

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

In the Matter of)	
)	
K B. C)	OAH No. 18-0221-CSS
_____)	Agency No. 001140883

DECISION AND ORDER

I. Introduction

Custodial parent L M appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on February 10, 2018. The modified child support order decreased K C’s child support obligation for his two children to \$423 per month.

Ms. M met her burden to show that the child support amount should not decrease. Based on the evidence in the record and after careful consideration, Mr. C’s support amount for November and December 2017 should remain \$505 per month, the amount set in the prior child support order. Beginning January 1, 2018 and ongoing, his obligation should increase to \$581 per month for two children.

For purposes of calculating his child support obligation, Mr. C’s 2017 income includes 100% of the commissions he earned as a Real Estate Agency Agent but excludes an interest-free loan from his Real Estate Agency. His reduced income in 2017 does not justify a reduction of his support amount, since it is a temporary change resulting from his transition to a new career as a Real Estate Agency Agent. Mr. C is likely to earn significantly higher income in 2018 from his job in Real Estate Agency And a second job as a Taxi Company X driver. His expected income warrants an increase in his child support obligation.

II. Facts and Proceedings

A. Procedural Background

Mr. C and Ms. M have two children, Z, age 13, and F, age 12.¹ Ms. M lives in Alaska and exercises primary physical custody of both children.

In April 2006, CSSD set Mr. C’s ongoing child support amount at \$505 per month.² Ms. M requested a modification review in September 2017. CSSD sent both parents notice of the petition on October 16, 2017.³ Mr. C did not provide any income information. On February 10,

¹ Exhibit 3.
² Exhibit 1.
³ Exhibit 2; CSSD pre-hearing brief, p. 1.

2018, CSSD granted the modification request and issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal.⁴

Seeing no evidence of reported wage income for Mr. C, CSSD calculated his modified support obligation based on imputed income from a full-time job earning minimum wage in Arizona, or gross income of \$21,840. This decreased his support amount for two children to \$423 per month, effective November 1, 2017.⁵ Ms. M appealed, arguing that CSSD should not have reduced the support amount without any evidence of Mr. C's actual income.⁶

The formal hearing took place on March 21, 2018. It was audio-recorded. Ms. M appeared in person, represented herself and testified on her own behalf. She was assisted by her husband, N M. Mr. C appeared by telephone, represented himself, and testified on his own behalf. Child Support Specialist Patrick Kase appeared in person and represented CSSD, with assistance from Brandi Estes.

At the time of the hearing, Mr. C did not have his income information readily available. After the hearing, he submitted documentation showing 2017 income.⁷ CSSD then submitted revised child support calculations.⁸ Mr. C and Ms. M were provided another opportunity to address the post-hearing documents and issues, but neither did so. All submitted documents were admitted to the record, which closed on April 9, 2017.

B. Material Facts

Mr. C lives in Arizona. He is 35 years old. He has worked in sales for many years. At one time, he worked as an independent contractor for Cable Company Y in Alaska, doing sales and installation of Cable Company Y systems. At the height of that job, he earned as much as \$70,000 in gross annual income.⁹ Mr. C did that work sometime prior to 2017.

By early 2017, Mr. C had moved to Arizona. He planned to do the same Cable Company Y work he had been doing in Alaska, but he discovered it paid significantly less in Arizona. In addition, he suffered a broken neck and could no longer perform installation work.¹⁰ He earned 2017 gross wages of \$6,390 from an employer identified on his W-2 form as Media Company Z.¹¹ This employment appears to pertain to Mr. C's work for Cable Company Y.

⁴ Exhibit 3.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ C submissions dated March 27, 2018.

⁸ CSSD submission dated April 2, 2018; Exhibit 6.

⁹ C testimony.

¹⁰ *Id.*

¹¹ C submission 3/27/18.

Mr. C supplemented his 2017 income by driving for Taxi Company X. He worked as an independent contractor, with gross receipts of \$1,745.29. He incurred \$623.19 in business expenses and earned net 2017 income of \$1,122.13.¹²

Mr. C obtained his real estate license in early 2017 and embarked on a new career. On February 21, 2017, he started as an independent contractor with Real Estate Agency A, which operates under the broker's license of Realty Group B.¹³ His job as a Real Estate Agency Agent is Mr. C's primary occupation. He expects to continue working with the Real Estate Agency A agency throughout 2018 and beyond.

