

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

IN THE MATTER OF )  
 )  
 M. J., JR. ) Case No. OAH-08-0574-CSS  
 ) CSSD Case No. 001126410  
\_\_\_\_\_)

**DECISION & ORDER**

**I. Introduction**

The obligor, M. J., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on October 8, 2008. Mr. J. appeared by telephone at a hearing on January 12, 2009, as did the custodian, X. S. Andrew Rawls represented CSSD by telephone. The child is A. S. (DOB 00/00/02). Mr. J.'s child support obligation is modified to \$341 per month for one child effective July 1, 2008.

**II. Facts**

Mr. J. is from No Name Village, but he has very recently moved to No Name City. In No Name City, Mr. J. lives with his fiancée, their two children, and his fiancée's three children from a previous relationship.

Mr. J. has a history of working seasonal and temporary jobs as they become available. In an administrative child support Decision and Order issued on November 5, 2007, the administrative law judge found that Mr. J.'s average gross income over a three year period was \$14,179.51.<sup>1</sup> Based on that amount of income, support had been set at \$211 per month for one child. CSSD stated that according to the Department of Labor, in the period starting with the fourth quarter of 2007 through the third quarter of 2008, Mr. J. earned wages of \$19,253.26 and unemployment benefits of \$2,522.00. Mr. J. testified that he has not completed his 2008 tax return and he was not sure how much he earned in 2008, but he estimated he might have earned about \$17,000 working for K. Construction, and that he earned some additional income working evenings at bingo.

Mr. J.'s fiancée does not work, although it appears that in the past she has earned \$600 per month from working at part-time jobs.<sup>2</sup> At the hearing, Mr. J. made his best estimates of his household's expenses, as follows:

Rent:	\$200
Food:	\$900
Heating Oil:	\$600

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<sup>1</sup> Exhibit 1, page 4.

<sup>2</sup> Exhibit 1, page 3.

Electricity:	\$160
Telephone:	\$40
Personal care items:	\$200-\$300
Tobacco:	\$60
Total monthly expenses:	\$1960 - \$2060

In addition, the family owes about \$400 in unpaid electric bills, \$400 in unpaid phone bills, and Mr. J.'s fiancée owes \$700 on a credit card that she has stopped making payments on. Mr. J. testified that he is not a member of a Native corporation and does not receive corporation dividends. Mr. J. had not prepared details of his monthly expenses before the hearing, as CSSD had requested, and he answered questions from CSSD about the family's expenses as best he could with little advance preparation. A great deal of hesitancy and variation in amounts before settling on final answers to questions suggests that, despite his honest intent to answer the questions as best he could at the hearing, the figures provided may be somewhat lacking in accuracy.

Mr. J. testified that he is currently unemployed and not looking for work, with no ideas about when he might start working again. Mr. J. did state that the project he worked on for K. Construction has ended and will not provide him with employment this coming summer. Mr. J. testified that he is currently receiving about \$300 to \$400 in unemployment insurance benefits. Mr. J. did not explain how the family is currently meeting about \$2,000 per month in expenses while bringing in only \$600 to \$800 per month. However, if everyone in the household received permanent fund dividends, the family would have received \$22,883 at some time near the end of 2008, which would be enough to cover the family's expenses for almost an entire year.

Ms. S. also testified about her financial situation. Ms. S. lives with her son A., the child in this case. Ms. S. and A. now live with Ms. S.'s parents in No Name Village. Ms. S. does not pay rent, but she helps around the house and buys food and supplies for her parents. Ms. S. is also unemployed at the present time. Ms. S. testified that she is looking for work and thinks she may get a full-time job soon, but at this point she cannot be certain. Ms. S. testified that she spends about \$400 per month for food, she does not pay any utilities, and her expenditures on other expenses, such as personal care items, are minimal while she is unemployed.

