

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

In the matter of:)	
)	OAH No. 06-0129 CSS
D. S. M.)	CSSD No. 001053963
_____)	

DECISION AND ORDER

I. Introduction

D. M. appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on December 13, 2005, raising his monthly child support obligation by 32% from \$815 to \$1077. The obligee child is E., born 00/00/93. J. L. R. has primary physical custody of E.

Mr. M. and Ms. R. attended the formal hearing, held on March 2, 2006. A. J. Rawls, Child Support Specialist, appeared for CSSD. The hearing was recorded. After the hearing, the record remained open until March 8 to permit Mr. M. to submit a doctor's report about his fitness to work. Both Mr. M. and Ms. R. made supplemental submissions.

II. Overview

At the hearing, Mr. M. showed that he has been unemployed and without significant income since early August, 2005, and that he is unlikely to find work at his previous income level. His financial position is disastrous.

In this order, Mr. M.'s child support for E. will be set at \$423 per month, effective October 1, 2005. This support amount is based on two independently sufficient grounds: Mr. M.'s diminished income prospects and, in the alternative, the manifest injustice that would result from ordering a higher support amount in the present circumstances.

In addition to the adjustment to the ongoing obligation, Mr. M. will be credited with a \$300 payment made directly to the custodial parent.

Mr. M. should note that the retroactive alteration of the support amount and the \$300 credit will have a major effect on his arrears and credit calculation with CSSD. For example, the \$8000 tax refund which he testified the agency had recently garnished would, by itself, be sufficient to pay support at this level for nineteen (19) months, or until sometime in 2007. Mr.

M. will need to stay in close touch with his caseworker to discuss how payments are being credited to his account and to determine when he needs to make additional payments.

This order does not and cannot address the other matters Mr. M. needs to attend to in order to avert a financial train wreck. These include his court-ordered child support arrangement for his other children, which appears to be based on an outdated understanding about physical custody and income and which the court might well change dramatically if he were to ask.

III. Facts

A. History

Mr. M.'s child support for E. was set in early 2001 at \$815 per month. Mr. M. had a good income and remained essentially current with his support until August of 2005. In that month, he lost his job as a wellhead technician on the North Slope.

Because of the reduction in his income, Mr. M. petitioned for modification of the child support for E. on September 16, 2005.¹ Although he told CSSD orally about his unemployment, Mr. M. did not respond to CSSD's written request for financial documentation.² Accordingly, the agency used Alaska Department of Labor information to determine that Mr. M. had an annual gross income of \$88,584.29.³ It calculated his monthly allowable deductions using standard values based on an employee enrolled in Social Security.⁴ This yielded a support amount of \$1077 per month, which was entered in the modification order of December 13.⁵ The result was ironic, because Mr. M.'s request for modification to reduce his obligation had resulted instead in a one-third increase. Mr. M. appealed.

B. Material Facts

For a number of years ending in August of 2005, Mr. M. worked in the oil industry for FMC Technologies, Inc. His work entailed heavy lifting and pulling or pushing. He typically worked two weeks on and two weeks off on the North Slope, but he was required to be available

¹ Ex. 1.

² Ex. 2.

³ Ex. 3, p. 4.

⁴ Ex. 3, p. 6.

⁵ Ex. 3.

to be called for jobs outside that schedule. In 2003 and 2004, his income with FMC approached \$100,000.⁶

Mr. M. has five children, all girls, of whom E. is the oldest. The four younger girls are from a different relationship, which ended in divorce in early 2005. After the divorce, he had 50-50 shared physical custody of these younger children. It became very difficult for him to juggle the unpredictable scheduling requirements of his job and his responsibilities to the children. In August of 2005, he insisted on taking time off when his employer wanted him to take an open-ended assignment in California, and he lost his job.

