



The administrative support order in this case was modified in 2006; the modification added J. to the order and set support at \$342 per month for two children, based on Mr. W.'s projected 2006 income of \$17,833.<sup>3</sup>

In 2007, Mr. W. was employed by an Anchorage television station and earned \$11 per hour, with total wages of \$20,031.75.<sup>4</sup> In February, 2008, Mr. W. requested modification of the order.<sup>5</sup> At the end of April, 2008, Mr. W. left his job, and in mid-May he moved to Minnesota in order to be closer to members of his family and to his children. Mr. W. and his daughter, N., live in the Twin Cities area with his brother's family. Mr. W. has been unable to find work at the wages he had been earning in Anchorage. Since July, 2008, he has been working full time at Gold's Gym, where he earns \$6.55 per hour, with some overtime at \$9.825 per hour, and commissions.<sup>6</sup>

Mr. W. was unemployed for about two months in 2008 as a result of his relocation to Minnesota, and his adjusted gross income in 2008 was \$16,734.<sup>7</sup> His 2009 monthly total income through April was about \$2,068 per month; his net monthly income after taxes was about \$1,656.<sup>8</sup> Mr. W.'s monthly expenses total about \$949, including rent paid to his brother (\$300), food (\$160), cell phone (\$83), payments for use of his brother's vehicle (\$135), health insurance (\$176) and personal care, including clothing (\$95). He is at present unable to make payments on his debts for a student loan (\$8,000) and medical bills (\$1,000). He believes that he could pay \$250-300 per month in child support for P. and J.

### III. Discussion

#### A. Income

The annual child support payment for two children is 27% of the adjusted annual income,<sup>9</sup> that is, total income after allowable deductions.<sup>10</sup> When the child support obligation changes by an amount greater than 15%, a material change of circumstances is presumed and the

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<sup>3</sup> Ex. 3, pp. 4, 6.

<sup>4</sup> Ex. 7, p. 3. This amount excludes \$1,082.40 in pre-tax deductions for medical coverage. *Id.*

<sup>5</sup> Ex. 5.

<sup>6</sup> Titan Fitness pay stub (5/7/2009).

<sup>7</sup> Ex. 12.

<sup>8</sup> *Id.* The pay stub shows year to date income of \$8,272.76 and year to date tax deductions of \$1,627.24 for the first four months of 2009.  $\$8,272.76 \div 4 = \$2,068.19$ ;  $\$1,647.24 \div 4 = \$411.81$ ;  $\$2,068.19 - \$411.81 = \$1,656.38$ .

<sup>9</sup> Civil Rule 90.3(a)(2)(A); 15 AAC 125.010, -.070(a).

<sup>10</sup> 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

existing order may be modified.<sup>11</sup> In this case Mr. W.'s existing child support order is \$342 per month; modification is appropriate if his support obligation in 2008 varied from that amount by at least 15% (\$52).

The division's calculates Mr. W.'s 2008 support obligation based total income in 2008 of \$20,003, adding the 2008 Alaska Permanent Fund dividend (\$2,069) and energy rebate (\$1,200) to the adjusted gross income (\$16,734) shown on Mr. W.'s tax return.<sup>12</sup> However, Mr. W. points out that his 2008 adjusted gross income included his Alaska Permanent Fund dividend and energy rebate,<sup>13</sup> and the division did not elicit testimony to the contrary at the hearing. Thus, the preponderance of the evidence supports is that Mr. W.'s total income in 2008 was \$16,734. Accordingly, Mr. W.'s presumptive 2008 child support obligation, based on his 2008 income, was \$247 per month, which is more than 15% less than the existing order, as shown on Appendix A.<sup>14</sup> Modification of the order for 2008 is therefore appropriate.

