

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

In the Matter of)	
)	
Q F)	OAH No. 18-1105-CSS
<hr style="width: 80%; margin-left: 0;"/>)	Agency No. 001123179

DECISION AND ORDER

I. Introduction

Q F appeals a modification increasing his monthly child support obligation for his F from \$577 to \$1,241. After a full hearing and based on the evidence in the record, Mr. F’s monthly support obligation for F is set at \$1,187, effective July 1, 2018.

II. Facts¹

Q F is the father of 16-year-old F. F attends School A in City A. The custodial parent in this case was O S. On January 7, 2014, the Child Support Services Division (the Division or CSSD) issued an administrative order setting Mr. F’s child support obligation for F at \$577 per month.²

On June 25, 2018, Ms. S requested a support modification, and CSSD initiated a modification review. On June 26, 2018, CSSD notified Mr. F and Ms. S that a petition to modify had been filed and requested both parties to provide financial information.³ Neither party submitted any income documentation.

CSSD obtained wage information reported by Mr. F’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. F worked two quarters and earned \$10,834.40 in 2015; he worked all four quarters and earned \$65,060.74 in 2016; he worked all four quarters and earned \$79,716.59 in 2017; and he earned \$60,712.02 during the first three quarters of 2018.⁵ According to the Alaska Department of Labor and Workforce Development database of

¹ The facts set forth are established by a preponderance of the evidence based on the parties’ testimony and exhibits in the record.
² Ex. 1.
³ Ex. 2.
⁴ Ex. 5.
⁵ Ex. 5 at 1.

Unemployment Insurance Benefits (UIB) disbursements, Mr. F also received \$7,650 in UIB in 2015.⁶

On October 6, 2018, CSSD issued a Modified Administrative Child Support and Medical Support Order, increasing Mr. F's monthly child support obligation to \$1,241 per month, effective July 1, 2018.⁷ The order indicated that because Mr. F had not provided any income information, the support amount was based on an estimated annual income, derived as follows: "The income calculation for 2018 was based on your employer reported bi-weekly pay amount of \$3,641.25. This amount was multiplied by 26 (total bi-weekly pay periods in a year) for an annual total income of \$94,672.50. The Alaska Permanent Fund Dividend and your native dividends were included in the calculation."⁸

Mr. F appealed the new child support order.⁹ In his request for a hearing, he did not dispute CSSD's calculations.¹⁰ He instead argued that the custodial parent did not request a modification review, and thus, CSSD could not modify his order.¹¹

Before the hearing, Mr. F notified CSSD that on November 10, 2018, Ms. S passed away. A telephonic hearing was held on November 19, 2018. Mr. F represented himself and testified on his own behalf. Brandi Estes, Child Support Specialist, represented CSSD. The parties confirmed that Ms. S did in fact pass away, but because Mr. F did not have custody of F, and because the modification was effective on July 1, 2018, the child support obligation would still need to be decided.

At the hearing, Mr. F reported that under his employment contract, his salary is capped at \$90,000 per year.¹² In addition, Mr. F has three other biological children who were born after F.¹³ Mr. F reported that he planned to get custody of F, but he did not know when that would occur.¹⁴

After the hearing, the record was left open until November 29, 2018 to allow Mr. F to submit additional evidence he wanted considered. Specifically, Mr. F was asked to produce a copy of his employment contract and any documentation of steps taken to obtain custody of F.

⁶ Ex. 5 at 2.

⁷ Ex. 3 at 4.

⁸ Ex. 3 at 7.

⁹ Ex. 4.

¹⁰ Ex. 4.

¹¹ Ex. 4.

¹² Testimony of Q F.

¹³ F Testimony.

¹⁴ F Testimony.

Based on the new information about Mr. F's income and Ms. S's death, Ms. Estes advised that Mr. F's support obligation would need to be recalculated. She was instructed to submit new calculations by December 6, 2018.

Mr. F submitted the requested information, and CSSD submitted new calculations on December 6, 2018. Mr. F was given until December 13, 2018 to request a supplemental hearing to dispute the new calculations. Mr. F did not request another hearing, and the record closed on December 13, 2018.

III. Discussion

A parent is obligated both by statute and common law to support his or her children.¹⁵ 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."¹⁶ Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. Assuming it has jurisdiction, CSSD may unilaterally review a child support order "if circumstances exist that may justify a modification of the support obligation."¹⁸ CSSD may also review an order for modification, with or without evidence of a 15% change from the current support obligation, if three years have elapsed since the support order was issued or modified.¹⁹ 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.²⁰

In this case, Ms. S requested a modification. But it has been more than three years since Mr. F's child support obligation has been reviewed. Mr. F's child support obligation has been \$577 since January 2014, so a child support calculation that is at least \$86.55 higher or lower than \$577 would be sufficient to warrant modification.

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

¹⁶ Civil Rule 90.3, Commentary I.B.

¹⁷ AS 25.27.190(e).

¹⁸ 15 AAC 125.316(b).

¹⁹ 15 AAC 125.316(e).

²⁰ 15 AAC 125.321(d).

Child support under Rule 90.3 is calculated based on the adjusted annual income of the non-custodial parent.²¹ 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 and social security).²² 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."²³ 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.²⁴ This requires consideration of the best available information, including:²⁵

- (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. F's income. Based on Mr. F's testimony at the hearing, CSSD corrected its income calculations. CSSD's new calculation uses Mr. F's actual earnings for 2018 and adds his PFD and native dividends for a gross annual income of \$91,846.²⁶ Other than mandatory deductions for taxes, Social Security and unemployment insurance, Mr. F is not entitled to any deductions when calculating his support obligation for F.²⁷ Mr. F's other children are younger than F.²⁸

²¹ Civil Rule 90.3(a).

²² Civil Rule 90.3(a)(1).

²³ Civil Rule 90.3, Commentary III.E.

²⁴ *Benedixen v. Benedixen*, 962 P.2d 170, 172 (Alaska 1998).

²⁵ 15 AAC 125.050(c).

²⁶ See 15 AAC 125.050(e) (requiring CSSD to include PFDs and native dividends in calculation)

²⁷ Civil Rule 90.3, Commentary III.D.2.

²⁸ Civil Rule 90.3, Commentary III.D.2.

Entering Mr. F's income information into the CSSD's online child support calculator yields a 2018 adjusted annual income of \$71,215.84. This amount produces an annual child support payment of \$14,243.17, or \$1,187 per month for one child. Because this is an increase of more than \$86.55 from Mr. F's previous child support order, modification is warranted.

IV. Conclusion

Because Mr. F's new support obligation is an increase of more than 15% from his previous child support order, modification is warranted. Nevertheless, Mr. F met his burden of showing that his monthly child support obligation was calculated incorrectly. That obligation is modified through this decision and order.

V. Child Support Order

1. Q F is liable for child support in the amount of \$1,187 per month for 1 child, effective July 1, 2018 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated October 6, 2018 remain in full force and effect.

Dated: December 14, 2018

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.

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 3rd day of January, 2019.

By: Signed
Signature
Stephen C. Slotnick for 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.]

