

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

In the Matter of	)	
	)	
N P. U	)	OAH No. 18-1102-CSS
_____	)	Agency No. 001168351

**DECISION AND ORDER**

**I. Introduction**

N U appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 13, 2018. The modification increased his child support amount for his daughter, K, to \$674 per month.

Mr. U did not show that CSSD made a mistake and the child support order should be adjusted. He recently lost his job, but his current unemployment is most accurately seen as a temporary circumstance. He is likely to find new work at comparable wages in the near future, and CSSD correctly relied on his former wage income to determine his child support amount. Accordingly, the Modified Administrative Child Support and Medical Support Order dated October 13, 2018, is affirmed.

**II. Facts**

Mr. U and custodian of record D U are the parents of K, age 15.<sup>1</sup> Both parents live in a village. K regularly spends time with her father, but she spends more than 70% of her overnights with her mother.<sup>2</sup> Ms. U therefore exercises primary physical custody.

Mr. U has skills and work experience as an auto mechanic. Until sometime in September 2018, he was employed by a native corporation in a village as a manager, mechanic, and maintenance worker for its rental car fleet. He was terminated from this job in September 2018.<sup>3</sup> He is actively seeking new employment and believes he is likely to find a new job in the near future. To support himself in the interim, he earns limited income from self-employment as an auto mechanic. He also receives native corporation dividends and the PFD.

In 2014, CSSD set Mr. U's support amount for K at \$331 per month.<sup>4</sup> At that time, CSSD did not have information showing Mr. U's actual income or employment, so the calculation was based on imputed income from a full-time job paying minimum wage (then \$7.75 per hour), plus the PFD and native corporation dividends.<sup>5</sup> CSSD determined that his 2014 gross income from all

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<sup>1</sup> Exhibit 1.

<sup>2</sup> U testimony.

<sup>3</sup> However, information available to CSSD suggests the termination became effective in early October 2018. CSSD hearing representative statement.

<sup>4</sup> Exhibit 1.

<sup>5</sup> Exhibit 1, pp. 4-6.

sources totaled \$22,670.<sup>6</sup>

CSSD received a request for a modification review from Ms. U. On July 17, 2018, it served on each parent a Notice of Petition for Modification of Administrative Support Order.<sup>7</sup> However, CSSD did not receive income information from Mr. U.

On October 13, 2018, it issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal. The modification increased Mr. U's ongoing support amount to \$674 per month, effective August 1, 2018. CSSD calculated this obligation based in large part on Mr. U's expected 2018 annual wages (\$45,333.04), the PFD (\$1,600), and expected native corporation dividends (\$1,500).<sup>8</sup>

Mr. U appealed.<sup>9</sup> The hearing took place by telephone on December 10, 2018. Mr. U and Ms. U represented themselves and testified. Child Support Specialist Patrick Kase represented CSSD. The hearing was recorded. All submitted documents were admitted to the record, which closed at the end of the hearing.

Mr. U did not dispute the amount of his PFD or native corporation dividend income. He contested the wage determination and asserted that he cannot afford the new support amount. He also sought a change in the parties' custody arrangement and asserted that he regularly provides food and other necessities for K.

### **III. Discussion**

In a child support matter, the person who files the appeal bears the burden of proving that the support order requires adjustment.<sup>10</sup> Mr. U filed this appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated October 13, 2018 is incorrect.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>11</sup> 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 former obligation was \$331 per month, so a change of \$49.65 or more per

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<sup>6</sup> Exhibit 1, p. 6.

<sup>7</sup> Exhibit 2.

<sup>8</sup> Exhibit 3, p. 6-8.

<sup>9</sup> Exhibit 4.

<sup>10</sup> 15 AAC 05.030(h).

<sup>11</sup> AS 25.27.190(e).

month satisfies this standard.<sup>12</sup> Even when there is not a 15% change, however, CSSD may modify a support order if three or more years have elapsed since the order was issued or last modified.<sup>13</sup>

*A. Preliminary Issues*

At the outset of the hearing, Mr. U reported that he would like to change the parties' custody arrangement. He agreed that, in 2018, K has spent more than 70% of her overnights with her mother. Therefore, the current arrangement involves primary physical custody with Ms. U. As discussed during the hearing, this tribunal has no authority to order changes to the parties' custody practices. That issue cannot be resolved in this appeal.

