

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

In the Matter of)	
)	
M E. U IV)	OAH No. 18-1139-CSS
_____)	Agency No. 001151055

DECISION AND ORDER

I. Introduction

M U IV appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 13, 2018. The modified order increased his child support obligation for his son, also named M, to \$1,803 per month, effective August 1, 2018 and ongoing.

Through the evidence produced in the hearing process, Mr. U showed that the calculation should be adjusted. After all applicable deductions, his income results in a support amount of \$1,285 per month for one child. The Modified Administrative Child Support and Medical Support Order issued on October 13, 2018 is adjusted to reflect this obligation, effective August 1, 2018 and ongoing.

II. Facts and Proceedings

M U IV and U H are the parents of M V, age 13. M is Mr. U's oldest minor child.¹ He and Ms. H live in Louisiana. Ms. H is the custodian of record. Mr. U lives in Anchorage. He also has a younger child from a different relationship.

Mr. U receives Veteran's Administration (VA) benefits of \$644.90 each month, or \$7,738.80 per year. He is eligible for the PFD. In 2018, Mr. U was employed on a full-time basis by Employer A, where his annual gross wage income totaled \$84,790.37. He lost his job in mid-December 2018 and is presently looking for new employment.

Mr. U worked as a basketball coach at a local high school during the fall of 2017. He was paid \$3,150 for that work in early 2018. It is therefore countable as 2018 income. He did not work as a coach during the fall 2018 season, and he does not expect to earn any income from coaching in the foreseeable future.

¹ Exhibit 1.

Mr. U holds two business licenses: one in the area of computer design services and one in the area of diet and weight reduction. However, he does not actually operate businesses under those licenses, and he earns no income from self-employment.

CSSD last reviewed Mr. U's child support obligation for young M in 2016, when it set the ongoing amount at \$765 per month.² CSSD initiated a modification review because Mr. U's support obligation for his younger child was under review. On July 12, 2018, CSSD served a notice of the petition for modification on the parties.³

On October 13, 2018, CSSD granted the modification and issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal.⁴ It adjusted Mr. U's child support amount to \$1,803.⁵ The same day, CSSD also issued a modified child support order in Mr. U's case for his younger child. Mr. U appealed both orders.⁶

The formal hearings in both of Mr. U's appeals took place on November 27, 2018. They were audio-recorded. Mr. U appeared in person. He was represented by Herbert M. Pearce, Esq. Child Support Specialist Brandi Estes appeared in person and represented CSSD. Ms. H appeared by telephone and represented herself. Both parents testified. The record remained open after the hearing for additional evidence and legal argument. It closed on January 23, 2019. All submitted documents were admitted.

III. Discussion

As the person who filed the appeal, Mr. U bears the burden to show that the modified child support order requires adjustment.⁷ The standard is preponderance of the evidence. He met this burden.

A. Preliminary Issues

Mr. U initially argued that CSSD lacks jurisdiction to modify the child support order. He asserted that a tribunal in Louisiana issued the first support order for M V, and it therefore should have continuing, exclusive jurisdiction over it. He withdrew this argument after CSSD submitted a copy of its Administrative Child Support and Medical Support Order dated August

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit 4.

⁵ After a \$93.80 monthly medical credit for Mr. U's share of the health insurance he provided for the child, the ongoing monthly obligation decreased to \$1,710. Exhibit 4, p. 10.

⁶ Exhibit 5; *In re M E. U*, OAH No. 18-1338-CSS.

⁷ 15 AAC 05.030(h).

6, 2008. In 2008, CSSD administratively established Mr. U's support obligation for M V after receiving a transmittal request from the child support services agency in Louisiana.⁸

Mr. U also argued that the child lives with a grandparent rather than Ms. H. This issue does not affect the validity of the child support order, and no determination is made on its merits. Mr. U can pursue this concern with his CSSD caseworker, as his ongoing support obligation may be deferred if Ms. H no longer maintains physical custody and the third-party custodian has not applied for services.⁹

B. Child Support Calculation under Civil Rule 90.3(a)

A parent is obligated both by statute and at common law to support his or her children.¹⁰ Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹¹ 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. U's prior support amount was \$765 per month, so a support calculation that changes his obligation by \$114.75 or more is sufficient to modify his obligation.¹²

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.¹³ Here, CSSD provided notice in July 2018, so the modification is effective August 1, 2018.

