

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

In the Matter of	)	
	)	
N W. T	)	OAH No. 18-0315-CSS
_____	)	Agency No. 001151515

**DECISION AND ORDER**

**I. Introduction**

N T appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 10, 2018. The order increased Mr. T’s child support obligation for his son, E. Mr. T asserted that recent changes in his employment and income warrant a decreased support amount.

Through the evidence provided in the formal hearing process, Mr. T showed that the modified child support order should be adjusted, and CSSD agreed. For November 2017 and December 2017, Mr. T’s actual income results in a \$370 monthly support amount, a slight increase from the prior amount. For 2018, the calculation should be based on Mr. T’s current employment and significantly reduced income. That income results in a support amount of \$288 per month, effective January 1, 2018 and ongoing.

**II. Facts**

*A. Relevant factual background*

N T and C M are the parents of E, age 11. E lives with Ms. M in Iowa. CSSD last reviewed Mr. T’s child support obligation in 2011, when it set the support amount at \$364 per month.<sup>1</sup>

Mr. T lives in No Name City. In addition to E, he has three children from other relationships: a fourteen-year-old stepchild and two biological children, ages five and two. Mr. T does not have a legal obligation to financially support his stepchild, so E is the oldest child for whom he owes a duty of support.

For the past several years, Mr. T worked as a hazardous materials technician. He worked for the same employer from 2015 to early September 2017.<sup>2</sup> He was terminated from the job on September 7, 2017, due to a poor decision he made, for which he was subsequently incarcerated.<sup>3</sup>

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 6.  
<sup>3</sup> T testimony.

He was released from jail in late October 2017.<sup>4</sup> Since that time, he has diligently looked for new employment in his former field, but so far without success. He did not receive unemployment benefits while out of work.

After four months of active job-seeking, Mr. T took a job at a No Name restaurant in early March 2018. The work is quite different from his former job, and it pays significantly less. He still hopes to find employment that will build on his experience and training in hazardous materials. He took the restaurant job to earn income while he continues his search for better-paying work. He earns \$10.50 per hour and typically works 35 to 37 hours per week.<sup>5</sup>

*B. Procedural history*

In early October 2017, Mr. T requested a modification of his support amount for E.<sup>6</sup> On October 30, 2017, CSSD sent both parents notice of his petition to modify the existing child support order.<sup>7</sup> Mr. T did not submit documentation showing his income or explaining his changed circumstances.

On February 10, 2018, CSSD issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal. The order increased Mr. T's ongoing child support obligation to \$465 per month, effective November 1, 2017.<sup>8</sup> The calculation was based on the income Mr. T's former employer reported to the Alaska Department of Labor & Workforce Development over the twelve-month period from October 1, 2016 through September 30, 2017, a period in which Mr. T was working as a hazardous materials technician for all but the last three weeks. This income, \$32,507.61, plus the PFD, resulted a \$465 monthly child support obligation.<sup>9</sup>

Mr. T appealed.<sup>10</sup> The formal hearing took place by telephone on April 23, 2018. Mr. T represented himself and testified on his own behalf. Child Support Specialist Patrick Kase represented CSSD. Ms. M did not appear or answer a call to her telephone number of record, so she did not participate.<sup>11</sup> The hearing was audio-recorded. All submitted documents were admitted to the record, which closed at the end of the hearing.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*; Exhibit 5.

<sup>6</sup> Exhibit 2.

<sup>7</sup> Exhibit 3.

<sup>8</sup> Exhibit 4.

<sup>9</sup> Exhibit 4, p. 8.

<sup>10</sup> Exhibit 5.

<sup>11</sup> The person who answered at Ms. M's telephone number of record indicated that it was a wrong number. Mr. T provided an updated telephone contact, and the undersigned left a voice message at that number. As of the date of this decision, Ms. M has not contacted the Office of Administrative Hearings. Ms. M received appropriate notice of the

### III. Discussion

As the person who filed the appeal in this case, Mr. T has the burden of proving by a preponderance of the evidence that the child support amount set in the February 10, 2018 Modified Administrative Child Support and Medical Support Order was incorrect.<sup>12</sup> He met this burden.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>13</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. 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>14</sup> Mr. T’s support amount for E was last reviewed in 2011, so a discretionary adjustment is warranted.