### III. Discussion

Child support may be modified upon a material change of circumstances. A material change of circumstances will be presumed if the amount of support, as calculated under Civil Rule 90.3, would change by more than fifteen percent.<sup>3</sup>

CSSD has recently calculated Mr. J.'s monthly support obligation to be \$341 per month, based on the annual wages of \$19,253.26, unemployment benefits of \$2,522.00, and PFD income that Mr. J. earned in the one-year period in the last quarter of 2007 and the first three quarters of 2008. This amount of support constitutes a change of more than fifteen percent over the \$221 per month in the previous order. Mr. J. has not disputed CSSD's calculation, but he argues that this amount is more than he can reasonably pay, considering the needs of his current household and the fluctuating nature of his employment.

Generally, support for one child in primary custody should be set at 20 percent of the obligor's adjusted income.<sup>4</sup> This amount may be varied upon proof by clear and convincing evidence that, because of unusual circumstances, manifest injustice would result if the support award were not varied.<sup>5</sup> In this case it is first necessary to establish an estimate of Mr. J.'s income for 2009 and future years, and then to determine whether the amount of support should be based on that figure or varied from the standard formula.

In the previous formal hearing, the administrative law judge noted in her November 5<sup>th</sup>, 2007, decision that Mr. J.'s income appeared to be increasing over the years, although she calculated support based on a three-year average of gross income calculated to be \$14,179.51. Mr. J.'s 2008 wage income of \$19,253.20 along with unemployment benefits of \$2,522 is consistent with the finding that his income is trending upward. Mr. J. correctly points out that he cannot be certain he will earn the same amount in 2009, but it is also true that he cannot be certain he won't make the same or more. At this time, the amount of income Mr. J. earned in 2008 is the best indicator of his likely income in 2009. Should it prove more difficult for Mr. J. to find work in the coming season, another modification request may be appropriate after enough evidence of Mr. J.'s earnings for the year is available.

The second issue to address is whether there is clear and convincing evidence that Mr. J.'s support amount must be varied to prevent manifest injustice. Based on the most recent evidence of Mr. J.'s earnings for a one-year period, CSSD has calculated Mr. J.'s support

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<sup>3</sup> Civil Rule 90.3(h)(1).

<sup>4</sup> Civil Rule 90.3(a).

obligation for one child to be \$341 per month, a total of \$4092 for an entire year. Mr. J.'s testimony shows his family's monthly expenses to be roughly \$2000 per month, or \$24,000 per year. Mr. J. earns about \$22,000 per year, considering wages and unemployment benefits. While these figures show a deficit for the household's needs, they do not take into account the extraordinary amount of income the household receives from permanent fund dividends. Even if PFDs are reduced substantially from the unusually high payout in 2008, the family's dependence on Mr. J. should be reduced enough that Mr. J. has enough to meet his obligations to all of his children, including A..

Comparing the parents' households also reveals no injustice in the amount of support required by the standard formula. While expenses may be tight for the children in Mr. J.'s current household, there does appear to be approximately enough income available to cover the year's needs. In contrast, Ms. S. is unemployed and earning little or no income. Hopefully, in the near future Ms. S. will be employed and no longer need to depend on her family for housing and support, but at the current time A.'s needs are at least as great as the needs of the other children in Mr. J.'s household.

#### **IV. Conclusion**

CSSD has correctly calculated Mr. J.'s support obligation to be \$341 per month for one child, based on the best available evidence of his future earning capacity. This amount is more than fifteen percent above the previous amount, indicating a material change in circumstances. The record does not contain clear and convincing evidence that this support amount must be varied to avoid manifest injustice.

#### **V. Order**

IT IS HEREBY ORDERED that Mr. J.'s support obligation be set at \$341 per month for one child, effective July 1, 2008. All other terms of the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division on October 8, 2008 shall remain in effect.

DATED this 22<sup>nd</sup> day of January, 2009.

By: *Signed* \_\_\_\_\_  
DALE WHITNEY  
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 18th day of February, 2009.

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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