

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

In the Matter of)	
)	
M E. U)	OAH No. 18-1138-CSS
_____)	Agency No. 001169624

DECISION AND ORDER

I. Introduction

M U 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, E, to \$1,443 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, including a deduction for the child support Mr. U pays in his older child's case, Mr. U's income results in a support amount of \$1,028 per month for E. 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 and N N are the parents of E, age 9. E lives in a city with Ms. N. Mr. U lives in City A. He also has an older son from a prior relationship. That child is thirteen.

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.

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 E in 2016, when it set the ongoing amount at \$698 per month.¹ CSSD received a request for a modification review from Ms. N in early July 2018. On July 12, 2018, it served notice of the petition for a modification on the parties.²

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.³ It adjusted Mr. U's child support amount to \$1,443, effective August 1, 2018 and ongoing. The same day, CSSD issued a modified child support order in Mr. U's case for his older child. Mr. U appealed both orders.⁴

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. N 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.⁵ The standard is preponderance of the evidence. He met this burden.

A parent is obligated both by statute and at common law to support his or her children.⁶ Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁷ 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 \$698 per month, so a support calculation that changes his obligation by \$104.70 or more is sufficient to modify his obligation.⁸

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 4.

⁴ Exhibit 5; *In re M D. U*, OAH No. 18-1339-CSS.

⁵ 15 AAC 05.030(h).

⁶ AS 25.20.030; *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987).

⁷ AS 25.27.190(e).

⁸ \$698 x 15% = \$104.70.

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.⁹ 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.¹⁰ Deductions are also available for obligations including: child support payments made pursuant to a child support order for children from prior relationships; and, 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).¹¹

At the time CSSD calculated the modified child support amount in this case, it was unaware of Mr. U's income from the VA and from coaching. The calculation included his gross annual wages from Employer A, which CSSD determined were \$84,790.37, the PFD, and an additional \$63,970.40 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 \$97,279.17.¹²

Mr. U is entitled to deductions for the child support he is ordered to pay in his older son's case, as well as his cost of providing health insurance coverage for himself. His support amount for the older child was adjusted to \$1,285 per month in a decision issued January 25, 2019.¹³ 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.¹⁴

⁹ 15 AAC 125.321(d).

¹⁰ Civil Rule 90.3(a)(1)(A).

¹¹ Civil Rule 90.3(a)(1)(B)-(F).

¹² Attachment A.

¹³ *In re M U IV*, OAH No. 18-1139-CSS.

¹⁴ $\$9.18 + \$.61 = \$9.79$ 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.

As shown on Attachment A, Mr. U's adjusted annual income after all applicable deductions is \$61,658.13. This results in a monthly support amount of \$1,028 for E. 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 E, 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 E.¹⁵ This is not a material change, so the 2018 amount remains in effect.¹⁶

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 obligations.¹⁷ 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 E should be adjusted to \$1,028 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 E in the amount of \$1,028 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.

Signed _____

Kathryn A. Swiderski
Administrative Law Judge

¹⁵ Attachment B (\$1,028 - \$991 = \$37).

¹⁶ 15 AAC 125.321(b).

¹⁷ *Patch v. Patch*, 760 P.2d 526, 529–30 (Alaska 1988).

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
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.]