

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

In the Matter of)	
)	
S M)	OAH No. 18-1181-CSS
_____)	Agency No. 001122545

DECISION AND ORDER

I. Introduction

Custodian of record K F appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on October 27, 2018. The modified order reduced S M’s child support obligation for his son, K, to \$187 per month.

Through the information produced during the hearing process, Ms. F showed that Mr. M earns significant income from seasonal work in the construction industry, and he has other sources of income. As a result, Mr. M’s child support obligation should have increased rather than decreased. Mr. M’s expected 2018 income from all sources results in a child support obligation of \$510 per month for one child. This shows a material change of circumstances, and the modified support order is therefore adjusted to reflect this amount, effective September 1, 2018 and ongoing.

II. Facts

A. Procedural History

Mr. M is the father of K, age 16. Mr. M lives in No Name. K lives in No Name with his older sister, Ms. F, who is the custodian of record. Ms. F exercises primary physical custody. Ms. F and her boyfriend, D D, are K’s co-guardians.

Mr. M’s ongoing monthly child support obligation for K was last reviewed in 2004, when CSSD set it at \$405 per month.¹ CSSD received Ms. F’s request for a modification review in early August 2018.² On August 10, 2018, it served Mr. M with a Notice of Petition for Modification of Administrative Support Order, ordering him to provide his income information.³ However, Mr. M did not respond or provide any information.

On October 27, 2018, CSSD issued a decision granting the modification request.⁴ The same day, it issued the Modified Administrative Child Support and Medical Support Order that

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3.
⁴ Exhibit 5.

is the subject of this appeal.⁵ Because CSSD did not have actual income or employment information showing Mr. M's wages, it calculated the modified support obligation based on imputed income from a part-time job (20 hours per week) at minimum wage (\$9.84 per hour), resulting in gross annual wages of \$10,233.60, plus the PFD and \$246 in native corporation dividends.⁶ This income reduced Mr. M's child support amount to \$187 per month, effective September 1, 2018.

Ms. F requested a hearing, asserting that Mr. M actually earns significant income in the construction industry.⁷ The hearing took place by telephone on December 12, 2018. It was audio-recorded. Ms. F represented herself, with assistance from D D. Ms. F and Mr. D both testified. Child Support Specialist Brandi Estes represented CSSD. Mr. M did not answer calls to his number of record or return a message left at that number. He received notice of the hearing, as evidenced by his signature on the green certified-mail return receipt card in the OAH file. The hearing therefore took place without his participation. All submitted documents were admitted to the record, which closed on December 24, 2018.⁸

B. Material Facts

Since at least 2015, Mr. M has worked seasonally for Employer A.⁹ He also worked for another employer in 2015 and 2016. During the construction off-season, he has collected unemployment benefits. According to information available to CSSD from the Alaska Department of Labor and Workforce Development, Mr. M's gross annual wages and unemployment income for the last three years are as follows:¹⁰

	<u>Gross wages</u>		<u>Unemployment Income</u>		<u>Total</u>
2015:	\$32,392.41	+	\$5,960	=	\$38,352.41
2016:	\$33,453.79	+	\$3,058	=	\$36,511.79
2017:	\$23,334.00	+	\$4,736	=	\$28,070.00

Over this three-year period, Mr. M's average wage and unemployment income totaled \$34,311.40.¹¹ The Department of Labor does not yet have complete information regarding Mr.

⁵ Exhibit 4.

⁶ See Exhibit 4, p. 6.

⁷ Exhibit 5.

⁸ The record remained open for ten days after the hearing, providing Mr. M an opportunity to show good cause for his failure to appear. He did not contact the Office of Administrative Hearings during this time.

⁹ Exhibit 6.

