three other children in addition to M. His oldest son is a senior in high school. Mr. H currently pays ongoing child support of \$261 per month for him pursuant to a child support order enforced by the State of Idaho.<sup>3</sup> Mr. H’s legal obligation is expected to end when his son graduates from high school in May 2018.

M is Mr. H’s second-oldest child. There is no child support order in his third child’s case; by agreement with that child’s mother, Mr. H does not provide financial support for her.<sup>4</sup> Mr. H’s youngest son is 13. A Texas court issued a child support order for him in August 2017. Mr. H pays ongoing monthly support of \$381, plus monthly medical support of \$43.<sup>5</sup> He also pays \$140 per

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<sup>1</sup> Exhibit 6.  
<sup>2</sup> Exhibit 1; G testimony.  
<sup>3</sup> Exhibit 7, p. 23; Exhibit 9.  
<sup>4</sup> H testimony; *see also* Exhibit 1 (*In re U W. H*, OAH No. 13-0737-CSS, Comm’r of Revenue, 8/21/13).  
<sup>5</sup> Exhibit 7, pp. 6-7, 10.

month toward a pre-order arrears balance of \$18,000.<sup>6</sup>

Mr. H works full-time for the No Name corporation. He is paid every two weeks. His November 2<sup>nd</sup> paycheck shows year-to-date gross earnings of \$35,042.16.<sup>7</sup> Until November 25, 2017, Mr. H worked a night shift, earning \$18.53 per hour. He took a pay cut in order to switch to a daytime work schedule, and he now earns \$17.13 per hour.<sup>8</sup> He made the change because he believes he is more likely to be recognized and promoted if he works the day shift, which offers more interaction with managers/supervisors. He believes he is likely to be promoted within six to eight months, and the temporary decrease in income is justified by the long-term financial gain from a promotion.

Mr. H started a second, part-time job in 2017, working on an hourly basis for a local restaurant. He does not work a set schedule. From January through September 2017, he earned gross wages of \$1,771 from this employment.<sup>9</sup> He took the job because of the Texas child support proceedings and his obligation to pay support for his youngest son, including significant arrears.

*B. Procedural history*

CSSD last revised Mr. H's child support obligation for M in 2013. Following an administrative appeal, it set his ongoing support at \$417 per month.<sup>10</sup> CSSD received Ms. G's request for a modification review on July 24, 2017.<sup>11</sup> It sent both parents notice of the petition on August 18, 2017.<sup>12</sup> In response, Mr. H submitted copies of two paystubs, a 2016 child support guidelines affidavit, and a statement of the health insurance coverage he provides for M.<sup>13</sup>

CSSD initially calculated Mr. H's expected 2017 gross income at \$39,851.47.<sup>14</sup> It provided a \$164.12 monthly deduction from income for his contributions to a retirement plan, but it did not include a deduction for the child support he pays for his oldest child. It also did not include a medical credit for the health insurance he provides for M. After adjusting for other deductions such as federal income taxes and Social Security/Medicare, Mr. H's income resulted in a \$515 monthly support obligation for M.

CSSD issued the Modified Administrative Child Support and Medical Support Order on

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<sup>6</sup> Exhibit 7, pp. 10-11.

<sup>7</sup> Exhibit 11. The paycheck covered the pay period from October 14 through 27, 2017.

<sup>8</sup> Exhibit 7, p. 22.

<sup>9</sup> Exhibit 8.

<sup>10</sup> Exhibit 1.

<sup>11</sup> CSSD pre-hearing brief, p. 1.

<sup>12</sup> Exhibit 2.

<sup>13</sup> Exhibits 3 - 5.

<sup>14</sup> Exhibit 6, pp. 7, 9.

December 14, 2017.<sup>15</sup> Mr. H appealed.<sup>16</sup> With the appeal, he submitted documentation showing his November pay reduction and his other child support obligations. He also provided additional information regarding the insurance he provides for M.<sup>17</sup>

The hearing took place by telephone on January 22, 2018. Mr. H and Ms. G represented themselves. Each testified on his or her own behalf. Child Support Specialist Brandi Estes represented CSSD. The record remained open until February 2, 2017, so CSSD could submit a revised child support calculation. The parents were provided an opportunity to respond, but neither did so. All submitted documents were admitted to the record.

### **III. Discussion**

As the person who filed the appeal, Mr. H has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order dated December 14, 2017 was incorrect.<sup>18</sup> He met this burden.

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. Mr. H's former obligation for M was \$417 per month, so a change of \$62.55 or more per month satisfies this standard.<sup>20</sup> When the newly calculated amount is less than a 15% change, CSSD still may grant the modification if three or more years have elapsed since the prior support order was issued.<sup>21</sup>

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.<sup>22</sup> Here, CSSD provided notice in August 2017. Therefore, the modification is effective as of September 1, 2017.

#### *A. 2017 and 2018 Support Calculations*

Under Civil Rule 90.3(a), 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

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<sup>15</sup> Exhibit 6.

<sup>16</sup> Exhibit 7.

<sup>17</sup> *Id.*

<sup>18</sup> 15 AAC 05.030(h).

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

<sup>20</sup> \$417 x 15% = \$62.55.

<sup>21</sup> 15 AAC 125.321(b)(2)(C).

