

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

In the Matter of	)	
	)	
D. L. B.	)	OAH No. 23-0598-CSS
_____	)	

DECISION AND ORDER

I. Introduction

Custodian D. B. appeals a Modified Administrative Child Support Order issued by Child Support Services (Division) in August 2023. The modified order decreased D. N.'s monthly child support obligation for his son B., the child he shares with Ms. B., from \$1,100 to \$73. Ms. B. objects and asserts that the reduction is inappropriate as it was calculated based on inaccurate information.

A telephonic formal hearing was held over two dates, October 23, and November 1, 2023. Ms. B. showed by a preponderance of the evidence that Mr. N.'s support obligation was calculated incorrectly as he does not live in a distressed community, and he has the education, training, and ability to be gainfully employed outside the home. Therefore, through January 1, 2024, his support will be calculated based on two 8-hour days of work per week, resulting in a monthly support obligation of \$212. Beginning February 1, 2024, and onward, Mr. N.'s support obligation will be based on a full-time position paying minimum wage, resulting in a monthly obligation of \$303 for B.

II. Facts

A. Material Facts¹

Mr. N. and Ms. B. are the biological parents of 13-year-old B. Ms. B. testified that when she was pregnant with their son, she was working full time and going to school. She and Mr. N. cohabitated briefly, then separated shortly after B.'s birth. Ms. B. hired an in-home caregiver for B. and returned to work.

Ms. B. is currently employed full time as an accountant and shares a home with B. in City A. Her monthly adjusted income is approximately \$5576. Monthly household

¹ Material facts are based on the testimony presented at the hearing by Mr. N. and Ms. B., as well as the submitted written record.

expenses include \$1040 for her mortgage, an average of \$510 for utilities, \$600 for food, \$325 for car payments, \$625 for gas/vehicle maintenance/insurance, \$70 for health insurance, and \$350 in entertainment/personal care/B.'s school fees, totaling an average of \$3,520. Subtracting these expenses from her monthly income results in an approximate surplus of \$2,056.

Mr. N. also lives in City A. He shares a home with his girlfriend and their toddler. Since graduating from high school Mr. N. has predominantly worked for employers requiring skilled manual labor, including Company A. and construction companies. Over the summer he held a temporary job in construction in his home village of Village A., but since 2021 has been largely unemployed. He attributed this to the COVID pandemic, which halted building projects and caused Company A. to lay off workers, and the birth of his daughter.

While his girlfriend finishes her nursing degree, Mr. N. is at home taking care of their daughter. Neither adult is earning any income. His girlfriend's family is temporarily paying for their housing and utilities, and he believed his partner pays for groceries with food stamps. He testified that at present there are no other available childcare options for their daughter besides himself. However, Mr. N. thought that his girlfriend would be graduating from her nursing program within the next few months. At that point he expected their financial situation to change, as presumably she will begin working in her field.

Mr. N. urged that his monthly support obligation remain as set at \$73 or be lowered. He did not think he could work a job on the weekends or evenings, as those are the only times he connects with his girlfriend, and because he is often exhausted after caring for their child. He also argued that he supports B. by oftentimes having his son in his care. Ms. B. disputed this, however, asserting that B. does spend overnights with his father, but not with regularity. She testified that historically there have been many months when Mr. N. was not available to take B., including, for example, this past summer when he was living in Village A.

B. Procedural History

On July 19, 2019, the Division issued an Administrative Child and Medical Support Order setting Mr. N.'s monthly support obligation for B. at \$1,100 per month based on

primary custody, effective August 1, 2019 and ongoing.² It was based on his most recent quarterly earnings as reported to the Department of Labor, augmented by the Permanent Fund Dividend and Company A. shares.³ On July 10, 2023, Mr. N. requested a modification review of this calculation.⁴ He did not submit any of the requested documentation regarding his income, so the Division relied on information from other sources in determining that he was unemployed and residing in Village A. This resulted in a reduction of his monthly child support obligation to \$73.⁵

In September, 2023, Ms. B. submitted an appeal of the reduced obligation, and a telephonic formal hearing was held over two days, October 23, and November 1, 2023. Ms. B. and Mr. N. both participated and represented themselves. The Child Support Services Division was represented by Child Support Specialist Shawn Pattison. The hearing was recorded. The record closed on November 1, 2023.