¹⁰ *Id.*

¹¹ $(\$38,352.41 + \$36,511.79 + \$28,070.00) / 3 \text{ years} = \$34,311.40.$

M's 2018 income. The record shows he earned \$12,259.50 from work for Employer A during the third quarter of the year, and his 2018 year-to-date unemployment income totaled \$5,462.¹² Though his income information for the fourth quarter of 2018 is not in the record, Mr. M continued to work for Employer A through the year and he likely earned significant income.

Since the summer of 2018, Ms. F and Mr. D have observed that Mr. M is working long hours. They often see him driving a large dump truck bearing the Employer A logo early in the day and into the evening. Mr. M likely requires a commercial driver's license for this work. He is most likely working overtime hours and earning Davis-Bacon wages because Employer A has a government contract for construction work on a hospital project.¹³

In addition to his wage and unemployment income, Mr. M received the 2018 PFD and native corporation dividends. His 2018 native corporation dividends totaled \$246.¹⁴

During the hearing, CSSD agreed that the modified child support order underestimated Mr. M's actual 2018 income, and it should be adjusted. Because of Mr. M's seasonal work and varying income each year, CSSD recommended adopting the three-year average of his wage and unemployment income as the best evidence of his expected 2018 income from those sources.

Ms. F and Mr. D concurred.

III. Discussion

As the person who filed the appeal, Ms. F has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order dated October 27, 2018 is incorrect.¹⁵ She met this burden.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁶ 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 \$405 per month, so a change of \$60.75 or more per month satisfies this standard.¹⁷ In addition, CSSD may grant a modification if three or

¹² Exhibit 6.

¹³ D testimony.

¹⁴ Exhibit 5, p. 8; Exhibit 8.

¹⁵ 15 AAC 05.030(h).

¹⁶ AS 25.27.190(e).

¹⁷ $\$405 \times 15\% = \60.75 .

more years have elapsed since the prior support order was issued.¹⁸ Mr. M's obligation for K was last reviewed fourteen years ago, so a modification is also justified by the passage of time.

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.¹⁹ Here, CSSD provided notice in August 2018, so the modification is effective as of September 1, 2018.

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.²⁰ For 2018 and ongoing, this determination is necessarily somewhat speculative because the relevant income figure includes expected future income.²¹ In addition, the calculation is challenging because Mr. M's annual income fluctuates from year to year due to his seasonal employment.

In such cases, Civil Rule 90.3 allows the calculation to be based on an average of the obligor's past income over several years.²² Here, the record includes income information covering the last three full years, 2015 through 2017. It shows that Mr. M's average combined wage and unemployment income is \$34,311.40. This is the best available evidence of his expected 2018 income from those sources, and it should be adopted.

After the hearing, CSSD submitted a proposed revised child support calculation that includes the above income determination, plus Mr. M's native corporation dividends and PFD income.²³ It results in expected 2018 gross income from all sources of \$36,157.40. After allowable deductions for matters such as federal income taxes and Social Security/Medicare, this income results in a support amount of \$510 for one child.²⁴ This reflects a material change of circumstances.

IV. Conclusion

Through the evidence presented in the hearing process, Ms. F showed that the modified child support order should be adjusted. CSSD's revised child support calculation is based on the

¹⁸ 15 AAC 125.321(b)(2)(C).

¹⁹ 15 AAC 125.321(d).

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

²¹ Civil Rule 90.3, Commentary, Section III.E. It also includes fourth quarter 2018 income that has not yet been reported to the Department of Labor and is not in the evidentiary record.

²² *Id.*

²³ Exhibit 8.

²⁴ *Id.*

best evidence of Mr. M's actual income and allowable deductions, and it should be adopted. Under Civil Rule 90.3(a), Mr. M's income from all sources results in a child support amount of \$510 per month, effective September 1, 2018 and ongoing. This amount was calculated under Civil Rule 90.3(a) without variance.

V. Child Support Order

- Mr. M is liable for child support for K in the amount of \$510 per month, effective September 1, 2018 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated October 27, 2018, remain in full force and effect.

DATED: December 31, 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 16th day of January, 2019.

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.]