

Early in 2009, Mr. M. was laid off from his job at J. and W. due to lack of work. By March 1, 2009, Mr. M. had found a new job with Q. C., a firm that provides home cleaning services. Mr. M. earns \$20 per hour, and works 20-30 hours per week. He has not looked for any other employment in Juneau. He is presently voluntarily and unreasonably underemployed.

II. Discussion

The annual child support payment for one child in the absence of shared custody is 20% of the obligor's adjusted annual income.¹ 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.²

When a non-custodial parent is voluntarily and unreasonably unemployed, the child support award is presumptively based upon the parent's potential income.³ The division imputes potential income to a voluntarily unemployed non-custodial parent based on the parent's work history, skills, qualifications, job history, and job opportunities in the area of residence.⁴ An individual's imputed potential income is based upon what the individual can reasonably be expected earn under the current circumstances, not on prior earnings that may or may not be available in the future.⁵

The division set Mr. M.' modified order based on his 2008 wages. That determination reflects Mr. M.' actual earnings through the date he was laid off from J. and W. Mr. M. is no longer employed in that same capacity, however, and it is unclear whether he could obtain work in Juneau in a capacity similar to his former jobs with GCI and J. and W. In his current job, Mr. M. is earning \$20 per hour. At present, Mr. M. works less than full time, and he has not attempted to find full time work. Jobs in his prior occupation as a telecommunications technician are limited in Juneau, but Mr. M. has a consistent work history and a demonstrated earning capacity in Juneau of at least \$20 per hour. For full time employment, this is equivalent to wages of approximately \$41,600 for the full year. Mr. M.' presumptive support obligation, at that income level, is \$593 per month, as shown in Appendix A.

¹ Civil Rule 90.3(a)(2)(A); 15 AAC 125.010, -.070(a).

² Civil Rule 90.3(h)(1).

³ 15 AAC 125.020(b); -.060(b); -.065(b).

⁴ 15 AAC 125.060(a); 15 AAC 125.020(b).

⁵ See, e.g., Nass v. Seaton, 904 P.2d 412 (Alaska 1995). Anticipated future earnings, by contrast with potential income in cases of voluntary unemployment, are determined based on prior income, to the extent income information is available. 15 AAC 125.050(c); -.100. As our supreme court has recognized, these are distinct inquiries. See Koller v. Refit, 71 P.3rd 800, 806 at n. 13 (Alaska 2003).

IV. Conclusion

A material change of circumstances is presumed and the existing support order may be modified. The modified order should reflect actual income through March 1, 2009, and potential income thereafter.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated March 2, 2009, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated March 2, 2009, is **AFFIRMED**:

1. Amended modified ongoing child support is set at \$910 per month for one child, effective November 1, 2008 through February 28, 2009, and at \$593 per month for one child effective March 1, 2009.

DATED: August 21, 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 25th day of August, 2009.

By: *Signed* _____
Signature
Jerry Burnett _____
Name
Deputy Commissioner _____
Title

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