

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

In the Matter of)	
)	
N U. E)	OAH No. 18-1137-CSS
_____)	Agency No. 001183045

DECISION AND ORDER

I. Introduction

N T. E appeals the denial of his request to modify an Administrative Child Support and Medical Support Order, which set his child support obligation for his child R at \$630 per month. Because there has been a material change in circumstances since support was set in May 2013, Mr. E’s monthly support obligation for R is modified to \$374, effective August 1, 2018.

II. Facts

N E is the father of 9-year-old R. R lives with his mother, X T. On May 13, 2013, the Child Support Services Division (the Division or CSSD) issued an administrative order setting Mr. E’s child support obligation for R at \$630 per month.¹

On July 16, 2018, Mr. E verbally requested a support modification, and CSSD initiated a modification review. On July 17, 2018, CSSD notified Mr. E and Ms. T that a petition to modify had been filed and requested both parties to provide financial information.² Mr. E provided income information, including a Child Support Guidelines Affidavit, paystubs, and portions of his 2016 Federal Income tax return.³

CSSD also obtained wage information reported by Mr. E’s employers in the Alaska Department of Labor and Workforce Development database from the first quarter of 2015 through the third quarter of 2018.⁴ According to the database, Mr. E worked all four quarters and earned \$32,949.10 in 2015; he worked one quarter and earned \$8,339.93 in 2016; he worked two quarters for two employers and earned \$12,974.30 in 2017; and he earned \$18,857.07 during the first three quarters of 2018.⁵ According to the Alaska Department of Labor and Workforce Development

¹ Ex. 1.
² Ex. 2.
³ Ex. 3.
⁴ Ex. 6.
⁵ Ex. 6.

database of Unemployment Insurance Benefits (UIB) disbursements, Mr. E also received \$7,152 in UIB in 2016.⁶

Based on Mr. E's pay stubs, CSSD calculated his 2018 income at \$41,214.94.⁷ CSSD arrived at that amount by extrapolating the data in Mr. E's June 29, 2018 pay stub to an annual amount and adding the Alaska Permanent Fund Dividend and native dividends.⁸ On October 13, 2018, CSSD issued a decision denying Mr. E's request for modification.⁹ CSSD reasoned that the information provided did not indicate a material change in circumstances warranting a modification in Mr. E's support obligation.¹⁰

Mr. E appealed the denial.¹¹ In his request for a hearing, he asserted that he works only 8 months per year and does not earn \$41,214.94 per year.¹² He submitted his most recent pay stub, which showed his year-to-date earnings as of October 15, 2018 at \$19,968.¹³

A telephonic hearing was held on November 27, 2018. Mr. E represented himself and testified on his own behalf. Brandi Estes, Child Support Specialist, represented CSSD. Ms. T appeared but did not add anything to the record.

At the hearing, Mr. E reported that he does custodial and maintenance work for Employer A.¹⁴ He works five hours per day, about 30 hours per week, earning \$19.50 per hour.¹⁵ He works primarily during the school year from mid-August to mid-May.¹⁶ He sometimes gets limited hours of work during the summer.¹⁷ Mr. E tries to find work during the summer when he is not working for Employer A, but he does not have any definite plans for employment next summer.¹⁸ He lives with his girlfriend and helps with whatever expenses he can afford.¹⁹ They have one child and four grandchildren who live with them.²⁰

⁶ Ex. 6.
⁷ Ex. 4 at 2.
⁸ Ex. 4 at 2.
⁹ Ex. 4.
¹⁰ Ex. 4.
¹¹ Ex. 4.
¹² Ex. 5.
¹³ Ex. 5 at 2.
¹⁴ Testimony of N E.
¹⁵ E Testimony.
¹⁶ E Testimony.
¹⁷ E Testimony.
¹⁸ E Testimony.
¹⁹ E Testimony.
²⁰ E Testimony.

Based on the new information about Mr. E's income, CSSD requested that Mr. E submit his most recent paystubs. CSSD also asked for the opportunity to recalculate Mr. E's support obligation.

After the hearing, the record was left open until December 7, 2018 to allow Mr. E to submit his most recent pay stubs and any additional evidence he wanted considered. CSSD was instructed to submit new calculations by December 11, 2018.

Mr. E submitted the requested information, and CSSD submitted new calculations on December 11, 2018 as ordered. According to Mr. E's November 30, 2018 paystub, his year-to-date earnings were \$23,526.75.²¹ CSSD then estimated Mr. E's annual income, derived as follows: "The annual wages are extrapolated by taking the year-to-date earnings of \$23,526.75 and dividing by 48 (48 weeks in the year), reaching a weekly amount of \$490.14. This is multiplied by 52 weeks in the year for an annual total of \$25,487.31."²² CSSD added the Alaska Permanent Fund Dividend and Mr. E's native dividend.²³ After deductions for taxes, Social Security, retirement, and unemployment insurance, CSSD calculated an adjusted annual income of \$22,439.01.²⁴ CSSD calculated Mr. E's child support obligation at \$374 per month. Based on these numbers, CSSD asked that its denial of modification be reversed, and that Mr. E's ongoing support obligation be modified to \$374 per month.