Since August, he has been living on savings, credit cards, and the proceeds of selling his recreational equipment. He may also have earned a small income by doing plowing and sanding.⁷ He began receiving minimal unemployment benefits in January of 2006. Because CSSD calculates that he is over \$6000 in arrears in his child support for E., the contents of his bank account (except for \$67) has been attached and an \$8000 tax refund has been garnished. Mr. M. has been unable to make his most recent house and car payments. On one credit card, with a \$35,000 maximum, he owes \$34,700; he owes \$2900 on another credit card, and an additional \$4600 in medical bills for himself and his children. Simply to remain current on his car loan, consumer debt, and medical installments, Mr. M. would need \$1403 per month. His mortgage adds another \$1017 in monthly obligation. Oil heat costs \$450 a month. Finally, he is required by court order to pay \$647 to his former spouse in child support, notwithstanding that he keeps the children at least half the time and that she has a much higher income than he does. Regrettably, he does not seem to have brought this situation to the attention of the court so that it can be addressed. He has remained current on that child support obligation.

Mr. M.'s situation would certainly improve, or at least would deteriorate less rapidly, if he were to find a new job. Unfortunately, he was injured in September of 2005 and seems to be unable for the time being to do the heavy physical labor required of wellhead technician. In any event, the scarcity of jobs in the oil industry, the circumstances of his departure from FMC, and the impact of the divorce on his ability to travel have combined to make it unlikely that he will be able to get a job similar to the one he had before. He has made only limited efforts to find

⁶ Ex. 5.

alternative employment. He now seems to recognize that he must have an income, but the jobs he can compete for, such as commercial driving or retail sales at the entry level, do not pay anything close to the income he was used to.

In a post-hearing submission, Mr. M. stated that he “will soon be” employed by Fisher’s Fuel, Inc. at \$12.50 per hour. He also sent in some recent medical forms that suggest he has chest wall pain that is “refractory” (that is, resistant to treatment) and will require treatment with anti-inflammatory medication and further evaluation by a specialist. There is no indication in the medical reports that the condition is permanent, nor that it is wholly disabling at this time.

During this period of unemployment or limited employment, Mr. M. has not been living a lavish lifestyle for a man who keeps a home for himself and four girls. He drives a reasonably modest vehicle and lives in reasonably-priced housing. Having said that, there is no question that Mr. M. lives a more affluent life than Ms. R. and his daughter E.

Ms. R. has primary physical custody of E. She and E. have been greatly affected by the cessation of support from Mr. M.; she has been forced to move to Anchorage for employment, leaving E. with relatives. Ms. R. works irregular hours for GCI, receiving take-home pay that averages about \$1700 per month. About \$700 of this amount goes to transportation-related expenses, and another \$550 to food, leaving very little for other items.

IV. Discussion

A. Child Support Obligation Based on Projected Income

When one parent has primary custody of the children, the other parent’s child support obligation is “calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in [Civil Rule 90.3](a)(2).”⁸ By “adjusted annual income” the rule means “the parent’s total income from all sources minus mandatory deductions ...” which include basic taxes, union dues, and retirement contributions.⁹ Child support for one child is calculated at 20% of the resulting figure.¹⁰

⁷ The evidence on the plowing and sanding income is conflicting. Mr. M. testified that he had made no money this way, but Ms. R. has submitted materials after the hearing that suggest that he has had at least some income from jobs of this kind.

⁸ See Alaska R. Civ. P. 90.3(a).

⁹ Alaska R. Civ. P. 90.3(a)(1).

¹⁰ Alaska R. Civ. P. 90.3(a)(2)(A).

Because child support is calculated based on annual income, temporary periods of unemployment do not negate the support obligation. Also, child support may be based on the potential income of a person who is voluntarily and unreasonably unemployed or underemployed.¹¹ On the other hand, it is important to bear in mind that child support is calculated based on “the income which will be earned when the support is to be paid”—that is, actual or potential *future* income.¹² Past income can indicate the potential for future income, but when earning potential in the future is below past levels, the future earnings are what determine the support amount.