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.<sup>15</sup> Here, CSSD provided notice to both parents in October 2017. Therefore, the modification is effective as of November 1, 2017.

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.<sup>16</sup> When this determination involves expected future income, it is necessarily a somewhat speculative calculation. The law requires examination of all available evidence to make the best possible determination.<sup>17</sup>

Mr. T’s child support amount for November and December 2017 can be reviewed using his actual wage information over the year. In 2017, his wages from employment as a hazardous materials technician totaled \$25,091.55.<sup>18</sup> He had no other employment or 2017 income after he lost his job. Mr. T credibly testified that, upon his release from jail in late October, he engaged in a focused and diligent job search. He continues to seek work in the hazardous materials field.

Mr. T’s 2017 income from all sources, \$25,091.55, plus the PFD of \$1,100, results in a

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hearing, and the file includes the green certified mail return-receipt card showing delivery of the Notice of Hearing to her address of record.

<sup>12</sup> 15 AAC 05.030(h).

<sup>13</sup> AS 25.27.190(e).

<sup>14</sup> 15 AAC 125.321(b)(2)(C).

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

<sup>16</sup> 15 AAC 125.050(a); Civil Rule 90.3, Commentary III.E.

<sup>17</sup> Civil Rule 90.3, Commentary III.E.

<sup>18</sup> *Id.*; T testimony.

monthly child support amount of \$370 for one child.<sup>19</sup> This calculation should apply to his support obligations for November and December 2017, even though it is less than a 15% change from the prior child support amount.

This calculation includes a determination that Mr. T was not voluntarily and unreasonably unemployed between October 2017 and February 2018. After his release from jail, the evidence in the record is that Mr. T spent roughly four months actively looking and applying for work as a hazardous materials technician. This focus was reasonable, given his recent years of experience working in that field. He appropriately broadened his job search by late February 2018, because his more focused efforts had not resulted in a job offer. Therefore, potential income should not be imputed to Mr. T for the months of his unemployment.

In addition, Mr. T's changed financial circumstances are more than a temporary situation.<sup>20</sup> It has been approximately eight months since he lost his job. That time has involved incarceration, more than four months of unemployment without any indication that a job offer in his former field is imminent, and a new restaurant job paying significantly lower wages. Though his current employment likely is not permanent, his changed circumstances can no longer be characterized as brief. For the foreseeable future, the best estimate of Mr. T's 2018 income is that he will continue earning \$10.50 per hour on a full-time schedule.

Therefore, for 2018 and ongoing, Mr. T and CSSD agreed that his child support obligation should be set based on the 2018 income he will earn from his current job, assuming a full-time work schedule, or \$18,480.<sup>21</sup> After including the PFD and deducting allowable amounts for matters such as federal income taxes and Social Security/Medicare, this income results in a child support amount of \$288 per month.<sup>22</sup> This is a material change from the prior amount. It should be adopted effective January 1, 2018 and ongoing. If Mr. T's income materially differs from the calculation in this decision, either parent may request another modification review.

#### **IV. Conclusion**

Mr. T met his burden to show that the Modified Administrative Child Support and Medical Support Order dated February 10, 2018 should be adjusted. For November 2017 and December 2017, Mr. T's actual 2017 income results in a \$370 monthly support amount, calculated under Civil

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<sup>19</sup> Exhibit A.

<sup>20</sup> *Cf. Patch v. Patch*, 760 P.2d 526, 529–30 (Alaska 1988) (parents going through temporary periods of unemployment can be expected to maintain their support obligations).

<sup>21</sup> \$10.50/hour x 40 hours/week x 44 weeks from March through December = \$18,480.

<sup>22</sup> Exhibit B.

Rule 90.3(a). Beginning January 1, 2018, Mr. T's current employment and reduced income result in a support amount of \$288 per month for one child, also calculated under Civil Rule 90.3(a). Mr. T and CSSD both concurred with these calculations, which should be adopted. No variance under Civil Rule 90.3(c) was requested or granted.

**V. Child Support Order**

- Mr. T is liable for child support for E in the amount of \$370 per month for November 2017 and December 2017;
- Mr. T's child support obligation for E is adjusted to \$288 per month, effective 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 27, 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 16<sup>th</sup> 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.]