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

In the Matter of	)	
	)	
U.T	)	OAH No. 21-2428-CSS
	)	

DECISION AND ORDER

I. Introduction

S.S, the biological father and custodial parent of V, L, and W, appeals a Decision on Request for Modification Review issued by the Child Support Services Division (CSSD) on September 28, 2021. The order denied the request of U.T, the biological mother, to modify a 2016 support order setting her monthly child support obligation at $327 for three children. Ms. T asserted unusual circumstances and financial hardship but failed to timely provide to the Division proof of income.

Mr. S appealed, claiming the monetary value of shares Ms. T holds in a Native corporation had recently increased, and therefore she should be able to pay more in child support, not less. Through testimony at the hearing. he proved by a preponderance of the evidence that the shares had increased in value. However, it was also established that Ms. T's 2016 support obligation had been calculated based on imputed wages from a part-time position paying minimum wage. Ms. T testified credibly regarding current significant health impediments preventing her from being able to work at all.

Therefore, Mr. S's request for a reevaluation of the value of Ms. T's stock is granted. But, in light of Ms. T's current health situation, her child support obligation is recalculated based solely on the increased value of her Native corporation dividends and augmented by the Permanent Fund Dividend, but without imputed wages from employment, resulting in a child support obligation for three children of $238 per month based on a primary custody formula under Civil Rule 90.3.

II. Facts

A. Material facts[1]

[1] The material facts are based on testimony presented at the hearing, as well as information submitted into the record.

S.S and U.T are the biological parents of V, L and W, ages 16, 13 and 10, respectively. The children live with their father and his wife and two children in City A, Alaska.

Their mother, Ms. T, has lived in Town B for many years. She worked full time at a local pull tab store until her mother was diagnosed with cancer. She slowly reduced her hours at the tab store as her mother needed an increasing amount of care. After her mother passed away in 2019, Ms. T described sliding more deeply into significant depression. By 2021 she was homeless, her health deteriorating. In September she suffered liver, kidney and heart failure. She was medevacked from Town B to Anchorage for immediate medical attention and was revived. She is currently being housed by a cousin in Anchorage, and is waiting for an appointment with a liver specialist with the Hospital A (Hospital A). Additional testing will indicate if dialysis is needed. She acknowledges that her survival depends on her achieving sobriety. Ms. T also suffers from severe anxiety, which is exacerbated by being in public and around people.

Ms. T asserts that given the considerable mental and physical health issues she is facing right now she is not in a position to work, and asks that her child support obligation be reduced to zero. She acknowledged that her Native dividend checks seemed larger as of late, but she assumed that was due to COVID-19 relief monies. A representative from the Native Corporation A participated in the hearing to clarify the situation. She testified under oath that Ms. T's shares have increased in value as one of her relatives passed away, the person's estate was recently settled, and his or her shares have been distributed to the next of kin.

Mr. S testified to working 70-hour work weeks to support his family of seven. He submitted an expense worksheet showing monthly household expenses of over $4500 a month. He is the sole financial provider for his family.

B. Procedural history

The Division received an application for child support services from Mr. S in November 2015.[2] In January 2016 the Division issued an Administrative Child Support and Medical Support Order setting Ms. T's monthly support obligation for three children at $327 based on projected 2016 income from a part-time job paying Alaskan minimum wage,

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[2] Ex. 1.

augmented by the Permanent Fund Dividend, Native dividends, and reduced by appropriate deductions.[3]

In May 2021 the Division received a written application from Ms. T soliciting an "adjustment of child support," which was processed in July 2021.[4] The Division denied the modification request in September 2021. Mr. S appealed, and a hearing was held over the course of three dates, November 15, December 2 and December 16, 2021. The record closed on December 16, 2021.

III. Discussion

A. Legal framework for child support modifications

In a child support matter, the person who files the appeal has the burden of proving that the Division's decision is incorrect.[5] Mr. S filed this appeal, so he must prove by a preponderance of the evidence that the Decision on Request for Modification Review issued on September 28, 2021 incorrectly denied Ms. T's modification request instead of increasing her monthly support obligation due to the appreciation of her Native dividends.

