



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.<sup>1</sup> Where the parent is voluntarily unemployed or underemployed, the parent's presumptive support obligation is based upon potential income.<sup>2</sup>

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

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<sup>1</sup> 15 AAC 125.070(a). See Civil Rule 90.3(a)(2)(B).

<sup>2</sup> 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.<sup>3</sup> 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

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<sup>3</sup> 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.]