When he started with Real Estate Agency A, Mr. C received a draw (or advance) of \$2,500 per month for his first six months on the job, \$15,000 in total. However, his contract requires him to repay this amount to Real Estate Agency A from his future commissions. Specifically, he is to pay the agency 50% of each commission he earns until the full draw is repaid.¹⁴ Mr. C repaid some of the advance during 2017, but not all. As long as Mr. C continues working with the Real Estate Agency A agency, he is obligated to continue paying off the advance. For this reason, the \$15,000 advance draw he received in 2017 should be viewed as an interest-free loan rather than as 2017 income.

As a Real Estate Agency Agent, Mr. C earns income from commissions on each transaction he closes. His share of the commission varies depending on the type of transaction involved.¹⁵ For 2017, the Real Estate Agency A agency issued a 1099-Misc tax form showing that Mr. C received \$7,639.35 in income.¹⁶ However, it appears the agency excluded from this calculation the 50% of Mr. C's commissions that he repaid to Real Estate Agency A to pay down his loan.¹⁷ Therefore, without subtracting and "netting out" his loan repayments, Mr. C's gross commissions more likely than not totaled \$15,278.70, double the amount shown on his 1099-

¹² *Id.*

¹³ C testimony; C submission 3/27/18 (Independent Contractor's Agreement between Real Estate Agency A and K C).

¹⁴ C submission 3/27/18 (Independent Contractor Agreement).

¹⁵ *Id.*

¹⁶ C submission 3/27/18.

¹⁷ Mr. C's submissions show he actually earned commissions significantly exceeding \$7,639.35. Most of the eight closing summaries involving Mr. C and the Real Estate Agency A agency include hand-written notes showing the total commission Mr. C earned and the 50% amount he repaid to the agency. However, given the incomplete notations and lack of explanation regarding the documents, it is impossible to accurately ascertain Mr. C's full commissions from them. They were \$12,989.18 at a bare minimum, but likely were higher.

Misc form. His child support calculation should be based on his actual gross commissions, rather than his net commissions, which omit the loan repayments.¹⁸

Mr. C also submitted a 2017 1099-Misc tax form from Real Estate Agency C, showing compensation of \$3,149.39. Based on publicly available information from the Arizona Department of Real Estate, Real Estate Agency C operates under the business name of Realty Group B.¹⁹ Therefore, this income likely is additional commission income from Mr. C's real estate work, bringing Mr. C's gross 2017 real estate commissions to \$18,428.09.²⁰ In sum, Mr. C's 2017 income from Cable Company Y work, Taxi Company X, and gross real estate commissions (without adjusting for loan repayments) more likely than not totaled \$25,940.22.²¹

III. Discussion

In a child support hearing, a party challenging the order on appeal has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.²² Ms. M therefore bears the burden to show the modified child support order incorrectly reduced Mr. C's support amount. She met this burden. After the hearing, CSSD also agreed it should not have reduced Mr. C's obligation, and it proposed an increased support amount.²³

Child support orders may be modified upon a showing of "good cause and material change in circumstances."²⁴ 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. C's former obligation was \$505 per month for two children, so a change of \$75.75 or more per month satisfies this standard.²⁵ CSSD also may modify a support order when there is less than a 15% change if more than three years have elapsed since the support order was issued or last modified.²⁶

Under the primary custody formula at 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

¹⁸ However, even if Mr. C's commissions from Real Estate Agency A totaled only \$7,639.35, this fact would not justify a reduction of his child support amount.

¹⁹ See <https://services.azre.gov/publicdatabase/SearchEntities.aspx>.

²⁰ $\$15,278.70 + \$3,149.39 = \$18,428.09$.

²¹ $\$6,390 + \$1,122.13 + \$18,428.09 = \$25,940.22$. CSSD's post-hearing submission calculated Mr. C's 2017 income from all sources at \$33,300.87, but it included the \$15,000 commission advance as non-taxable income. Exhibit 6. Based on Mr. C's contract and ongoing repayment of his advance, this decision excludes the advance but includes Mr. C's full commission on each transaction.

²² Alaska Regulation 15 AAC 05.030(h).

²³ Exhibit 6.

²⁴ AS 25.27.190(e).

²⁵ $\$505 \times 15\% = \75.75 .

