

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

IN THE MATTER OF:)
)
D. R. M.) OAH No. 09-0435-CSS
) CSSD Case No. 001108903
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of D. R. M. for the support of D. M. (DOB 00/00/2000). The custodian of record is J. H.

The Child Support Services Division issued an administrative child support order in 2003 in the amount of \$50. In December, 2008, Ms. M. filed a request for modification of the order. On July 23, 2009, the division granted the request and issued an order setting modified ongoing support at \$1,051 per month effective February 1, 2009.

Mr. M. filed an appeal. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a hearing on September 3, 2009. Both Mr. M. and Ms. H. participated. Erinn Brian represented the division.

Based on the preponderance of the evidence in the record and the testimony at the hearing, modified child support is set at \$779 per month.

II. Facts

D. R. M. is a construction laborer who works primarily as a carpenter. In 2008, he was employed by C. C. and he worked full time for the entire year, with substantial overtime, primarily resulting from the firm's contract for construction of the T. M. H. S. in Juneau. His regular wage at C. C. was \$33.30 per hour, and his overtime wage was \$47.31 per hour.¹ Mr. M. was laid off by C. in the spring of 2009. Prior to being laid off, he earned 2009 wages of \$20,234.69 from C., all but \$118.28 (2.5 hours) at his regular wage.² His average 2009 weekly wage at C., based on a 40 hour work week, was about \$1,332.³

¹ Ex. 6, p. 3.

² Ex. 6, p. 3.

³ Mr. M.'s year-to-date hours worked at his regular rate through August 6 were 612.5. Since he worked at N. P. from the week beginning April 19 through at least the week ending August 1, it appears that substantially all of these hours were worked in the first fifteen weeks of the year ending April 18. His average work week, therefore,

In April, 2009, Mr. M. found work with N. P. E. He worked through the summer with N.P. His regular wage at N. P. E. was \$33 per hour, his overtime wage was \$49.95 per hour, and his premium wage was \$66.60 per hour.⁴ Mr. M.'s average weekly wage at N. P. was \$1,456.08, based on about 35 hours of work at his base pay and 5 hours of overtime.⁵ In August, Mr. M. was laid off by N. P. and he went back to work for C. C., on a project to construct a parking garage in Juneau. His job entails framing concrete forms. When the winter freeze sets in, likely sometime in November, the concrete work will shut down and he will be laid off.

Mr. M.'s average monthly net income, after taxes and allowable deductions, varies from \$3,500 to \$4,500.⁶ His monthly household expenses are about \$2,710, including rent (\$1,000), electricity (\$120), vehicle (\$350 for insurance and gasoline), telephone (\$40), and food (\$600). He spends about \$65 per month on the tools of his trade.⁷

II. Discussion

The division initially calculated Mr. M.'s modified support obligation based on his 2008 wages of \$82,820.03.⁸ Mr. M.'s notice of appeal stated that he anticipated working less in 2009 than he did in 2008.⁹ He submitted wage information for 2009, and the division recalculated his support obligation as \$925 per month, extrapolating on his year-to-date 2009 wages through August 1 to the full year.¹⁰ At the hearing, Mr. M. asserted that he anticipated being laid off before the end of the year, and that while he can afford monthly payments of \$925, he cannot afford to pay that amount plus the arrears of \$6-7,000 that accrued on his modified support obligation before he received notice of the request to modify the support order.

Mr. M. had been substantially fully employed for all of 2009 through the date of the hearing, a period of 35 weeks. His year-to-date earnings for the 30 weeks from January 1 through August 1 were \$42,075.83, or an average of \$1,402.53. By the hearing date he had another five weeks of work, for total earnings through the date of hearing of about \$49,088.48.

was about 40 hours per week ($612.5 \div 15 = 40.83$), and his average weekly wage was about \$1,332 ($40 \times \$33.30 = \$1,332$).

⁴ Ex. 6, p. 4.

⁵ Mr. M. started work the week of April 19-25, and his total wages for the first 15 weeks of his employment, that is, through the week of July 26-August 1, were \$21,841.14. Ex. 6, pp. 4-18.

⁶ Testimony of D. M. Mr. M.'s testimony is consistent with the evidence, which indicates that his average monthly net income while he was working at N. P. from April through July was about \$4,350. Ex. 6, p.18.

⁷ Ex. 9.

⁸ Ex. 6, p. 2.

⁹ Ex. 6, p. 1.

¹⁰ Ex. 7.

He anticipated 8 to 12 weeks of additional work before the winter freeze, which at his average weekly wage with C. of \$1,332, is about \$10,656-\$15,984 in additional 2009 wages, for total 2009 wages of about \$59,744.48-\$65,072.48. His reasonably anticipated annual wages are the average of those two amounts, or \$62,408.48.

Mr. M. should be eligible for unemployment compensation beginning two weeks after a layoff, at the maximum rate of \$370 per month. If laid off after 8 weeks, he would receive 7 weeks' unemployment compensation (\$2,590), if laid off after 12 weeks he would receive 3 weeks' unemployment compensation (\$1,110). The mid point of these is \$1,850, or 5 weeks of unemployment compensation, which is the amount he can reasonably anticipate to receive as unemployment compensation. With his Alaska Permanent Fund dividend, his reasonably anticipated total income is thus \$65,563.48.¹¹ Applying standard deductions for taxes, plus a deduction for union dues based on his year-to-date totals through August 1, extrapolated to a 45-week work year, his anticipated adjusted income is \$46,716.12, and his child support obligation is \$779 per month.¹² Mr. M.'s income is sufficient to pay that amount, plus accrued arrears, and thus there is not good cause to advance the effective date of the modified order.

IV. Conclusion

The child support obligation as calculated under 15 AAC 125.070 and the child support guidelines of Alaska Rule of Civil Procedure 90.3 is more than 15 percent greater than the existing order. Mr. M. has not shown that the presumptive support obligation is manifestly unjust.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated July 23, 2009, is **AMENDED** as follows; in all other respects, the Modified Administrative Child Support and Medical Support Order dated July 23, 2009, is **AFFIRMED**:

Modified ongoing child support is set at \$779 per month effective February 1, 2009.

DATED: September 30, 2009.

Signed

Andrew M. Hemenway
Administrative Law Judge

¹¹ \$62,408.48 + \$1,850 + \$1,304 = \$65,563.48.

¹² Appendix A.

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 16th day of October, 2009.

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

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