III. Discussion

A. *Child support modification under Civil Rule 90.3(a)*

In a child support matter, the person who files the appeal has the burden of proving that the Division's order is incorrect.⁶ Ms. B. filed this appeal, so she must prove by a preponderance of the evidence that the August 28, 2023 Modified Administrative Child Support Order is incorrect.

A parent is obligated both by statute and at common law to support his or her children.⁷ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her total income from all sources minus mandatory deductions such as support for prior children, federal income taxes, and Social Security/Medicare withholdings.⁸ Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁹ If the newly calculated child support amount is more

² Ex. 1.

³ *Id.*

⁴ Ex. 5.

⁵ *Id.*

⁶ 15 AAC 05.030(h).

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

⁸ Civil Rule 90.3(a); *see also Kowalski v. Kowalski*, 806 P.2d 1368, 1370 (Alaska 1991).

⁹ AS 25.27.190(e).

than a 15% change from the previous order, Civil Rule 90.3(h) assumes a “material change in circumstances” has been established.

Mr. N.’s child support was previously set at \$1,100 per month, so a support calculation that changes his obligation by \$165 or more would be sufficient to modify his child support obligation.¹⁰ When the newly calculated amount is less than a 15% change, the Division still may grant the modification if three or more years have elapsed since the prior support order was issued.¹¹ Both conditions are met in the present case.

B. Mr. N.’s support obligation as the non-custodial parent under the primary custody formula

In response to Mr. N.’s July 2023 request for a modification review, the Division recalculated Mr. N.’s support obligation on the understanding that he had relocated from City A. to Village A. Imagining that he was living in a distressed community with limited employment options, the Division imputed no wages. Mr. N.’s income was based solely on the Permanent Fund Dividend and his shares in the Company A. company. This resulted in a 2023 adjusted annual income of \$4,444. After a deduction for FICA, his adjusted annual income totaled \$4,379.56.¹² This was then multiplied by 20%, the requisite rate for the calculation of the non-custodial parent’s support for one child.¹³ Under this calculation, Mr. N.’s monthly child support obligation came to \$73 for one child.¹⁴

At the hearing, Mr. N. acknowledged that he only worked briefly in Village A. over the summer when he and his partner temporarily separated. They reconciled and he returned to their home in City A., the city where he has lived for many years.

C. Voluntary and unreasonable unemployment

Under Civil Rule 90.3, support obligations are to be set based on total income from all sources. However, when a parent is found to be voluntarily and unreasonably unemployed or underemployed, his or her child support obligation may be calculated by imputing the parent’s “potential income,” which is based on his or her “work history, qualifications or job opportunities.”¹⁵ Income is only imputed when it has been determined

¹⁰ \$1,100 x 15% = \$165.

¹¹ 15 AAC 125.321(b)(2)(C).

¹² Ex. 5.

¹³ Civil Rule 90.3(a)(2)(A).

¹⁴ Ex. 5.

¹⁵ Civil Rule 90.3(a)(4); 15 AAC 125.060.

that the obligor has engaged in voluntary conduct “for the purpose of becoming or remaining unemployed [or underemployed].”¹⁶ The Alaska Supreme Court has explained that “the relevant inquiry under Civil Rule 90.3 is ... whether a parent’s current situation and earnings reflects a voluntary and unreasonable decision to earn less than the parent is capable of earning.”¹⁷ Opting to not work out of the home is not conclusive proof of voluntary and unreasonable unemployment. Other factors to be considered are a parent’s education, training, occupation, health, and the extent to which the parent is participating in a reasonably diligent work search.¹⁸

Mr. N. is a 35-year-old man with no known disabilities that would prevent him from holding compensated employment. He has experience in positions requiring manual labor skills, including construction and house weatherization, and he acknowledged that it was a possibility that Company A. might rehire him. However, Mr. N. was adamant that he could not hold any job at this point, even part time, as he is completely preoccupied caring for his daughter.

Mr. N. is admittedly tasked with the very significant responsibility of child rearing. It is commendable that he is taking an active role in his child’s life, and by caring for their daughter, he is allowing his girlfriend to finish her degree program. But Mr. N. owes a duty of support not only to his daughter, but also to B. While offering to have B. in his home for overnight visits is undoubtably helpful, the ongoing expenses of raising their teenage son should not be borne by Ms. B. alone.

