

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

IN THE MATTER OF:)
)
C. P. C.)
)
) OAH No. 09-0111-CSS
) CSSD Case No. 001045874
_____)

DECISION AND ORDER

I. Introduction

This case concerns the child support obligation of C. P. C. for C. J. C. (DOB 00/00/1993). The custodian of record is J. M. M.

The Child Support Services Division issued a modified administrative child support order October 18, 2007, in the amount of \$613 per month.¹ On September 2, 2008, the division received Mr. C.'s request for modification of the support order.² On February 10, 2009, the division denied modification review on the ground that the support obligation had not changed by at least 15%.³

Mr. C. appealed and the matter was referred to the Office of Administrative Hearings. The assigned administrative law judge conducted a telephonic hearing on March 12, 2009. Mr. C. and Ms. M. testified. Andrew Rawls represented the division.

Because Mr. C. established by a preponderance of the evidence that his presumptive support obligation has decreased by more than 15% and neither party provided clear and convincing evidence that the presumptive amount is manifestly unjust, the division's decision to deny modification review is reversed and modified child support is set at \$487 per month.

II. Facts

In October, 2007, C. C. was living in Alaska. He had two jobs, one full-time and one part-time, and in 2007 he earned total wages of about \$45,341.⁴ In July, 2008, he moved to Seattle, where he obtained a full time job as a building maintenance person

¹ Exhibit 1, page 1.
² Exhibit 2.
³ Exhibit 5.
⁴ Exhibit 1, page 6.

earning \$2,500 per month,⁵ equivalent to annual wages of \$30,000. With occasional overtime, his anticipated annual wages are approximately \$33,000.⁶ Mr. C. and his partner share rented premises with a roommate, who contributes \$400 per month towards the rent.⁷ Mr. C. has been looking for a second part-time job but has not found one to date.

II. Discussion

The annual child support payment for one child in the absence of shared custody is 20% of the adjusted annual income.⁸ When the child support obligation changes by an amount greater than 15% of the existing order, a material change of circumstances is presumed and the existing order may be modified.⁹

The division's initial denial of modification was based on Mr. C.'s total income for 2008, including earnings in Alaska before he moved to Washington. Because Mr. C. earned significantly greater income in Alaska than he is currently earning in Washington, his total income in 2008 was significantly greater than his anticipated income after the move.

The difference in Mr. C.'s current income from his former income in Alaska results from the fact that in Washington he has only one full time job and does not have an additional part-time job. If Mr. C. obtains additional work, then the income from his second job could be included in determining his child support obligation. However, that Mr. C. is no longer working two jobs does not mean that he is unreasonably underemployed. Accordingly, his presumptive child support obligation should be determined based on his actual income, rather than on imputed income.

Mr. C.'s current actual income includes his wages and his share (\$200 per month) of the amount contributed to his rent by a roommate. Based on Mr. C.'s current actual income, his presumptive support obligation is \$487 per month.¹⁰ Ms. M. did not show

⁵ Exhibit 6, page 4 ($\$1,250 \div 80 = \15.6250).

⁶ Testimony of C. C.

⁷ Testimony of C. C.

⁸ Civil Rule 90.3(a)(2)(A); 15 AAC 125.010, -.070(a).

⁹ Civil Rule 90.3(h)(1).

¹⁰ Appendix A.

that she would be unable to support the children if Mr. C.'s support obligation is reduced from \$613 per month to \$487 per month.¹¹

IV. Conclusion

A material change of circumstances is presumed and the existing support order may be modified to reflect actual income.

CHILD SUPPORT ORDER

1. The denial of modification review is REVERSED.
2. Mr. C.'s modified ongoing support is set at \$487 per month, effective October 1, 2008.

DATED: April 6, 2009.

Signed _____
Andrew M. Hemenway
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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 27th day of April, 2009.

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

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

¹¹ See Maloney v. Maloney, 969 P.2d 1148 (Alaska 1998).