

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

In the Matter of)	
)	
X J. M)	OAH No. 18-0296-CSS
_____)	Agency No. 001155209

DECISION AND ORDER

I. Introduction

X M appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on March 3, 2018. The modification decreased his child support obligation for his daughter, N, to \$681 per month, effective December 1, 2017.¹

During the hearing process, Mr. M provided additional information showing recent changes in his employment and income. He also provided information about his medical insurance premiums. CSSD agreed the additional information warranted an adjustment to the modified child support order. After all allowable deductions, Mr. M's actual income results in a child support amount of \$678 for December 2017, and a monthly obligation of \$544, beginning January 1, 2018 and ongoing. The Modified Administrative Child Support and Medical Support Order dated March 3, 2018 is adjusted to reflect these determinations.

II. Facts and Proceedings

A. Relevant factual background

X M and K Z have one child, N, age 10.² N lives in Alaska with Ms. Z, who exercises primary custody. Mr. M moved from Alaska to Idaho in 2017. In addition to N, he has two children from other relationships: a daughter for whom he pays child support, and a son who lives with Mr. M. Both children are younger than N.

From 2015 through the first quarter of 2017, Mr. M worked in Alaska in the mining industry. However, the job ended in March 2017, and Mr. M was terminated from the company.³ He earned \$28,803.27 from his mining job from January through March 2017.⁴ During the second and third quarters of 2017, Mr. M was searching for a new job and receiving

¹ Exhibit 4; CSSD pre-hearing brief, p. 1.
² Exhibit 1; Z testimony.
³ M testimony.
⁴ Exhibit 6, p. 1.

unemployment compensation. In September 2017, he started a new job in Idaho, working on an hourly basis. He earned a total of \$13,667 from this job between September and December 2017.⁵ In total, Mr. M's 2017 income included \$42,470.27 in wages, \$7,486 in unemployment benefits, and the Alaska PFD of \$1,100.⁶

In January 2018, Mr. M was promoted to a supervisor position with the same Idaho employer.⁷ This is a salaried position, with base compensation of \$45,250 annually.⁸ Mr. M is not eligible for overtime pay. He is eligible for the company's incentive program, which can result in bonus compensation, but only if specified goals or targets are attained.⁹ Mr. M testified that the company has been in financial distress in recent years, and it has not paid bonuses recently or with any regularity. He does not expect to receive any incentive compensation in 2018.

When he started his supervisory position in January, Mr. M obtained health insurance coverage for himself through his employer.¹⁰ Beginning in 2018, his total out-of-pocket cost for his own medical, dental, and vision premiums is \$201.83 per month. This includes monthly medical plan contributions of \$183.48, dental plan contributions of \$11.98, and vision plan contributions of \$6.37.¹¹

B. Procedural history

CSSD last revised Mr. M's child support obligation in 2013. Following an administrative appeal, it set his ongoing support for N at \$1,006 per month.¹² Ms. Z requested a modification review on November 1, 2017.¹³ CSSD sent both parents notice of the petition on November 17, 2017.¹⁴ In response, Mr. M submitted a number of paystubs and his 2016 federal income tax documentation.¹⁵

⁵ Exhibit 9.

⁶ Exhibit 6, p. 1; Exhibit 9.

⁷ Exhibit 5, p. 3.

⁸ *Id.*

⁹ M submission to record, 4/26/18.

¹⁰ M testimony; M submission to record 4/26/18. Mr. M did not submit information showing his cost for health insurance in his prior job. This decision therefore assumes he had no out-of-pocket premium for own health insurance coverage in December 2017.

¹¹ M submission to record 4/26/18; CSSD submission 5/2/18 (indicating that Mr. M's medical plan is the "Tobacco Value PPO" plan, with an \$84.71 bi-weekly contribution). Mr. M's submission identifies bi-weekly insurance costs: \$84.71 for the "Tobacco Value PPO" medical plan, \$5.53 for dental, and \$2.94 for vision coverage. This decision converts these amounts to monthly figures by multiplying them by 2.166 weeks per month.

¹² Exhibit 1.

¹³ CSSD pre-hearing brief, p. 1.

¹⁴ Exhibit 2.

¹⁵ Exhibit 3.

In determining Mr. M's 2017 income from all sources, CSSD annualized his fourth quarter 2017 income, which resulted in annual income of \$54,668.¹⁶ It included the Alaska PFD. After deductions for matters such as federal income taxes, Social Security/Medicare, and Idaho state taxes, this income resulted in a child support amount of \$681 per month.

On March 3, 2018, CSSD granted the modification review and issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal.¹⁷ The modified order set his support amount at \$681 per month, effective December 1, 2017 and ongoing. Mr. M appealed, asserting that CSSD relied on inaccurate income information.¹⁸

The hearing took place by telephone on April 19, 2018. It was audio-recorded. Mr. M and Ms. Z both participated and represented themselves. Child Support Specialist Patrick Kase represented CSSD. The record remained open after the hearing, so Mr. M could submit additional information regarding his employer's bonus compensation program and his cost for his own medical insurance coverage. CSSD then submitted updated child support calculations.¹⁹ The parents were afforded an additional opportunity to respond, but neither did so. All submitted documents were admitted to the record, which closed on May 9, 2018.