Mr. N. is not engaged in a work search, as he is convinced that it would not be feasible due to his limited availability. However, an employment website for City A. and the surrounding area currently has dozens of part time listings for general laborers, construction workers, custodians, and shuttle drivers.¹⁹ There is a posting handyman position paying \$30 - \$50/hour with the flexibility to set one’s own schedule. A listing for a school bus driver that pays \$27/hour also offers employees childcare for kids 2-6 years old. Mr. N. cares for his daughter throughout the week, but he is available to work in the mornings, evenings, and weekends.

¹⁶ *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

¹⁷ *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

¹⁸ 15 AAC 125.060(a).

¹⁹ Indeed, available at <https://www.indeed.com>.

D. Recalculated child support

The Division calculated Mr. N.'s child support obligation of \$73 per month under the mistaken impression that he was living in a distressed community. In fact, Mr. N.'s home is in City A., where there is no shortage of jobs, including positions that are part time or offer a flexible schedule. Mr. N. did not testify about any mental or physical restrictions that would prevent him from holding a paying position outside the home. He also has more abilities than the average entry level applicant. Regarding his time restrictions, Mr. N. takes care of his daughter during the day, but this responsibility can be shared with his girlfriend outside of classroom hours.

Therefore, from August 1, 2023 (the effective date of this order) through January 31, 2024, it is appropriate to impute wages for Mr. N. based on his working 15 hours a week at a job that pays \$10.85 (minimum wage).²⁰ Augmenting this figure by \$3,284 for the 2022 Permanent Fund Dividend and \$1,822 for his Company A. shares results in a total gross income of \$13,569. After a monthly allowable deduction of \$71.81 for Federal income tax, FICA and unemployment insurance, his adjusted annual income totals \$12,707.28. From this amount 20% is marked as available for child support as per Civil Rule 90.3, which is \$2,541.46 annually, or \$212 per month.²¹

Beginning February 1, 2024, and onward, Mr. N. is expected to have organized his life such that childcare is secured for his daughter, as his girlfriend will graduate from her program by December 2023 or thereabouts. His imputed income will be based on his working 40 hours a week for 52 weeks of the year and earning \$10.85 an hour, resulting in an annual gross income of \$25,702. After adding in a 2023 PFD in the amount of \$1,312, Company A. shares totaling \$1,822, and subtracting a monthly \$625 self-sufficiency reserve, his adjusted annual income becomes \$18,202. The 20% allocated for child support is \$3,640.40 annually, or \$303 per month.²²

Mr. N.'s support obligation is based on minimum wage employment, although he has a skill set that would easily qualify him for jobs that pay significantly more. This is due to

²⁰ There are 52 weeks in a year. Accordingly, his gross annual income is calculated as follows: 15 hours x \$10.85 (minimum wage) x 52 (weeks in a year) = \$8,463.

²¹ As calculated using the State of Alaska Child Support Calculator, available at [CASSD Web Applications \(state.ak.us\)](https://cassd.ak.us).

²² *Id.*

the expectation that in the coming weeks he will need to be hired quickly, likely for an entry level position. Mr. N. will need to begin looking for a better compensated position very soon thereafter, given that he has even more financial responsibilities with the birth of his daughter. When he secures a higher paying position, he must report this change to the Division. Additionally, either party may request another modification review at any time.

IV. Conclusion

Mr. N. is living in City A., which is not a distressed community. He is voluntarily unemployed. From August 1, 2023, through January 31, 2024 his potential income should be calculated as that of an individual working part time (15 hours per week, 52 weeks a year) and making minimum wage (\$10.85) an hour. Beginning February 1, 2024, and ongoing, his potential income should be calculated as that of an individual working full time (40 hours per week, 52 weeks a year) and making minimum wage (\$10.85) an hour.

V. Child Support Order

1. D. N. is liable for child support in the amount of per \$212 month for one child effective August 1, 2023, through January 31, 2024, based on a primary custody calculation.
2. D. N. is liable for child support in the amount of \$303 per month for one child effective February 1, 2024 and ongoing based on a primary custody calculation.
3. All other terms of the Modified Administrative Child Support Order dated August 28, 2023, remain in full force and effect.

Dated: November 13, 2023

Signed

Danika B. Swanson
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 within 30 days after the date of this decision.

DATED November 29, 2023.

By: Signed
Danika B. Swanson
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]