Mr. M. had a wonderful run as a top wage earner. While he was making the high income, he paid E.’s support, which was set at quite a high level. Unfortunately, circumstances have changed and it is not realistic to think that he will regain anything close to his previous income in the next year or two. He will probably need to start a new career at the entry level. His injury, though probably not permanent, is an additional complication to finding employment.

Mr. M. asked that his child support be set based on imputed income at the minimum wage. Despite the obstacles he faces, he can do better than that. With his history as a stable employee and his maturity, he does not need to be in the same employment pool as a teenager looking for his first job. I find that with reasonable effort Mr. M. could find work fairly soon at the level of approximately \$15 per hour, or about \$30,000 per year. When a PFD is added, income at this level, assuming standard allowable deductions, yields a child support amount of \$5078 per year, or \$423 per month, as shown in the calculation attached to this decision.

It is Mr. M.’s responsibility to his daughter E. to find work so that he can pay support at this modest level. E.’s family is so stressed by the current lack of support that her mother has been forced to leave her with relatives,

If a non-custodial parent is potentially entitled to a reduction in child support, prior to granting a modification, it is necessary to consider whether the custodial parent will be able to provide for the child if the obligor's support obligation is reduced.¹³ In this case, receiving virtually no support has greatly stressed E.’s household, but the evidence in the record shows that

¹¹ Civil Rule 90.3 Commentary, Part III-C.

¹² Civil Rule 90.3 Commentary, Part III-E.

¹³ *Maloney v. Maloney*, 969 P.2d 1148, 1152 (Alaska 1998).

E.'s mother will be able to support her if Mr. M.'s ongoing child support is received at the level of \$423 per month.

Because the support amount set in this order is retroactive to October 1, it covers the winter period when there is conflicting evidence as to whether Mr. M. was or was not earning income from plowing and sanding. It is not necessary to resolve the issue of whether Mr. M. was working at times during the winter, because if he was not, he should have been. This order sets support based on Mr. M.'s potential annual income after October 1, and is not dependent on his actual income during recent months.

B. Variance Based on Manifest Injustice

This section of the decision uses an alternative basis to reach a similar result to the one reached in IV-A above.

A child support obligation may be varied from the standard calculation if unusual circumstances exist and those circumstances make application of the usual formula unjust.¹⁴ The injustice must be demonstrated by clear and convincing evidence.¹⁵

In this case, CSSD has taken the position at the end of the hearing that it was a mistake to actually increase Mr. M.'s support obligation in December, but that the obligation should continue at the \$815 level that he was paying when he had a North Slope job. For two reasons, manifest injustice would result if that approach were followed. The injustice has been shown by clear and convincing evidence.

First, Mr. M.'s extended period of unemployment has led him to the brink of financial collapse. A support order of \$815 per month would result in large arrears to support seizure of Mr. M.'s remaining assets, and an ever-deepening hole of debt with each passing month unless he immediately finds, not only a stop-gap job, but a high-paying job. It is better to throw a person in this situation a lifeline so that he can get back on his feet and provide some support, rather than let him drown with the likely result that no support will be paid in the foreseeable future.¹⁶

¹⁴ Civil Rule 90.3 Commentary, Part IV-B.

¹⁵ Alaska R. Civ. P. 90.3(c)(1).

¹⁶ This case presents a real risk of such a downward spiral. Mr. M.'s arrears under his current order are large enough to trigger driver's license revocation under AS 25.27.246, and indeed there was testimony at the hearing that the process under that statute is already in motion. For a man who lives in the Mat-Su Valley, loss of the driver's license would make it much more difficult to hold a job, and thus even more difficult to keep abreast of a debt accruing at \$815 per month.