A parent is obligated both by statute and at common law to support his or her children.[6] 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 federal income taxes, and Social Security/Medicare withholdings.[7] Child support orders may be modified upon a showing of "good cause and material change in circumstances."[8] 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.

B. Ms. T's support obligation as the non-custodial parent under the primary custody formula

Prior to reevaluating Ms. T's support obligation, the Division solicited income information from both parties. Ms. T did not respond. There were no employer reported

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3 *Id.*
4 Ex. 2.
5 15 AAC 05.030(h).
6 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.
7 Civil Rule 90.3(a); *see also Kowalski v. Kowalski*, 806 P.2d 1368, 1370 (Alaska 1991).
8 AS 25.27.190(e).

wages for Ms. T in the Alaska Department of Labor database since 2018, nor any prior or pending claims for Unemployment Insurance Benefits (UIB). Without updated information regarding her work history, the Division calculated her support obligation as it did in 2016, by basing her annual income on imputed wages from a part time minimum wage job, and adding in the PFD and the value of her Native dividends.[9] The result did not represent the requisite 15% change from the current support obligation, so no "material change in circumstances" was established, the request for a modification was denied, and the monthly obligation remained as set at $327 for three children.[10]

At the hearing, however, a representative from the Native Corporation A confirmed Mr. S's assertion that Ms. T's Native dividends had appreciated in value. The Division submitted into the record an updated calculation of Ms. T's support obligation based on an imputed annual income of $10,753.60 from a part-time job paying Alaska minimum wage ($10.34), augmented by $7,548 - her 2021 Native corporation dividend payments - and a PFD in the amount of $1,114. Subtracting standard monthly deductions for federal income tax, Social Security, and unemployment insurance resulted in an annual adjusted income of $17,852.72, or $491 per month for three children.[11]

This would be an appropriate calculation of Ms. T's support obligation for her children V, L and W if her emotional and physical health allowed her to hold a part-time job. But she credibly testified about current health complications that include multiple organ failures, depression, anxiety, and alcohol addiction. Previously homeless in Town B, she recently relocated to Anchorage by way of an emergency medevac flight, and is staying as a guest with a cousin. In the coming weeks she must triage with ANMC health care providers to address her panoply of life-threatening health issues. Realistically, these current health issues prevent her from being able to work even part-time hours. It is presumed that in the coming months she will receive the care and treatment she needs to stabilize her health and become capable of returning to the workforce and supporting her children. Right now, however, her health issues are too grave and her comprehensive health treatment plan too indeterminate to include imputed income from employment.

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9 The Division previously obtained a default judgment for Ms. T's Alaska Native Claims Settlement Act benefits and PFD through Superior Court case 3DI-16-00000CI.

10 Ex. 5.

11 Ex. 7.

Given the non-custodial parent's current situation, the Division submitted into the record a calculation of Ms. T's support obligation based not on wages, but rather just the current value of Ms. T's Native corporation dividends, $7,548, and a PFD in the amount of $1,114. There are no standard monthly deductions for such a limited income. This results in an adjusted income of $8,662, or $238 per month for three children.[12]

IV. Conclusion

Mr. S objected to a downward modification of Ms. T's support obligation. He expressed frustration with what seemingly has been years of her inability to meaningfully contribute financially to the support of their children. It is acknowledged that he has had to shoulder this responsibility almost entirely himself, in additional to providing for his wife and two younger children. It is only because of the exceptional severity of Ms. T's current health issues that she is not being imputed wages from a job. As an attempt at equity, however, it is determined that there is good cause to make the effective date of this downward modification January 1, 2022, not sooner. This will ensure that Ms. T will not be credited for higher support payments made in months past, resulting in a period when Mr. S's family doesn't receive a support payment at all. Another modification request would be appropriate once Ms. T's medical status has stabilized and she is again capable of working.

V. Child Support Order

1. U.T is liable for child support in the amount of $238 per month for three children effective January 1, 2022 and ongoing.
2. All other terms of the Administrative Child Support and Medical Support Order dated January 27, 2016 remain in full force and effect.

Dated: December 27, 2021

Signed

Danika B. Swanson
Administrative Law Judge

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12 Ex. 7.

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 this 12th day of January, 2022.

By: *Signed*
Danika 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.]