In 2009, Mr. W. argues that his commissions are uncertain, and that therefore his projected income should not include any commissions.<sup>15</sup> But the record includes a pay stub showing his earnings through the end of April, which is a substantial portion of the year, and Mr. W. has shown no reason why the commissions earned during that period should not be deemed representative of the commissions he will earn over the entire year. Based on his income through April, Mr. W.'s 2009 support obligation is \$356 per month, which is more than 15% greater than the modified amount for 2008, as shown on Appendix B.<sup>16</sup> Mr. W.'s presumptive support obligation for 2009 is therefore \$356 per month.

**B. Mr. W. Did Not Establish Manifest Injustice**

Mr. W. argued that he cannot afford the current \$342 per month monthly child support obligation. Mr. W. stated that he can afford to pay no more than \$250-300 per month, based on monthly net income of about \$1,084.<sup>17</sup>

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<sup>11</sup> Civil Rule 90.3(h)(1).

<sup>12</sup> Post Hearing Brief at 1.

<sup>13</sup> W. letter (5/12/2009).

<sup>14</sup> Minnesota state income tax is deducted as per the division's post hearing calculation, and he is provided a credit for his oldest child; Mr. W. was in Minnesota and had custody of his oldest child for the majority of the year. Appendix A-1 calculates the credit due for Mr. W.'s older child in the home; Appendix A-2 calculates the support obligation. Wages reflect Mr. W.'s adjusted gross income, minus the Alaska Permanent Fund dividend plus the energy rebate.

<sup>15</sup> W. letter (5/8/2009).

<sup>16</sup> Appendix B-1 calculates the credit for the older child in the home; Appendix B-2 calculates the support obligation. Mr. W.'s total wages represent the wages shown on his May 7, pay stub, multiplied by three.

<sup>17</sup> W. letter (5/1/2009). Mr. W. testified that he could afford perhaps \$250-300 per month.

The support obligation may be reduced if the child support obligation as measured by income would result in a manifest injustice.<sup>18</sup> The obligor must provide clear and convincing evidence of manifest injustice.<sup>19</sup> In determining whether there is manifest injustice, all of the relevant circumstances should be considered.<sup>20</sup> Manifest injustice may be found where the support obligation determined by the obligor's income would cause substantial hardship to subsequent children.<sup>21</sup> The obligor's debts may constitute grounds for a reduction in support if there are exceptional circumstances.<sup>22</sup>

As previously stated, Mr. W.'s pay stub dated May 7, 2009, shows income for the year to date through April 30, 2009, that is equivalent to monthly gross income of \$2,068 and monthly net income after taxes of \$1,674. Mr. W. states that his monthly net income is only \$1,084, but he did not provide evidence to support that amount. In light of the pay stub, Mr. W.'s unsupported statement regarding his net income is not persuasive.

As for his expenses, Mr. W. states that he will have to move out of his brother's home and find other premises, but did not provide evidence or testimony regarding the cost. Furthermore, it appears that a significant reason Mr. W. has had difficulty is that he has been paying arrears in addition to ongoing support, and modification of the order in this case for 2008, as well as adjustments to his accounts in his other two cases, should substantially reduce that burden.

#### **IV. Conclusion**

Mr. W.'s obligation for 2008 and 2009 should be modified to reflect actual income. Mr. W. has not shown by clear and convincing evidence that the presumptive amount is manifestly unjust.

### **CHILD SUPPORT ORDER**

The Modified Administrative Child Support and Medical Support Order dated March 6, 2006, is **AMENDED** as follows:

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<sup>18</sup> 15 AAC 125.075(a)(2).

<sup>19</sup> 15 AAC 125.075(a).

<sup>20</sup> *See*, 15 AAC 125.080.

<sup>21</sup> 15 AAC 125.075(a)(2)(F). *See*, Civil Rule 90.3, Commentary at VI(B)(2).

<sup>22</sup> 15 AAC 125.075(b)(2). *See*, Civil Rule 90.3, Commentary at VI(B)(4).

1. Mr. W.'s modified ongoing support is set at \$247 per month for two children for the months from March 1, 2008, through December 31, 2008.

2. Mr. W.'s modified ongoing support is set at \$356 per month for two children, effective January 1, 2009.

DATED: June 19, 2009.

Signed

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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 10th 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.]