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

IN THE MATTER OF:)	
)	
D. R. M.)	
)	OAH No. 07-0726-CSS
)	CSSD Case No. 001117240

DECISION AND ORDER

I. Introduction

This case concerns the obligation of D. R. M. for the support of J. M. (DOB 00/00/99) and D. M., Jr. (DOB 00/00/03). The custodian of record is A. N.

The Child Support Services Division established Mr. M.'s support obligation and issued a child support order in the amount of \$195 per month, dated November 4, 2003. Ms. N. filed a request for modification of the order dated September 29, 2007. On December 10, 2007, the division issued a modified administrative child support order providing for modified ongoing support in the amount of \$498 per month, effective November 1, 2007.

Mr. M. filed an appeal and requested an administrative hearing and the case was referred to the Office of Administrative Hearings. The assigned administrative law judge conducted a telephonic hearing on January 22, 2008. Mr. M. and Ms. N. participated, and David Peltier represented the division.

Based on the testimony at the hearing and the evidence in the record, the request for modification is denied.

II. Facts

D. M. is 30; he lives in Kodiak. His primary work experience is in the area of accounts receivable and health care office work. At the time his child support obligation was established in 2003, Mr. M. had recently moved to Kodiak and was working part time at a health clinic, earning about \$9 per hour. He subsequently got full time work at the clinic for a short period of time. He then joined the National Guard, but due to an injury in boot camp was unable to continue and he returned to Kodiak.

In 2004, after he returned to Kodiak, Mr. M. got a job as a patient services representative for the Kodiak Area Native Association (KANA). In that capacity he

processed patient admissions. He lost his job in June, 2007, as a result of disagreements with his supervisor. After he lost his job, Mr. M.'s primary source of income was unemployment compensation benefits, which expired in December, 2007.

In the fall of 2007, Mr. M. started classes at Kodiak College. He is presently living over his father's shop and taking 9 credit hours at the college, with tuition paid by his parents. Mr. M. has about 60 credits total and is working towards an associate's degree. At the end of the current semester he will need about 15 credits to complete his associate's degree in business administration, or about 21 credits to complete his associate's degree in accounting. He anticipates completing school in 2009.

Mr. M. is taking evening courses and could continue to take classes even if working. He has applied for a number of jobs, and most recently interviewed for a full time position with the Alaska Department of Fish and Game. He has also applied for part time work that would pay \$10-13 per hour.

A. N. lives with the children and another adult (with a baby sister) in No Name City. Since June, 2007, Ms. N. has been employed full time as a coding supervisor at the local hospital. She earns \$33 per hour. The household rent is \$848 per month, including heat but not including electricity.

III. Discussion

For two children, a parent's presumptive support obligation is 27% of that parent's adjusted annual income.¹ Where the parent is voluntarily unemployed or underemployed, the parent's presumptive support obligation is based upon potential income.²

Mr. M. does not dispute the division's calculation as a measure of his full-time earning potential. He contends, however, that because he lost his job and is currently unemployed, his support obligation should not be modified at this time.

In this case, Mr. M.'s current income is zero. The preponderance of the evidence is that he is not voluntarily and unreasonably unemployed: he was found eligible for unemployment compensation; he has engaged in a reasonably diligent job search by submitting a number of job applications and interviewing for available positions. After

¹⁵ AAC 125.070(a). See Civil Rule 90.3(a)(2)(B).

² 15 AAC 125.020(b). *See* Civil Rule 90.3(a)(4) ("voluntarily *and unreasonably...*unemployed or underemployed") [emphasis added].

he became unemployed, Mr. M. pursued educational goals that should in the long run provide a boost to his employment and financial prospects and thus benefit his children.³ Mr. M. found only part-time work when he first moved to Kodiak, and when he again finds work it may only be on a part-time basis at more or less the same income that he had in 2003 when the current order was issued; typically, students do not work full time.

Mr. M.'s current support obligation reflects the amount that he might reasonably be expected to earn in full time employment at the minimum wage, or part-time at his potential earning capacity. Ms. N. works full time and in light of her income and expenses there is no indication that failure to increase the child support amount at this time would have an adverse impact on the children in the short term. Because Mr. M. has continued to engage in a reasonably diligent job search while maintaining student status, the facts of the case do not support an upward modification of his child support order.

IV. Conclusion

Mr. M.'s actual income has not increased and he is not voluntarily and unreasonably unemployed. There has not been a showing of a material change in circumstances that warrants an increase in the current support order. Therefore, Ms. N.'s request for modification should be denied at this time.

ORDER

- 1. The request for modification is DENIED.
- 2. D. R. M.'s child support obligation remains \$195 per month for two children.
- 3. The division should review this case in no more than six months to determine whether Mr. M. has continued to engage in a reasonably diligent job search.

DATED: March 18, 2008.

Signed
Andrew M. Hemenway
Administrative Law Judge

³ See 15 AAC 125.060(c).

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 4th day of April, 2008.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]