Mr. U also argued that he regularly provides K with food and other necessities, pointing out that he is a responsible and caring father. To the extent this argument sought a credit for the value of in-kind contributions he has made, that issue also falls outside the scope of this appeal. Mr. U can contact his CSSD caseworker if he would like to discuss the separate review process that applies to such requests.<sup>14</sup>

*B. Modified Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.<sup>15</sup> A noncustodial parent's support amount is ordinarily calculated under Civil Rule 90.3(a) based on his or her total income from all sources, less applicable deductions, resulting in an adjusted annual income figure. The obligor-parent bears the burden of proving his or her income or earning capacity.<sup>16</sup> The goal of determining adjusted annual income is to arrive at an income figure reflective of economic reality.<sup>17</sup> In primary custody situations, the Civil Rule 90.3(a) formula sets the support amount for one child at 20% of the non-custodial parent's adjusted annual income.<sup>18</sup>

Mr. U's primary argument on appeal is that he recently lost his job and cannot afford the modified support amount. Regarding CSSD's 2018 wage income determination, he agreed he was earning gross annual wages of approximately \$45,333.04 at his former position. He also agreed he is likely to earn at least \$45,000 in his next job. He expressed optimism that a job will be available in the near future. Mr. U is pursuing at least one position in construction that could result in a significant wage increase. He is also talking with his former employer about jobs that may be

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<sup>12</sup> \$331 x 15% = \$49.65.

<sup>13</sup> 15 AAC 125.321(b)(2)(C).

<sup>14</sup> See 15 AAC 125.470.

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

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

<sup>17</sup> *Adrian v. Adrian*, 838 P.2d 808, 811 (Alaska 1992).

<sup>18</sup> Civil Rule 90.3(a)(1), (2).

available in other departments or subsidiaries. Thus, the primary question is not whether he will find new employment or earn at least \$45,000 in his next job, but rather *when* that will happen. From the evidence in the record, new employment is imminent and Mr. U's period of unemployment is likely to be short-term.

When it determines a parent's expected annual income, CSSD is to rely on the best available evidence. Among other information, this may include the parent's current income, income from the prior calendar year, partial wage information for periods of less than a year, wages from a prior job, and the parent's skills, training, and work history.<sup>19</sup>

Here, Mr. U was earning annual wages totaling \$45,333 in his former job. The record does not show his wages or income from prior years, so it is not clear whether Mr. U's income has historically fluctuated significantly from year to year, or whether he has earned roughly \$45,333 consistently. According to his former employer, he earned 2018 gross wages totaling \$35,500.54 before he was terminated.<sup>20</sup> He has also earned income from freelance auto mechanic work, though he did not quantify it during the hearing.

Given Mr. U's recent work history, skills, and prior wages, combined with the likelihood of new employment at the same or a higher annual wage, CSSD appropriately relied on his former wages as the best evidence of his 2018 and ongoing income from employment. Thus, it correctly determined that his wage determination should be \$45,333. After allowable deductions, Mr. U's combined sources of income result in a monthly support amount of \$674 for one child.

As CSSD pointed out, to justify a different income determination, a parent's recently 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.<sup>21</sup> The evidence in the record shows that Mr. U's earning potential has not permanently changed. Jobs are available in his area, which is not considered an economically distressed part of the state, and Mr. U is likely to find one quite soon.

Mr. U's involuntary job loss undoubtedly has created financial stress for him, and it may make it more difficult for him to stay current with his child support obligation while he seeks new employment. However, his circumstances are not considered unusual, and they do not show clear and convincing evidence that manifest injustice would result if the support amount is not varied.

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<sup>19</sup> 15 AAC 125.060(c).

<sup>20</sup> Exhibit 5.

<sup>21</sup> *Patch v. Patch*, 760 P.2d 526, 529–30 (Alaska 1988).

Mr. U owns his home and spends roughly \$600-\$700 per month for store-bought food; he relies heavily on traditional foods. He has other personal care expenses of \$150 per month, and he pays monthly utility bills averaging \$281 for electricity, natural gas, water, and trash service. He spends \$150 per month for cable tv, and \$330 per month for two cell phones – his own and K’s. He owns a truck that is not currently drivable and spends roughly \$600-\$700 per month for gas, auto insurance, or other transportation.

Though these expenses help explain his concerns about a budgetary shortfall while he is not working, they do not meet the high burden required for a hardship reduction under Civil Rule 90.3(c).

**IV. Conclusion**

Mr. U did not show that CSSD made a mistake when it calculated his modified support amount for K. It considered the best available evidence of his expected income from all sources and reasonably relied on his former wages as the best indicator of his expected ongoing wage income. Though his recent job loss and temporarily decreased income undoubtedly create budgetary pressures, Mr. U’s prospects for new employment are promising, and his finances should soon even out. If that does not happen despite Mr. U’s active search efforts, he may seek another modification review. However, the child support calculation should not be revised until he has secured employment and is earning a consistent income figure.

**V. Child Support Order**

- The Modified Administrative Child and Medical Support Order dated October 13, 2018, is affirmed and remains in full force and effect.

DATED: December 19, 2018.

*Signed* \_\_\_\_\_  
Kathryn A. Swiderski  
Administrative Law Judge

## 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 3rd day of January, 2019.

By: Signed  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge  
Title

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