

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

In the Matter of)	
)	
U H. N)	OAH No. 18-0255-CSS
_____)	Agency No. 001136327

DECISION AND ORDER

I. Introduction

Custodial parent Q P appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on February 10, 2018. The modified order reduced U N’s monthly child support amount for his daughter, L, based on the minimum wage income CSSD assumed Mr. N earned.

Through the information produced during the hearing process, Ms. P showed that Mr. N earns significant income from self-employment as an independent contractor, and his monthly child support obligation should have increased rather than decreased. Mr. N’s 2017 employment and Native Corporation income result in a child support obligation of \$665 per month for one child. It has been thirteen years since Mr. N’s support obligation was last reviewed, and this amount should be adopted effective November 1, 2017. Though Mr. N’s 2018 income also will include the Alaska PFD, that income does not result in a material change of his child support amount, so the 2017 monthly obligation carries into 2018 and ongoing.

II. Facts

A. Procedural History

Mr. N and Ms. P are the parents of L, age 13. L lives with Ms. P, who exercises primary physical custody. Mr. N’s ongoing monthly child support obligation for L was last reviewed in 2005, when CSSD set it at \$582 per month.¹

Ms. P requested a modification review in October 2017.² On October 30, 2017, CSSD served each parent with a Notice of Petition for Modification of Administrative Support Order, ordering them to provide their income information.³ Mr. N did not respond.

On February 10, 2018, CSSD issued a decision granting the modification request.⁴ The same day, it issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal. Seeing no evidence of recent employer-reported wages for Mr. N,

¹ Exhibit 1.
² CSSD pre-hearing brief, p. 1.
³ Exhibit 2.
⁴ Exhibit 3, pp. 1-2.

CSSD calculated the modified support obligation based on imputed income from a full-time job at minimum wage, \$20,384 per year, plus the PFD.⁵ This income reduced Mr. N's child support amount to \$310 per month, effective November 1, 2017.

Ms. P requested a formal hearing, arguing that Mr. N earns significant income from his work in the mining industry.⁶ The hearing took place by telephone on April 9, 2018. It was audio-recorded. Ms. P and Mr. N represented themselves and each parent testified on his/her own behalf. Child Support Specialist Patrick Kase represented CSSD. Mr. N provided general information about his work and sources of income during the hearing, but no specific income amounts. He agreed to submit documentation after the hearing that would detail his 2017 and year-to-date 2018 income.

The record remained open after the hearing, so Mr. N could submit his income information and CSSD could update its child support calculation. Mr. N did not submit anything after the hearing. However, CSSD was able to determine his gross income from information Mr. N's employer provided.⁷ Both parents had an opportunity to respond to CSSD's post-hearing submissions, but neither did so. All submitted documents were admitted to the record, which closed on May 1, 2018.

B. Material Facts

Mr. N is a shareholder of Native Corporation X and Native Corporation Y.⁸ In 2017, he likely received roughly \$375 in Native Corporation dividends.⁹ He applied for and expects to receive the 2018 Alaska PFD.¹⁰ He was eligible for the 2017 dividend, but he apparently did not apply for it. He did not receive it.

In 2014, Mr. N pled guilty to a misdemeanor crime for willful nonpayment of child support for L.¹¹ Ms. P asserted that he is still be subject to certain conditions of probation, such

⁵ Exhibit 3, pp. 7-8.

⁶ Exhibit 4.

⁷ Exhibit 6.

⁸ N testimony.

⁹ Exhibit 6; CSSD post-hearing submission dated 4/24/18 (the Native Corporation X paid 2017 dividends at the rate of \$375 per 100 shares).

¹⁰ N testimony.

¹¹ P testimony; Exhibit 4. The undersigned takes judicial notice of the guilty plea based on publicly-available information from the Alaska Court System webpage in case number 2XX-12-00000CR. *See* <https://records.courts.alaska.gov/eaccess/home.page.2>.

as applying for the PFD each year. Those conditions are not clear from the record in this case, however.

For at least the last several years, Mr. N has worked seasonally as an independent contractor for two different mining companies in No Name: Mining Company A and Mining Company B (sometimes also referenced by the parties as Mining Company C). Mr. N began working as an operator for Mining Company B in the summer of 2017, doing twelve-hour shifts, six days per week.¹² He worked primarily on the No Name, which was featured on a reality tv show. He did not receive additional pay for tv appearances.¹³ Mr. N expects to continue working on the No Name in 2018.¹⁴

It was difficult to hear Mr. N's testimony during the hearing because he was outside, at work, and talking via cell phone. He confirmed his recent income sources, but he could not recall his income from each source with any specificity. He indicated that, in 2017, his income came exclusively from Mining Company B and his Native Corporation dividends. He agreed to send in more detailed documentation after the hearing, but then did not do so.