The parties were given until December 21, 2018 to request a supplemental hearing to dispute the new calculations. Neither Mr. E nor Ms. T requested another hearing, and the record closed on December 21, 2018.

III. Discussion

A parent is obligated both by statute and common law to support his or her children.²⁵ A parent's child support obligation is determined primarily through a formula set out in Civil Rule 90.3. "The primary purpose of Rule 90.3 is to ensure that child support orders are adequate to meet the needs of children, subject to the ability of parents to pay."²⁶ Child support orders may be modified upon a showing of "good cause and material change in circumstances."²⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule

²¹ Ex. 8.

²² See Submission of Record dated December 11, 2018; Ex. 9.

²³ Ex. 9.

²⁴ Ex. 9.

²⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

²⁶ Civil Rule 90.3, Commentary I.B.

²⁷ AS 25.27.190(e).

90.3(h) assumes “material change in circumstances” has been established and the order may be modified. A modification is effective beginning the first day of the next month after CSSD issues notice to the parties that a modification has been requested.²⁸

In this case, Mr. E requested a modification. Mr. E’s child support obligation has been \$630 since May 2013, so a child support calculation that is at least \$94.50 higher or lower than \$630 would be sufficient to warrant modification.

Child support under Rule 90.3 is calculated based on the adjusted annual income of the non-custodial parent.²⁹ Rule 90.3(a)(1) provides that an obligor’s child support obligation is to be calculated based on the obligor’s “total income from all sources,” minus mandatory deductions (such as taxes, social security, and mandatory retirement).³⁰ Determining an obligor’s annual income for purposes of calculating ongoing child support is “necessarily . . . speculative because the relevant income figure is expected future income.”³¹ Unless a parent was voluntarily and unreasonably unemployed or underemployed, his or her child support obligation should be based on the best available information about his or her expected income, not potential income.³² This requires consideration of the best available information, including:³³

- (1) the parent’s current income as of the date of the agency’s calculation of support, as reflected in recent pay stubs or other information from the parent or the parent’s employer;
- (2) the parent’s actual income during the immediately preceding calendar year or, if the parent’s income is erratic or information is not available for the immediately preceding calendar year, the parent’s actual income during prior calendar years;
- (3) partial wage information for periods of less than one year;
- (4) the parent’s wage rate at a previous job;
- (5) the parent’s job skills, training, work history, and education;
- (6) the average wage or salary available to a person in the parent’s particular profession or occupation and, if applicable, location;
- (7) the availability of employment in the area where the parent physically resides;
- (8) the minimum wage for the area in which the parent physically resides; and
- (9) any physical or other restrictions on the parent’s ability to work.

Here, there is no real dispute about Mr. E’s income. Based on Mr. E’s testimony at the hearing and his most recent paystubs, CSSD corrected its income calculations. CSSD’s new calculation uses Mr. E’s actual earnings for 2018 and adds his PFD and native dividends for a gross

²⁸ 15 AAC 125.321(d).

²⁹ Civil Rule 90.3(a).

³⁰ Civil Rule 90.3(a)(1).

³¹ Civil Rule 90.3, Commentary III.E.

³² *Benedixen v. Benedixen*, 962 P.2d 170, 172 (Alaska 1998).

³³ 15 AAC 125.050(c).

annual income of \$25,487.31.³⁴ Entering Mr. E's income information with CSSD's estimated deductions for retirement into the CSSD's online child support calculator yields a 2018 adjusted annual income of \$22,439.01. This amount produces an annual child support payment of \$4,487.80, or \$374 per month for one child. Because this is a decrease of more than \$94.50 from Mr. E's previous child support order, modification is warranted.

IV. Conclusion

Because there has been a material change in circumstances since support was set in May 2013, Mr. E's monthly support obligation for R is modified from \$630 to \$374, effective August 1, 2018.

V. Child Support Order

1. N T. E is liable for child support in the amount of \$374 per month for 1 children effective August 1, 2018 and ongoing. His monthly obligation for arrears is not changed by this order.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated May 13, 2013 remain in full force and effect.

Dated: January 7, 2019

By: Signed
Signature
Jessica L. Leeah
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.

³⁴ See 15 AAC 125.050(e) (requiring CSSD to include PFDs and native dividends in calculation)

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 24th day of January, 20 19.

By: Signed
Signature
Hanna Sebold
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.]

