

Permanent Fund dividend (\$920).² In 2005, his total income was \$68,570, all but \$10 from his wages and commissions.³

A major source of commissions for Mr. S. in 2005 was sales for the construction of a new hospital on F. W. With the completion of that project, Mr. S. anticipate[d] that his total income in 2006 [would] be less than in 2005, and [would] return to about the level he made in 2004.

The 2006 decision set Mr. S.'s support obligation at \$693 per month, based on his 2004 income, rather than his 2005 income. There is no evidence in the record concerning Mr. S.'s actual income in 2006 or in 2007. However, in 2008, Mr. S.'s total income was about \$78,821, including \$75,552 in wages and commissions,⁴ his Alaska Permanent Fund Dividend (\$2,069) and the associated energy payment (\$1,200).⁵

Mr. S. predicts that his 2009 income will be less than in 2008. Mr. S. anticipates a general slowdown in business in 2009, reflecting national economic trends. In the first quarter of 2008 Mr. S. was paid total wages and commissions of \$19,506 (equivalent to annual earnings of \$78,026); in the first he quarter of 2009 was paid \$13,723 (equivalent to annual earnings of \$54,892).⁶

III. Discussion

The division establishes a child support obligation based upon "the expected actual annual income that the parent will earn or receive when the child support award is to be paid."⁷

In this case, Mr. S.'s 2008 earned income increased by about 29% from 2004, the base year for purposes of modification review: from \$58,766 to \$75,552. His total income increased by about 27%, from \$62,086 to \$78,821. However, the evidence supports Mr. S.'s testimony that his 2009 earned income will likely be less than his 2008 income. Department of Labor

² Ex. 10.

³ 2005 tax return. Mr. S. did not receive an Alaska Permanent Fund dividend in 2005, but is eligible to receive a dividend in 2006.

⁴ Mr. S. submitted a printout showing his 2008 earnings, letters from his employer confirming his commissions, and wage stubs. The evidence indicates that he is paid three times monthly; two regular monthly paychecks of \$1,500 each for his \$3,000 per month base pay, and a monthly commission paycheck, reflecting commissions earned during the prior month (the printout reflects the month commissions were earned; the commission is actually paid the following month). Thus, the 2008 printout, beginning in January, 2008, shows the amounts paid out from February, 2008, through January, 2009. Mr. S. provided an exhibit showing that his first 2008 paycheck for commissions, for commissions earned in December, 2007, was for \$3,776.93. Thus, his 2008 actual income includes the amounts shown on the printout for January through November, 2008, plus \$3,776.93.

⁵ The administrative law judge takes official notice that all persons receiving the 2008 Alaska Permanent Fund dividend were also paid a one-time \$1,200 energy rebate.

⁶ These totals are the actual amounts paid in January through March, which reflect commissions earned from December through February. Mr. S. stated that he anticipated receiving no commission in April, based on his sales in March.

statistics show that April construction employment in Alaska is down by 5% from the previous year, and that the Fairbanks unemployment rate has increased by 8%, from 5.7% in April, 2008, to 7.3% in 2009.⁸ More significantly, Mr. S.'s income, which is highly dependent upon construction activity, was down by nearly 30% in the first quarter 2009 as compared with the first quarter of 2008.

Mr. S. started in his current position in 2004, and it appears that, as is often the case with commission sales personnel, with increased tenure Mr. S. has been able to substantially increase his customer base, with a resultant increase in earnings: from \$58,766 in 2004, to \$68,560 in 2005, and \$75,552 in 2008. This has occurred notwithstanding the loss in 2005 of a substantial account associated with the Fort Wainwright hospital. Given this income history, it appears that although Mr. S.'s income may be lower in 2009 than in 2008, it is unlikely to fall as far as the reduction in his first quarter income suggests, particularly since construction spending is expected to be boosted by federal stimulus spending.

Apart from the increase in Mr. S.'s income over the past five years, nothing has changed: he is still working for the same employer, in the same job, with the same base salary and the same commission. To warrant modification of the existing order the evidence must show that his total income in 2009 will increase by at least 15% from his total income in 2004, which was the basis for the existing support order. To increase his 2009 total income by 15% from his 2004 total income, Mr. S.'s 2009 earned income would need to be at least \$69,229, which would be an 8% reduction from his 2008 earned income.

Extrapolating from the first quarter of 2009, Mr. S.'s projected 2009 earned income from wages and commissions is \$54,892; carrying forward his last four quarters' income, it is \$66,585; at 90% of his 2008 income, it is \$67,996; at 95% of his 2008 income, it is \$71,774; and averaging his two most recent known years' income (2005 & 2008), it is \$72,056. Each of these alternative projections is reasonable and is supported by substantial evidence. Based on his most recent quarter, however, the preponderance of the evidence is that in 2009, Mr. S.'s earned income will be at least 10% less than in 2008, and that therefore his total income in 2009 will not be 15% greater than in 2004.

⁷ 15 AAC 125.030(a).

⁸ See <http://labor.state.ak.us/news/2009/news09-31.pdf> (accessed June 12, 2009).

IV. Conclusion

The preponderance of the evidence is that Mr. S. support obligation has not increased by at least 15%. Therefore, the request for modification should be denied. The division should review this case at a later date, using income information through the second quarter or 2009, to determine whether the reduction in Mr. S.'s income in the first quarter of 2009 was temporary.

ORDER

1. The request for modification is DENIED.
2. D. C. S.'s ongoing child support remains at \$693 per month.

DATED: June 15, 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 3rd day of July, 2009.

By: Signed

 Signature
Andrew M. Hemenway

 Name
Administrative Law Judge

 Title

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