III. Discussion

As the person who filed the appeal, Mr. M has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order dated March 3, 2018 is incorrect.²⁰ He met that burden.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."²¹ 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. M's former obligation was \$1,006.00 per month, so a change of \$150.90 or more per month satisfies this standard.²²

¹⁶ Exhibit 4, pp. 7-8.

¹⁷ Exhibit 4.

¹⁸ Exhibit 5; M testimony.

¹⁹ Exhibit 8, 9; *See also* CSSD submissions to record, 5/1/18 and 5/2/18.

²⁰ 15 AAC 05.030(h).

²¹ AS 25.27.190(e).

²² \$1,006 x 15% = \$150.90.

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.²³ Here, CSSD provided notice in November 2017. Therefore, the modification is effective as of December 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.²⁴

A. 2017 Child Support Calculation

CSSD's post-hearing submission relied on Mr. M's actual 2017 income figures, which are supported by the evidence in the record. His gross wages from jobs in Alaska and Idaho were \$42,470.27.²⁵ He also received the 2017 PFD and unemployment compensation totaling \$7,486, for total gross income of \$51,056.27 during 2017.²⁶

The Civil Rule 90.3(a) formula entitles Mr. M to mandatory deductions from income for matters such as federal income tax, state income tax, and Social Security/Medicare withholding.²⁷ Because Idaho charges state income tax, the post-hearing calculation includes a monthly deduction of \$75.50 to account for the state income taxes Mr. M paid on his Idaho income.²⁸ After all appropriate deductions, Mr. M's 2017 income results in a child support amount of \$678 per month for N. This is a material change from the prior monthly support amount of \$1,006, and it should be adopted, effective December 1, 2017.

B. 2018 Child Support Calculation

Mr. M's 2018 income from all sources is expected to consist of his annual salary, \$45,250. He will not receive a PFD. The timing and amount of any bonus compensation is too uncertain to include in the calculation, given Mr. M's testimony regarding his employer's financial circumstances.

²³ 15 AAC 125.321(d).

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

²⁵ Exhibit 8, p. 1.

²⁶ Exhibit 8, p. 1.

²⁷ Civil Rule 90.3(a)(1)(A).

²⁸ Exhibit 8, 9; CSSD submission, 5/2/18. Mr. M earned Idaho wages for less than four months in 2017, so CSSD's calculation takes the state income taxes actually paid (\$906), then converts it to an average monthly amount over the whole year. $\$906/12 = \75.50 .

In addition to other mandatory deductions, Mr. M is entitled to a monthly deduction of \$244 for Idaho state income taxes.²⁹ Recently-adopted amendments to Civil Rule 90.3 also provide a deduction from income for a parent's cost of health insurance premiums for his or her own coverage.³⁰ The total amount of the parent's health premiums (including dental and vision premiums) may not exceed 10% of the parent's gross wages and self-employment income.³¹ Starting in January 2018, Mr. M pays out-of-pocket premiums of \$201.83 per month for his health insurance. This is less than 10% of his gross monthly wages, so he is entitled to a deduction in that amount.

After all allowable deductions, including Idaho income taxes and Mr. M's own health insurance premiums, his expected 2018 income results in a child support amount of \$544 per month.³² This is a material change from the \$678 amount adopted for December 2017.³³ Therefore, an adjustment is warranted, effective January 1, 2018 and ongoing.

C. Medical Credit

As discussed during the hearing, Mr. M may be entitled to a credit for his cost of including N on his health insurance plan. He can work with his CSSD caseworker on this issue, as it is not properly presented in this appeal. Once CSSD receives necessary information showing Mr. M's specific cost for covering N, it can determine the amount of any applicable credit and apply it as of the date of the qualifying coverage.

IV. Conclusion

Through the evidence presented in the hearing process, Mr. M showed that the March 3, 2018 Modified Administrative Child Support and Medical Support Order should be adjusted. CSSD agreed. Under Civil Rule 90.3(a), Mr. M's actual 2017 income and allowable deductions result in a support amount of \$678 per month, effective December 2017. His expected 2018 income results in a material change in circumstances. Therefore, his support obligation is adjusted to \$544 per month, effective January 1, 2018 and ongoing. No variance under Civil Rule 90.3(c) was requested or granted.

²⁹ CSSD submission, 5/2/18. Mr. M will be working and paying Idaho taxes throughout 2018, so no adjustment of his actual tax payments was necessary.

³⁰ See Civil Rule 90.3(a)(1)(F); Alaska Supreme Court Order 1919 (amending Civil Rule 90.3(a)(1) and (c)(2), effective April 16, 2018).

³¹ Civil Rule 90.3(a)(1)(F).

³² Attachment A. The "Other Deductions" line includes \$201.83 for Mr. M's health insurance premiums and \$244 for Idaho state tax deduction.

³³ A change of more than \$101.70 is considered material. ($\$678 \times 15\% = \101.70 .) The 2018 obligation is a \$134 change from the December 2017 amount.

V. Child Support Order

- Mr. M is liable for child support for N in the amount of \$678 for December 2017;
- Mr. M’s child support amount is adjusted to \$544 per month, effective January 1, 2018 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated March 3, 2018, remain in full force and effect.

DATED: May 14, 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 30th day of May, 2018.

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

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