Civil Rule 90.3(a) provides that a noncustodial parent's support amount is to be calculated based on his or her "total income from all sources," minus specified deductions. Mandatory deductions include matters such as federal income taxes and Social Security/Medicare withholding.¹⁴ A deduction is also available for a parent's cost of health insurance premiums for covering himself or herself only (up to a maximum of 10% of the parent's gross wages and self-employment income).¹⁵

At the time CSSD calculated the modified child support amount for Mr. U, it was unaware of his income from the VA and from coaching. The calculation included his gross annual wages, which CSSD determined were \$84,790.37, the PFD, and an additional \$63,970.40

⁸ See CSSD Submission to Record dated 12/20/18 and attached Exhibit 1, at p. 9.

⁹ See 15 AAC 125-870(d). However, deferred support will be reinstated upon an application for services from a party entitled to support. 15 AAC 125.870(e).

¹⁰ AS 25.20.030; *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987).

¹¹ AS 25.27.190(e).

¹² \$765 x 15% = \$114.75.

¹³ 15 AAC 125.321(d).

¹⁴ Civil Rule 90.3(a)(1)(A).

¹⁵ Civil Rule 90.3(a)(1)(B)-(F).

in annual income from self-employment. The self-employment income was based entirely on statistical wage information that CSSD applied to Mr. U's business licenses.

Mr. U showed that he does not earn any income from his business licenses and the self-employment income should be removed. He agreed he receives annual VA benefits of \$7,738.80, and his 2018 coaching income totaled \$3,150. He did not challenge CSSD's determination of his wage income or the inclusion of the PFD. These four sources result in total gross income of \$97,279.17.¹⁶

Mr. U is entitled to a deduction for his cost of providing health insurance coverage for himself only. His bi-weekly paychecks show that he pays \$9.18 for dental coverage and \$.61 for vision coverage each pay period. He is therefore eligible for a monthly deduction of \$21.21 for these expenses.¹⁷ The total is less than 10% of Mr. U's gross wage income, so he is entitled to a deduction for the full amount.

Under the primary custody formula, Mr. U's oldest minor child is entitled to 20% of his adjusted annual income.¹⁸ As shown on Attachment A, Mr. U's adjusted annual income after all deductions is \$77,078.13. This results in a monthly support amount of \$1,285 for young M.¹⁹ It reflects a material change of circumstances. If Mr. U believes he is entitled to a medical credit for his share of providing health insurance coverage for his son, he may pursue this issue separately with his CSSD caseworker. It does not affect the determination of his ongoing child support amount. Once CSSD has the necessary information, it can calculate the applicable credit and apply it as of the date of qualifying coverage.

For purposes of this child support determination, Mr. U's expected 2019 income will decrease by \$3,150, the amount of his former basketball coaching income. This change would result in a \$37 decrease in his monthly support obligation for M V.²⁰ This is not a material change, so the 2018 amount remains in effect.²¹

Mr. U's recent job loss is considered a temporary situation. Parents going through temporary periods of unemployment generally can be expected to maintain their child support

¹⁶ Attachment A.

¹⁷ $\$9.18 + \$.61 = \$9.79$ per pay period. $\$9.79 \times 26$ bi-weekly pay periods per year = \$254.54 per year. $\$254.54 / 12$ months = \$21.21 per month. Mr. U's paychecks also show contributions of \$177.80 each pay period to "Hsa Premium Ee," and \$3.84 to "Healthsave Ee." Exhibit 3. These are presumed to be contributions to a health savings account, not health insurance premiums. The record remained open for clarification of this issue, but no responses were received.

¹⁸ Civil Rule 90.3(a)(2)(B).

¹⁹ Attachment A.

²⁰ See Attachment B ($\$1,285 - \$1,248 = \$37$).

²¹ 15 AAC 125.321(b).

obligations.²² Mr. U's post-hearing submission recognizes this rule and explains that he will consider seeking another modification review after he has obtained new employment.

IV. Conclusion

The evidence produced in the hearing process showed that Mr. U's support amount for his oldest son should be adjusted to \$1,285 per month, effective August 1, 2018. This obligation was calculated under Civil Rule 90.3(a) without variation.

V. Child Support Order

- Mr. U is liable for child support for M V in the amount of \$1,285 per month, effective August 1, 2018 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated October 13, 2018, remain in full force and effect.

DATED: January 25, 2019.

By: Signed

Name: Kathryn A. Swiderski

Title: Administrative Law Judge

[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 8th day of February, 2019.

By: Signed

Name: Kathryn A. Swiderski

Title: Administrative Law Judge

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²² *Patch v. Patch*, 760 P.2d 526, 529-30 (Alaska 1988).