<sup>22</sup> 15 AAC 125.321(d).

total income from all sources, the relevant time period is the period for which the support is being paid.<sup>23</sup>

CSSD's post-hearing submission concluded that Mr. H's 2017 gross wages totaled \$40,523.78.<sup>24</sup> After deductions, including \$164.11 for retirement savings and \$261 for the prior child's support, this income resulted in a child support amount of \$468 for M.<sup>25</sup>

For 2018, CSSD determined that Mr. H's expected gross earnings are \$35,630.40, based on a full-time schedule at his \$17.13 hourly rate. After allowable deductions, this income results in a child support obligation of \$416 per month for M.<sup>26</sup> The 2018 obligation does not constitute a material change of 15% or more from the 2017 amount. Therefore, CSSD retained the \$468 monthly obligation for 2018 and ongoing.

CSSD's revised calculation is based on Mr. H's actual income and allowable deductions and should be adopted. Ms. G raised several questions during the hearing, but none change the revised calculation. She first questioned whether Mr. H should benefit from a reduced income determination when he voluntarily took a pay cut. Since his pay reduction did not result in a material change of circumstances for 2018, however, his support amount for M does not decrease in 2018. He received a relatively small benefit in the 2017 income calculation. However, Mr. H credibly testified that he agreed to the pay cut for strategic professional reasons. He hopes this change will be short-term, and it will result in long-term financial gain from a promotion. He reasonably explained that this is more likely to happen if he works the day shift. If this strategy is successful, Mr. H's eventual pay increase and professional advancement also should benefit M.

Ms. G also questioned whether Mr. H's income from his second job should be included in the support calculation for M. However, CSSD appropriately excluded his second job income in M's child support calculation. Mr. H works full-time at his primary job. He took the second job specifically to provide for a subsequent child. Civil Rule 90.3 permits the exclusion of this income.<sup>27</sup>

Finally, Ms. G noted that the grandparents of Mr. H's oldest child have become or soon will become his legal guardians. Because Mr. H's financial responsibility for that child will not be

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<sup>23</sup> 15 AAC 125.050(a); Civil Rule 90.3, Commentary III.E.

<sup>24</sup> CSSD submission dated 1/25/18; Exhibit 12.

<sup>25</sup> Exhibit 12.

<sup>26</sup> Exhibit 13.

<sup>27</sup> See Civil Rule 90.3 Commentary VI.B.2 (the interests of a subsequent family may be taken into account as a defense to a modification action where the obligor proves he took a second job or increased his income specifically to better provide for the subsequent family).

affected by a guardianship, he remains entitled to a prior child deduction of \$261 per month.<sup>28</sup>

As CSSD's updated calculations show, Mr. H's 2017 income results in an ongoing child support amount of \$468 per month under the Civil Rule 90.3(a) primary custody formula. This is a 12% change from the prior support obligation of \$417.<sup>29</sup> However, because more than three years have passed since the prior order was issued, the modification is warranted.

For 2018, Mr. H's expected income does not result in a 15% change from the \$468 amount.<sup>30</sup> Since there is no material change in circumstances, the 2017 amount carries through to 2018 and ongoing.

During the hearing, both parents discussed their respective financial situations and difficulties. Neither submitted post-hearing requests for a variance from the Civil Rule 90.3(a) formula due to financial hardship, and the evidence does not support either an upward or downward adjustment due to unusual circumstances or manifest injustice.

Mr. H discussed potential household income and personal living expense changes that could be significant, but that have not yet materialized. In addition, though his child support obligation for his youngest child has undoubtedly resulted in new budget pressures, he did not show that he cannot make ends meet through other budgetary or lifestyle adjustments. The evidence in the record does not justify a reduction of support for M because of substantial hardship on the youngest child.

Ms. G requested an upward adjustment based primarily on a desire to equally allocate M's expenses between both parents. However, the circumstances she described fall short of showing clear and convincing evidence of manifest injustice if the support amount is not varied. If there is a material change in circumstances in the future, either parent may request another modification review.

### *B. Medical Credit*

Mr. H has been providing health insurance for M and he is entitled to a credit for a portion of that cost. He has submitted some documentation, but CSSD requires more detailed information showing the additional cost Mr. H incurs to cover M on his plan. The hearing representative explained the information that is needed, and Mr. H agreed to provide it to his caseworker. Once

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<sup>28</sup> Civil Rule 90.3(a)(1)(C).

<sup>29</sup>  $\$468 - \$417 = \$51$  change.  $\$51 / \$417 = 12.23\%$ .

<sup>30</sup> It involves in an 11% change. Mr. H's expected 2018 income would result in a monthly support obligation of \$416. Exhibit 13.  $\$468 - \$416 = \$52$ .  $\$52 / \$468 = 11\%$ .

CSSD has the necessary information, it can calculate the applicable medical credit and apply it as of the date of the qualifying coverage.

**V. Conclusion**

Through the evidence presented in the hearing process, Mr. H showed that the modified support order should be adjusted. Under Civil Rule 90.3(a), his 2017 income and allowable deductions result in a support amount of \$468 per month. His expected 2018 income does not result in a material change in circumstances. Therefore, the 2017 calculation carries into 2018 and ongoing. Mr. H may receive a medical credit once he provides the information CSSD requires. No variance under Civil Rule 90.3(c) was granted.

**IV. Child Support Order**

- Mr. H is liable for child support for M in the amount of \$468 per month, effective September 1, 2017 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated December 14, 2017, remain in full force and effect.

DATED: February 6, 2018.

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 22<sup>nd</sup> day of February, 2018.

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

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