To calculate Mr. N's 2017 income from Mining Company B, CSSD relied on information it received from the company comptroller in August 2017. In a written communication, the comptroller verified that the company was remitting to CSSD 40% of Mr. N's gross invoices, in compliance with CSSD's withholding order.¹⁵ CSSD records show that it received garnished income totaling \$19,533.39 in 2017 from Mining Company B/Mining Company C. Concluding that this sum represents 40% of Mr. N's gross earnings, CSSD calculated that his actual 2017 mining income was \$48,834.98.¹⁶ This determination is reasonable, and it reflects the best available information regarding Mr. N's actual 2017 income from his work in the mining industry.

III. Discussion

As the person who filed the appeal, Ms. P has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order

¹² N testimony.
¹³ Exhibit 6, p. 5.
¹⁴ N testimony.
¹⁵ *Id.*
¹⁶ Exhibit 6.

dated February 10, 2018 was incorrect.¹⁷ She met this burden. CSSD also agreed the modified order should be adjusted.

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 established. Mr. N’s former obligation was \$582 per month, so a change of \$87.30 or more per month satisfies this standard.¹⁹ 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.²⁰ Mr. N’s obligation for L was last reviewed thirteen years ago, so a modification is justified by the passage of time.

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.²¹ Here, CSSD provided notice in October 2017, so the modification is effective as of November 1, 2017.

A. Income Determination & Child Support Calculation

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 total income from all sources, the relevant time period is the period for which the support is being paid.²² For the 2018 and ongoing calculation, this determination is necessarily somewhat speculative because the relevant income figure is expected future income.²³ However, when income is relatively stable from year to year, the past year’s income serves as a reasonable indicator of expected future income.

As CSSD’s post-hearing submission shows, Mr. N’s actual 2017 income from all sources included his mining income, \$48,834.98, and Native Corporation dividends of \$375, for total gross income of \$49,209.98. After allowable deductions for matters such as federal income taxes and Social Security/Medicare, this income results in a support amount of \$665 for one child.²⁴

¹⁷ 15 AAC 05.030(h).

¹⁸ AS 25.27.190(e).

¹⁹ \$582 x 15% = \$87.30.

²⁰ 15 AAC 125.321(b)(2)(C).

²¹ 15 AAC 125.321(d).

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

²³ Civil Rule 90.3, Commentary, Section III(E).

²⁴ Exhibit 6, p. 4.

This is a 14% change from the prior support amount. Mr. N's obligation nonetheless should be adjusted because it has been thirteen years since his last child support review.

In 2018, Mr. N plans to work for the same company, on the same No Name, and at roughly the same schedule. Therefore, his expected 2018 income is likely to be substantially similar to his 2017 earnings, plus the PFD of \$1,100. After appropriate deductions, this income results in a child support obligation of \$700 per month for one child.²⁵ Because this is not a material change from the \$665 monthly obligation for November and December 2017, Mr. N's support for L should remain \$665 per month for 2018 and ongoing.²⁶

B. Other Issues

Ms. P expressed frustration that Mr. N has not made regular child support payments in recent months and he did not apply for the 2017 PFD. She contended that this conduct was in violation of the conditions of release in his criminal nonsupport case. As discussed during the hearing, Ms. P should address these concerns in the criminal case. This appeal reviews only CSSD's decision to grant a modification and the modified child support order it issued on February 10, 2018. The conditions of Mr. N's probation are not part of the record in this matter, and his potential noncompliance is beyond the scope of this appeal.

Ms. P also indicated that she recently received a \$2,000 medical bill for L's orthodontic treatment. She argued that Mr. N should pay half of the bill. Both the 2018 modified child support order and the 2005 child support order include a provision addressing uncovered health care expenses.²⁷ This is an enforcement issue that Ms. P should resolve through her CSSD caseworker. It too is beyond the scope of this appeal.

IV. Conclusion

Through the evidence presented in the hearing process, Ms. P showed that the modified child support order should be adjusted. CSSD's revised child support calculation for 2017 is based on the best evidence of Mr. N's actual income and allowable deductions, and it should be adopted. Under Civil Rule 90.3(a), Mr. N's mining income and Native Corporation dividends result in a child support amount of \$665 per month, effective November 1, 2017. Mr. N's expected PFD income in 2018 does not result in a material change of his support obligation for

²⁵ Exhibit 6, p. 3.

²⁶ See *Duffus v. Duffus*, 72 P.3d 313, 321 (Alaska 2003).

L, so the \$665 monthly amount carries through to 2018 and ongoing. No variance under Civil Rule 90.3(c) was requested or granted.

V. Child Support Order

- Mr. N is liable for child support for L in the amount of \$665 per month, effective November 1, 2017 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: May 2, 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 16th day of May, 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. Names may have been changed to protect privacy.]

²⁷ See Exhibit 1, p. 4; Exhibit 3, pp. 5-6. Citing Civil Rule 90.3(d)(2), both child support orders provide that reasonable health care expenses of less than \$5,000 that are not covered by insurance are to be paid equally by both parties, unless good cause is shown.