

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

IN THE MATTER OF:)	
)	OAH No. 09-0627-CSS
L. R. A.)	CSSD No. 001142969
_____)	

DECISION AND ORDER

I. Introduction

The obligor, L. R. A., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on November 2, 2009 increasing Mr. A.’s monthly child support obligation for one child, T., from \$127 per month to \$162 per month.¹

The hearing was held on December 14, 2009. Mr. A. participated telephonically. CSSD Child Support Specialist Andrew Rawls also participated telephonically. The custodial parent, N. B., did not participate.

During the hearing, additional information was provided concerning Mr. A.’s work history. The record remained open to allow CSSD the opportunity to submit a new child support calculation based on this additional evidence. Mr. A. was given the opportunity to reconvene the hearing after receiving the new calculation, or respond to that calculation in writing. He stated that he would respond in writing rather than have an additional live hearing. CSSD’s revised child support calculation results in a monthly child support obligation of \$238.² The record closed with no further participation from Mr. A.

II. Facts

Mr. A. testified that he had been working for U.U. Inc., where he earned \$10 per hour for 4 hours per day, Monday through Friday. He quit this job in February 2009 because he did not need it, did not want to work there, and it was not the right job for him.³ A month later he requested modification of his child support obligation. He was anticipating a reduction to \$50

¹ Exhibit 6.
² CSSD Post-Hearing Brief
³ A. Testimony.

because he was no longer employed.⁴ CSSD based his child support on Alaska Department of Labor reported earnings and a PFD which resulted in an increase in child support.

Mr. A. recently started working part-time for the T. C. of T. earning \$15 per hour. His hours vary from week to week. He also has income from the National Guard. Mr. A. has the rank of Specialist E4. His enlistment with the Guard ends in May of 2011 and he does not intend to re-enlist. He also has experience as a substitute teacher and substitute teacher's aide for the local school. He testified that he could work three six-hour days each week if he wanted to substitute earning \$14.44 or \$13.23 per hour depending on whether he was substituting for a teacher or a teacher's aide.

III. Discussion

Prior to the hearing, Mr. A. faxed pay stubs from his current employer as well as a statement raising concerns about the care his child is receiving.⁵ Mr. A. is concerned about the care given to his son by the custodial parent. As explained at the hearing, the only issue that is before the Office of Administrative Hearings is the proper amount of Mr. A.'s support obligation.

A parent is obligated both by statute and at common law to support his or her children.⁶ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources." Because child support is calculated based on annual income, temporary periods of unemployment do not negate the support obligation. Also, child support may be based on the potential income of a person who is voluntarily and unreasonably unemployed or underemployed.⁷ On the other hand, it is important to bear in mind that child support is calculated based on "the income which will be earned when the support is to be paid"—that is, actual or potential *future* income.⁸ The primary purpose of this rule is to ensure "child support orders are adequate to meet the needs of the children, subject to the ability of parents to pay."⁹ The obligor has the burden of proving his or her earning capacity.¹⁰

⁴ A. Testimony.

⁵ Exhibit 8.

⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁷ Civil Rule 90.3 Commentary, Part III-C.

⁸ Civil Rule 90.3 Commentary, Part III-E.

⁹ Civil Rule 90.3 Commentary I(B).

¹⁰ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

CSSD argues that it would be inappropriate to use income earned from T. C. of T. because Mr. A.'s hours are unknown. Therefore, CSSD asks that Mr. A. be treated as voluntarily and unreasonably unemployed or underemployed and that income be imputed to him based on what he would have earned had he remained with U. U. plus income from the National Guard and PFD.

When Mr. A. petitioned for modification he was voluntarily unemployed. It is not necessary to prove the parent was purposefully avoiding a support obligation, or acting in bad faith, in order to find voluntary unemployment or underemployment.¹¹ Mr. A. voluntarily left his job at United Utilities for no reason other than he did not want to work there anymore. In today's economy, to quit one's job without having another job to walk into when there is a child to support is unreasonable. Based on this finding, income could be imputed for the short period of unemployment. However, Mr. A. is now employed at increased wages. To impute income for five months would result in multiple support calculations in one year. Therefore, the approach to calculating child support in this case that is supported by the facts and the law is to keep Mr. A.'s child support obligation at \$127 per month until October 1, 2009 at which time his child support obligation will be based on current earnings.

The unchallenged evidence establishes that from October to December 2009, Mr. A. worked between 18 hours per week and 29 hours per week.¹² The last few paystubs revealed a downward trend in hours worked. Based on the earning trend revealed in the paystubs provided by Mr. A., it is reasonable to conclude that over the year he will work on average 18 hours per week. This results in an annual income of \$14,040.¹³ The unchallenged evidence also establishes that Mr. A. will earn at least \$4,467.96 from the National Guard.¹⁴ At this rate his annual income is \$19,812.96 (\$14,040 wages + \$4,467.96 National Guard + \$1,305 PFD) After deducting federal income tax, FICA, and SUI, Mr. A.'s annual adjusted gross income for purposes of calculating child support is \$17,152.56¹⁵ Applying Civil Rule 90.3, this results in a monthly child support payment of \$286. Because the newly calculated child support payment

¹¹ *Kowalski*, 806 P.2d at 1371.

¹² Exhibit 8 at 3 - 6.

¹³ 18 hours per week x \$15 per hour x 52 weeks = \$14,040.

¹⁴ CSSD Post Hearing Brief. Mr. A. did not dispute the earnings CSSD attributed to National Guard.

¹⁵ \$17,152.56 = \$19,812.96 + PFD in the amount of \$1,305 – \$1,152 Annual Estimated Federal Income Tax – \$1,415.88 Annual Estimated FICA – \$92.52 Annual Estimated SUI. (Calculated using CSSD's online Child Support Guideline Calculator. A printout of the calculation is attached).

was greater than a 15% change from the prior support amount, child support calculated using this income figure does result in a material change in circumstances.¹⁶ As a result, Mr. A.'s monthly child support obligation should be increased effective October 1, 2009 to \$286.

IV. Conclusion.

Mr. A. voluntarily and unreasonably quit his job with U. U. in March 2009. He is now employed with the T. C. of T. at higher wages. Accordingly, his child support obligation calculated on current wages is \$286 per month for one child effective October 1, 2009.

V. Child Support Order

- L. R. A. is liable for modified ongoing child support in the amount of \$286 per month effective October 1, 2009. The Modified Administrative Child Support and Medical Support Order issued November 2, 2009, is so amended.
- All other provisions of the Modified Administrative Child Support and Medical Support Order issued November 2, 2009, remain in full force and effect.

DATED the 8th day of February, 2010.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹⁶ "A material change in circumstances will be presumed if support as calculated under this rule is more than 15 percent greater or less than the outstanding support order." Civil Rule 90.3(h)(1).

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 26th day of February, 2010.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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