

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

In the Matter of)	
)	OAH No. 18-1091-CSS
K M. L)	Agency No. 001192659
_____)	

DECISION AND ORDER

I. Introduction

K L appeals the Child Support Services Division’s (CSSD) decision denying his request to modify his child support obligation for his daughter, S. Mr. L explained that he lost his job and is living on significantly reduced income.

The evidence in the record is that Mr. L has experienced a temporary setback in his career, but he is likely to be rehired at his former position or find a new job in the near future. His new employment likely will result in annual wages that are comparable to or higher than the income CSSD relied on to set his child support amount in 2013. Because Mr. L’s joblessness and reduced income is a temporary situation, it does not justify a reduction in his support obligation for S. CSSD’s decision is therefore affirmed. Mr. L may request another modification review if future information shows that his changed circumstances will be more permanent.

II. Facts

Mr. L and T L are the parents of S, age 8. S lives with Ms. L in another state. Mr. L lives in Alaska.

CSSD established Mr. L’s child support obligation for S in an Administrative Child Support and Medical Support Order dated August 12, 2013.¹ That order set his ongoing obligation at \$1,097 per month, based on expected annual wage income of \$87,361.48, plus the PFD.²

For the past seven years, Mr. L has worked as an operator at Employer A. He failed a random drug test and was terminated from his job on February 20, 2018.³ He requested a

¹ Exhibit 1.
² See Exhibit 1, p. 8.
³ K L testimony.

reduction of his child support amount in June 2018. CSSD served each parent with a Notice of Petition for Modification of Administrative Support Order on June 22, 2018.⁴ The notice required each parent to submit income information. This was particularly relevant to Mr. L, the obligor (or parent paying support). However, Mr. L did not provide additional information or documentation showing his changed circumstances.

CSSD denied the requested modification review on October 6, 2018, finding that Mr. L had not shown a material change of circumstances.⁵ Mr. L requested a formal hearing, asserting that he lost his job and was waiting to be rehired, but he did not know when that would happen. He also indicated that his only current income is \$450 in monthly VA disability benefits.⁶

The formal hearing took place by telephone on November 15, 2018. Mr. L and Ms. L represented themselves. Child Support Specialist Patrick Kase represented CSSD. The hearing was audio-recorded. All submitted documents were admitted to the record, which closed at the end of the hearing.

During the hearing, Mr. L testified that he has completed a rehabilitation program, and he hopes to get his job with the refinery back. He is eligible for rehire as job openings become available, either as an operator or in another position. Though he is optimistic about his prospects for rehire, there remains some uncertainty about when that will happen and the capacity in which he will work. Even if he is hired as something other than an operator, however, Mr. L is likely to earn at least \$87,000 in annual wages.⁷

Because of his technical skills and work experience, Mr. L also has other options for new employment. He has plans to meet with a potential employer in No Name regarding a job doing ship inspections. He also may have job opportunities on the North Slope, though he would not be eligible for any prospective jobs that require a commercial driver's license.

From January 1 to February 20, 2018, Mr. L worked significant overtime hours and earned gross wages of \$36,013.69.⁸ He received unemployment benefits totaling \$7,770 during the second and third quarters of the year.⁹ As an Employer B shareholder, he will receive 2018

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ As an operator, he earned average annual wages of \$104,414.25 from 2015 through 2017. Exhibit 5 (\$116,349.34 + \$95,829.16 + \$101,064.25 / 3 years = \$104,414.25).

⁸ Exhibit 5.

⁹ *Id.*

dividends totaling \$6,500. He also receives the PFD and monthly disability income of \$450 from the VA. Even if he earns no other 2018 income, this results in gross annual income of \$57,283.69.¹⁰

Mr. L is actively seeking employment now that he has completed the rehabilitation program. He did not explain whether he was able to work in some other capacity while he participated in rehab, to mitigate his income losses. His living expenses are modest, and it appears he has been able to pay for necessities on his reduced income. He owns a trailer home that he shares with a roommate. The roommate formerly paid \$500 in monthly rent; however, after Mr. L lost his job, he suspended the rent obligation because the roommate is paying most of the household utility bills and some other expenses.¹¹

Ms. L opposed a reduction in Mr. L's ongoing child support amount. She explained that she is a single mother earning roughly \$35,000 in gross annual wages, and she incurs significant expenses for S.¹² Ms. L's finances are tight; she rents a room in a friend's home because she cannot afford a place of her own.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹³ As the person who filed this appeal, Mr. L has the burden of proving by a preponderance of the evidence that CSSD erred when it denied his modification request.¹⁴

A parent is obligated both by statute and at common law to support his or her children.¹⁵ A noncustodial parent's support amount is ordinarily calculated under Civil Rule 90.3(a) based on that parent's annual adjusted income. The obligor parent bears the burden of proving his or her income or earning capacity.¹⁶ To justify a reduced child support amount, a parent's reduced income must be more or less permanent rather than temporary; parents going through temporary periods of unemployment generally can be expected to maintain their support obligations.¹⁷

¹⁰ \$36,013.69 wages + \$7,770 UIB + \$6,500 ASRC + \$1,600 PFD + (\$450 x 12) VA = \$57,283.69.

¹¹ K L testimony; Exhibit 6 (K. L hearing expense worksheet).

¹² S is also an Employer B shareholder, and she will receive 2018 dividend payments. This does not change the analysis.

¹³ AS 25.27.190(e).

¹⁴ 15 AAC 05.030(h).

¹⁵ AS 25.20.030; *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987).

¹⁶ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁷ *Patch v. Patch*, 760 P.2d 526, 529–30 (Alaska 1988).

In this case, Mr. L's earning potential has not permanently changed. He completed the rehabilitation program and addressed the substance use problem that resulted in his termination. He expects to find new employment that will pay wages at or above his 2013 income. Because of his involuntary job loss, Mr. L's 2018 wages fall below this amount, and they are well below his more recent annual earnings. Understandably, this has created some financial stress and made it harder for Mr. L to keep up with his child support obligations for S.

However, Mr. L did not show that his decreased income is more than a temporary circumstance. He is eligible to work again as an operator at the refinery, and he expressed optimism that a job will be available in the relatively near future. Even if he is not rehired as an operator, he likely will be hired in a different job – either at the refinery or elsewhere. The primary issue is the timing of his new employment.

The evidence in the record supports the conclusion that new employment is imminent. If that does not happen despite Mr. L's active search efforts, he may seek another modification review. However, his child support amount should not be modified until he has secured employment and is earning a consistent income figure.

This decision takes into consideration Ms. L's financial circumstances and S's needs. It concludes that the equities do not justify placing a greater financial burden on S and Ms. L, while placing a correspondingly lesser responsibility on Mr. L.

IV. Conclusion

At this time, Mr. L's unemployed status and reduced income are most appropriately seen as a temporary circumstance. Mr. L may lack the ability to pay the total child support amount for S every month and he therefore may incur some additional arrears, but there is no evidence he will be permanently unemployed or that he is unemployable in other capacities.

CSSD's decision denying a modification review is affirmed. Mr. L may request another modification review if future events demonstrate that his employment prospects and income have more permanently changed.

V. Child Support Order

- CSSD's October 6, 2018 Decision on Request for Modification Review is affirmed;
- Mr. L remains liable for child support in the amount of \$1,097 per month for S, as set in the Administrative Child Support and Medical Support Order dated August 12, 2013.

DATED: November 16, 2018.

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

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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 13th day of December, 2018.

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

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]