²⁶ 15 AAC 125.321(b)(2)(C).

specified deductions. In determining total income from all sources, the relevant time period is the period for which the support is being paid.²⁷ By its nature, this is a somewhat uncertain endeavor, since the calculation involves expected future income.²⁸ The obligor parent bears the burden of showing his or her earning capacity.²⁹

For the reasons discussed previously, Mr. C's 2017 income from all sources totaled approximately \$25,940.22. This is only slightly below the income CSSD used in setting Mr. C's child support obligation in 2006. It would not result in a material change of the prior support obligation. Further, his decreased income does not warrant a reduction of his child support amount. This is true regardless whether Mr. C's income totaled \$25,940.22 or something less, as Mr. C argued. His reduced 2017 income is merely a temporary circumstance attributable to his recent career change. Temporary income reductions do not warrant a reduction of the obligor-parent's child support obligation.³⁰

Regarding his 2018 income, Mr. C testified that he cannot estimate his likely real estate commissions, saying he is still new to the industry, which is cyclical by nature, and his future income is highly uncertain. He did not submit documentation showing his 2018 year-to-date income. However, he indicated that he expects to continue driving for Taxi Company X, and he can earn gross receipts of \$200 per week.

Because of the incomplete record regarding Mr. C's income and acknowledging his relative newness to the real estate industry, CSSD submitted a post-hearing calculation that estimated his 2018 commissions based on occupational employment statistics for Real Estate Agency Agents. It assumed Mr. C's commissions will match those of a Real Estate Agency Agent earning at the 10th percentile for the industry, \$23,130, plus \$8,000 in expected Taxi Company X income, for total 2018 income of \$31,130.³¹ After deductions including Arizona state taxes, this income results in a child support obligation of \$581 per month for two children (\$430 for one child).³²

Mr. C's limited income history in his new career and incomplete submissions to the record make it difficult to determine his expected future income with a high degree of

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

²⁸ Civil Rule 90.3, Commentary III.E.

²⁹ *See Farr v. Little*, 411 P.3d 630, 635 (Alaska 2018); *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

³⁰ *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

³¹ Exhibit 6; CSSD submission 4/2/18. *See also* 2017 Occupational Employment Statistical data at <https://www.bls.gov/oes/current/oes419022.htm>.

³² Exhibit 6, p. 2.

confidence. CSSD's revised determination of Mr. C's likely 2018 income from all sources, \$31,130, is both reasonable and supported by the evidence in the record. The real estate income determination is conservative, given Mr. C's \$18,428.09 in commissions during 2017. From the disbursement forms he submitted, nearly all of this income came from contracts created between August and December 2017. One contract was created in June 2017.

In 2018, Mr. C's training and initial development as a Real Estate Agency Agent is complete, and he will be generating income throughout the year. His productivity in late 2017 suggests a strong likelihood that he will earn at least \$23,130 in real estate income during 2018, and likely significantly more. CSSD's revised calculation balances the uncertainty regarding his real estate income by including \$8,000 in income from Mr. C's second job with Taxi Company X. This determination is also reasonable.³³

The breakdown between Mr. C's two income sources need not be precise, as long as the total income figure is reflective of economic reality.³⁴ Mr. C ultimately may earn more income from real estate, providing flexibility to earn less from Taxi Company X if he chooses. In total, however, the record supports a finding that his combined income will be \$31,130. After appropriate deductions, this expected income results in an ongoing child support obligation of \$581 for two children (\$430 for one child), effective January 1, 2018, which should be adopted. If Mr. C's actual income materially differs from the projections made in this decision, either parent may request another modification review.

IV. Conclusion

Ms. M showed that the child support amount set in CSSD's February 10, 2018 Modified Administrative Child Support and Medical Support Order was incorrect, and Mr. C's support amount should not be reduced. For November and December 2017, Mr. C's support obligation should remain \$505 per month for two children, the amount set in the Administrative Child Support and Medical Support Order dated April 21, 2006. Beginning January 1, 2018, his support obligation should be adjusted to \$581 per month for two children. This determination was made pursuant to Civil Rule 90.3(a). No variance under Civil Rule 90.3(c) was requested or granted.

³³ Over 50 weeks of the year, weekly income of \$200 would result in gross receipts of \$10,000 and net receipts of \$8,000, assuming a twenty percent adjustment for ordinary and necessary business expenses.

³⁴ See *Farr v. Little*, 411 P.3d at 635.

V. Child Support Order

- For November 2017 and December 2017, Mr. C’s child support obligation for Z and F remains \$505 per month;
- Mr. C’s support amount is adjusted to \$581 per month for two children (\$430 for one child), beginning January 1, 2018 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated February 10, 2018, remain in full force and effect.

DATED: April 20, 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 7th day of May, 2018.

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

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