Second, the circumstances of Mr. M.'s subsequent children need to be taken into account. In a typical case, subsequent children are not considered in calculating a support obligation, but Rule 90.3 permits them to be considered where the presumptive order may cause them "substantial hardship."¹⁷ Here, the evidence at the hearing showed that an unmanageable support order of \$815 and the associated arrears could lead to financial catastrophe for Mr. M., including loss of his home, which would certainly be disruptive to his second family.¹⁸

C. \$300 Credit

Under AS 25.27.020(b) and 15 AAC 125.465, direct payments to the custodial parent may be considered if they are proven by clear and convincing evidence. In this case, the parties agree that one direct payment of \$300 was made after Mr. M. stopped making regular support payments through CSSD. Mr. M. will be given credit for that payment against his arrears.

Mr. M. should make all future child support payments for E. through CSSD.

V. Conclusion

Mr. M.'s child support obligation should be modified to reflect his more modest earning prospects at this time. For his part, Mr. M. needs to get a job so that he can pay this reduced support for his oldest daughter. He will need to take other steps as well, including asking the court to look at his child support for his other children and, possibly, further adjusting his spending to reflect his lower income.

VI. Child Support Order

- Mr. M.'s ongoing support obligation is \$423 per month effective October 1, 2005.
- CSSD shall credit Mr. M. for one \$300 direct payment to the custodial parent made after August, 2005.

DATED this 13th day of March, 2006.

By: Signed _____
Christopher Kennedy
Administrative Law Judge

¹⁷ Civil Rule 90.3 Commentary, Part VI-B-2.

¹⁸ CSSD argued at the hearing that the support for the first child should be higher than support for the subsequent children. It will be. At \$423 per month, the new support amount is almost three times the per-child support obligation for the other four children.

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 within 30 days after the date of this decision.

DATED this 30th day of March, 2006.

By: Signed _____
Signature
Christopher Kennedy _____
Name
Administrative Law Judge _____
Title

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

[The next 2 pages are not ADA accessible. Please contact the Office of Administrative Hearings for assistance.]

The results from this calculator are only estimates and are not binding on the court or CSSD.

www.childsupport.alaska.gov
 Welcome to the Alaska Child Support Services Division
 online
 Guideline Calculator Result

Date: 03/13/2006

Case Number: 06-0129

Tax Year: 2006

Paying Parent Name:

Annual Gross Income

Wages subject to FICA	\$30,000.00
Wages subject to SBS	\$0.00
PFD	\$845.76
Unemployment Insurance Benefits	\$0.00
Military Specialty Pay	\$0.00
Other Taxable Income	\$0.00
Total Taxable Gross Income:	\$30,845.76
Military Non-Income Pay (BAH/ COLA/ BAS)	\$0.00
Income received by child(ren) of order from Social Security	\$0.00
Workers' Compensation	\$0.00
Non-Taxable Dividends	\$0.00
Income from Self Employment	\$0.00
Other Non-Taxable Income	\$0.00
Total Non-taxable Gross Income:	\$0.00

Monthly Allowable Deductions

Federal Income Tax	\$251.61
FICA	\$191.25
Supplemental Benefits System	\$0.00
Retirement	\$0.00
Union Dues	\$0.00
SUI (Unemployment Insurance)	\$11.96
Child Support or Alimony in Prior Relationship	\$0.00
Work-related Child Care for Children in this Case	\$0.00
Cost of Support for Prior Children in the Home	\$0.00
Other Deductions	\$0.00

TOTAL GROSS INCOME: \$30,845.76

TOTAL MONTHLY DEDUCTIONS: \$454.82

Adjusted Annual Income \$25,387.92

Annual Child Support Payment (without credits)

1 Child \$5,077.58

Monthly Child Support Payments without Credits/ Debits

1 Child \$423.00

Recalculate Amounts

Start Over

Monthly Medical Credit	\$0.00
Monthly Medical Debit	\$0.00
Monthly Childrens Insurance Benefit Credit	\$0.00

Monthly Child Support Payments with Credits/ Debits

1 Child \$423.00

Comments: