

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

IN THE MATTER OF:)

G. N.)

_____)
—)

OAH No. 09-0446-CSS

CSSD Case No. 001141594

DECISION AND ORDER

I. Introduction

This case concerns the obligation of G. N. for the support of S. Diaz-N.. The custodian of record is D. D.-V.

The Child Support Services Division issued an administrative child support order dated April 17, 2006, in the amount of \$721 per month. Ms. D.-V. requested modification and on June 26, 2009, the division issued a modified order decreasing the support obligation to \$386 per month effective December 1, 2008.

Ms. D.-V. appealed and requested a formal hearing. The administrative law judge conducted a telephonic hearing on September 10 and 14, 2009. Mr. N. and Ms. D.-V. participated. Erinn Brian represented the division.

Because neither party has shown that the division's decision was erroneous, the modified administrative support order is sustained.

II. Facts

G. N. has four children. Three, the issue of his marriage to N. N., are older than S. When Mr. N. separated from his wife, prior to S.'s birth, he agreed to pay \$1,000 per month to his wife as child support. After S. was born, a court order for support in the amount of zero dollars per month was issued.¹ The California child support agency maintains a record of the case, but has taken no action in it, as there has been no request for services.²

Mr. N.'s child support obligation for S. was established in 2006, based on his wages during the third and fourth quarters of 2005.³ At that time, Mr. N. was working

¹ Ex. 13.

² Post-Hearing Brief.

³ Ex. 1, p. 4.

for N. A., earning \$19 per hour,⁴ and his anticipated annual wages (including overtime) were \$56,305.66.⁵

Mr. N.'s wage at N. A. was reduced to about \$15 per hour before he quit his job in 2006. For the next year or so, Mr. N. was unemployed for a period of time and he had several different employers.⁶ In April, 2008, he began working for U., an ocean freight forwarding company. Mr. N. remained with U. through the date of the hearing. He earns a monthly wage of \$2,400, or approximately \$14 per hour.

III. Discussion

A child support order may be modified when the support obligation changes by 15% or more⁷ or there is a material change of circumstances.⁸ The presumptive support obligation is based on the actual income that the obligor is expected to earn during the time the order will be in effect.⁹ The presumptive support obligation may be reduced or increased if it would result in a manifest injustice due to unusual circumstances.¹⁰ The party seeking to depart from the presumptive amount must provide clear and convincing evidence of manifest injustice.¹¹ In determining whether manifest injustice exists, all of the relevant circumstances should be considered.¹²

In this case, Mr. N. is presently working full time in his regular profession, albeit at a substantially lower salary than when his child support obligation was established. The division calculated his support obligation based on the evidence presented at the time it issued a modified order, and neither party has shown that the decision was mistaken. The division submitted a request for a slightly different amount following the hearing, but it did not show that its original decision was mistaken.¹³ For these reasons, the division's order should be sustained.

⁴ Testimony of G. Napoles.

⁵ Ex. 1, p. 7.

⁶ Ex. 4, pp. 2-4.

⁷ 15 AAC 125.321(b)(1).

⁸ 15 AAC 125.321(b)(2)(B).

⁹ 15 AAC 125.030(a).

¹⁰ 15 AAC 125.075(a)(2).

¹¹ 15 AAC 125.075(a); *see* Civil Rule 90.3(c)(1).

¹² *See* 15 AAC 125.080.

¹³ Ex. 16. The division originally provided a deduction in the amount of \$70.82 per month, for unspecified reasons. Ex. 8, p. 6 (item 2[j]). The later calculation, in Exhibit 16, omits that deduction, resulting in a support obligation of \$395 per month.

IV. Conclusion

The existing support order should be modified to reflect Mr. N.'s expected 2009 income. Neither party has shown manifest injustice.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated June 26, 2009, is **AFFIRMED**:

Modified ongoing child support is set at \$386 per month, effective December 1, 2008.

DATED: October 29, 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 18 day of November, 2009.

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

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