

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

IN THE MATTER OF:	)	
	)	
C L. J	)	
	)	OAH No. 08-0198-CSS
_____	)	CSSD No. 001053980

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of C L. J for the support of B S (DOB 00/00/94). The custodian of record is C Z.

The Child Support Services Division issued an administrative child support order in 1995 in the amount of \$493 per month.<sup>1</sup> On December 7, 2007, Mr. J filed a request for modification of the order.<sup>2</sup> The division denied the request and Mr. J filed an appeal. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on May 8, 2008. Mr. J participated. Ms. Z was notified of the hearing by certified mail but did not contact the Office of Administrative Hearings and she did not participate. A supplemental hearing was conducted on August 13, 2008; Mrs. Z participated, but Mr. J was not available at his telephone number of record and did not participate. David Peltier represented the division at both hearings.

Because Mr. J did not present evidence that his child support obligation has changed by 15% or more, the denial of modified review is affirmed.

**II. Facts**

C J has three children from two different relationships. B is his oldest child. His child support obligation for B has been \$493 per month since 1995, pursuant to an administrative support order.

Mr. J has two younger children from a marriage that was terminated by divorce; Mr. J was ordered to pay \$996 per month as child support for the two younger children in a court order issued on October 1, 2005. The child support division has recommended

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<sup>1</sup> Ex. 1.

<sup>2</sup> Ex. 2.

that the court reduce that order to \$609 per month, based on Mr. J's actual income in 2007 with no credit for his prior child.<sup>3</sup>

Mr. J is presently married. His household consists of himself, his wife, and her two children. Mr. J's wife works part time.

Mr. J is a heavy equipment operator and a member of the union. His earning capacity in 2005 in that occupation was at least \$66,924.<sup>4</sup> He incurred a disabling on the job injury in February 2005, and was unable to return to his usual and customary employment. His income in 2005 was \$18,386 in wages plus \$39,856 in workers' compensation, \$592 in unemployment compensation, and an \$846 Alaska Permanent Fund dividend, for total income of \$59,680.<sup>5</sup> In 2006, Mr. J received \$38,400 in workers' compensation,<sup>6</sup> \$3,060.94 in wages, and his Alaska Permanent Fund dividend of \$1,106.96, for total income of \$42,567.90.<sup>7</sup> In 2007, Mr. J received \$25,600 in workers' compensation<sup>8</sup> and his Alaska Permanent Fund dividend of \$1,654, for total income of \$29,638.

Mr. J prevailed upon his treating physician to release him to return to work in late August 2007, anticipating that he would be rehired by his former employer. However, that job did not come through. Mr. J is a union member who can be fined or lose his position on the union hire list if he accepts non-union employment. He was unable to find work immediately after his release by his physician, and during the winter construction work was very slow. Mr. J is not sure when he will be able to return to work in his former occupation as a heavy equipment operator.

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<sup>3</sup> Ex. 9, p. 2.

<sup>4</sup> Mr. J's workers' compensation benefit indicates weekly income of at least \$1,287, assuming for dependents, based on the 2005 rate table (available online, accessed July 7, 2008). A 1995 child support order of \$993, assuming credit for one prior child and standard deductions, reflects total income in the neighborhood of \$65,000. Mr. J's total wages of \$18,386 in 2005 are presumed to include more than the amount earned as his regular wages during the short period he was employed.

<sup>5</sup> Ex. 4, p. 4.

<sup>6</sup> Ex. 4, p. 2. This is equivalent to 45.28 weeks, at the rate of \$848 per week. The division's affidavit suggests that Mr. J received payments for 52 weeks in 2006, equivalent to \$44,096. See Ex. 9, p. 2.

<sup>7</sup> Ex. 4, p. 12.

<sup>8</sup> Ex. 4, p. 1. This is equivalent to 30.18 weeks, at the rate of \$848 per week. The division's affidavit suggests that Mr. J received payments for 33 weeks in 2007, equivalent to \$27,984. See Ex. 9, p. 2.

## II. Discussion

When the child support obligation as determined under 15 AAC 125.070 and Civil Rule 90.3 changes by an amount greater than 15% of the existing order, the existing order may be modified.<sup>9</sup> An ongoing support obligation is determined based on “the total annual income that the parent is likely to earn or receive when the child support is to be paid,” using the best available information.<sup>10</sup>

The division looks to a variety of sources to predict future income.<sup>11</sup> In considering modification of the judicial support order for Mr. J’s two younger children, the division relied on Mr. J’s income from the previous calendar year, 2007, which is generally a reasonable method for determining likely income in the future.<sup>12</sup> Mr. J’s 2007 earnings were similar to what he might have been expected to earn in 2008 if he had returned to work immediately at a relatively low wage of \$10-\$12 per hour, rather than waiting for an opening as a heavy equipment operator. Because there is no way to predict when Mr. J will find employment at the high wages he earned before he was injured, his 2007 income is thus a reasonable estimate of the amount he might be expected to earn in 2008, at least until he finds work as a heavy equipment operator. At that income level, however, Mr. J’s child support obligation would be \$451 per month,<sup>13</sup> which is less than a 15% change from his existing support obligation.

## IV. Conclusion

Mr. J did not show by a preponderance of the evidence that the division’s denial of modification review was erroneous, because he did not present evidence of that his presumptive support obligation has changed by more than 15% from the existing order.

### ORDER

The denial of modification review is AFFIRMED.

DATED: September 17, 2008

*Signed* \_\_\_\_\_  
Andrew M. Hemenway  
Administrative Law Judge

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<sup>9</sup> 15 AAC 125.321(b)(1).

<sup>10</sup> 15 AAC 125.050(c).

<sup>11</sup> See 15 AAC 125.050(c)(1)-(9).

<sup>12</sup> 15 AAC 125.050(c)(2).

<sup>13</sup> Ex. 11.

## 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 6<sup>th</sup> day of October, 2008.

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

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