

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

IN THE MATTER OF:)

D. A. M.)

_____)

OAH No. 09-0392-CSS
CSSD Case No. 001108816

DECISION AND ORDER

I. Introduction

This case concerns the obligation of D. A. M. for the support of B. P. L. The custodian of record is N. L.

The Child Support Services Division issued an administrative child support order dated April 7, 2004, in the amount of \$50 per month. On December 15, 2008, the division issued a petition for modification of the support order and on July 22, 2009 it issued a modified order increasing the support obligation to \$277 per month effective January 1, 2009.

Mr. M. appealed and requested a formal hearing. The administrative law judge conducted a hearing on August 27, 2009. Mr. M. participated telephonically; Ms. L. appeared and participated in person. Erinn Brian represented the division.

Because Mr. M. is disabled, he is not voluntarily and unreasonably unemployed. Based on his anticipated 2009 income, modified ongoing child support is set at \$107 per month.

II. Facts

D. A. M.'s child support order was set at the minimum amount of \$50 per month in 2004, when he was incarcerated. After he was released from prison, in the spring of 2008, Mr. M. found work as a warehouseman, earning \$14 per hour.

Mr. M. was laid off in the fall of 2008 and he filed for unemployment compensation. Mr. M. had been experiencing health problems for some time, and early in 2009, he was placed on dialysis; he is on a waiting list for a kidney transplant. Mr. M. has kidney disease, diabetes, hepatitis, coronary disease and hypertension. He had coronary bypass surgery earlier this year. Mr. M. has been found by the Veterans'

Administration to be permanently and totally disabled and has been awarded a disability pension, but the amount of the benefit is unknown. He has also been found by the Social Security Administration to be disabled, but he is ineligible for disability benefits due to a lack of sufficient work credits.

Mr. M. is 55 years old and has a high school education. He lives with his wife, who is employed and provides for his support. Despite his physical condition, Mr. M. has sought part-time employment, but he has not found work. His only income in 2009 has been from unemployment compensation, \$165 per week, until his veterans' pension benefits come in.

III. Discussion

A child support order may be modified when the support obligation changes by 15% or more¹ or there is a material change of circumstances.² Generally, the support obligation is based on the actual income that the obligor is expected to earn during the time the order will be in effect.³ However, when a non-custodial parent is voluntarily and unreasonably unemployed, the child support award is presumptively based upon the parent's potential income.⁴

In this case, Mr. M. is presently not voluntarily and unreasonably unemployed. He has made some attempts to find work, but as a 55-year-old ex-convict with a high school education, his employment prospects are limited. Moreover, he is physically disabled.

Because he is not voluntarily and unreasonably unemployed, Mr. M.' modified child support should be based on the actual income he is expected to earn in 2009. His wife's income is not included, because she is not liable for her husband's child support obligation. Because he was incarcerated in 2008, Mr. M. is ineligible for a 2009 Alaska Permanent Fund dividend.⁵ Mr. M.' 2009 income through the hearing date was limited to unemployment compensation in the amount of \$165 per week. Extended unemployment benefits are available for 39 weeks. Mr. M.' eligibility for unemployment

¹ 15 AAC 125.321(b)(1).

² 15 AAC 125.321(b)(2)(B).

³ 15 AAC 125.030(a).

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

⁵ AS 43.23.005(d)(2)(A).

benefits was due to expire in September, 2009. If he receives a kidney transplant, Mr. M. will be unable to work until he is medically stable. It is likely that Mr. M. will remain unemployed for the remainder of 2009. The order should therefore be modified based on Mr. M.' expected unemployment compensation for 2009, or 39 weeks at \$165 per week, or \$6,435 (39 x \$165) in total annual income. His child support obligation based on that level of income is \$107 per month, as shown on Appendix A.

Mr. M. has been found eligible for a non-service connected pension from the Veterans' Administration. However, the amount that he might receive from a veterans' pension is unknown, as is the date on which benefits might begin. Because his veterans' benefit claim was not initially granted until July 29, 2009, the current modification should be completed, and the division should review this case within six months to determine whether receipt of veterans' pension benefits warrants modification of the order.

IV. Conclusion

The existing support order should be modified to reflect Mr. M.' expected 2009 income. The division should review the case within six months.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated July 22, 2009, is **AMENDED** as follows; in all other respects, the Modified Administrative Child Support and Medical Support Order dated July 22, 2009, is **AFFIRMED**:

Modified ongoing child support is set at \$107 per month, effective January 1, 2009.

DATED: October 2, 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 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 4th day of November, 2009.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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