

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

IN THE MATTER OF	)	OAH No. 10-0036-CSS
M. H.	)	CSSD No. 001098367
_____	)	

**DECISION AND ORDER**

**I. Introduction**

On February 15, 2010, a formal hearing was held to consider the child support obligation of M. H. (Obligor) for the support of the child, J..<sup>1</sup> Mr. H. participated in the hearing. The custodial parent, K. D. L., also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

This case is Mr. H.'s appeal of the Division's order modifying his child support obligation. The Division's order is upheld because the Mr. H. failed to show that the order is incorrect and because Mr. H.'s cannot prevent the modification by simply disputing his paternity of the child.

**II. Facts**

This case is a modification action increasing ongoing child support.<sup>2</sup> Mr. H.'s paternity of J. was established in a default order dated July 24, 2002.<sup>3</sup> In September of 2002, Mr. H. requested genetic testing.<sup>4</sup> Two sets of forms to set up genetic tests were then sent to Mr. H. by the Division, but he did not respond to either of them. Mr. H.'s request for a genetic test was therefore denied in December of 2002.<sup>5</sup> Mr. H.'s existing child support for J. was set in 2003 at \$229 per month for one child.<sup>6</sup> Ms. L. filed a request that his child support be increased in April

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.

<sup>2</sup> Alaska Civil Rule 90.3(h) governs child support modification actions.

<sup>3</sup> Exhibit 3.

<sup>4</sup> Exhibit 5.

<sup>5</sup> Exhibit 8.

<sup>6</sup> Division's Pre Hearing Brief, page 1, & Exhibit 13.

of 2009. The Division issued notice of the petition for modification on April 29, 2009.<sup>7</sup>

The Division calculated Mr. H.'s modified ongoing child support based on his estimated 2009 income, using earnings information provided by his employers to the Alaska Department of Labor plus a PFD.<sup>8</sup> At the hearing, Mr. H. agreed that the income estimate used by the Division was correct.<sup>9</sup>

The Division issued a Modified Administrative Child Support and Medical Support Order on November 16, 2009. Mr. H.'s modified ongoing child support was increased to \$583 per month, effective May 1, 2009.<sup>10</sup>

Mr. H. requested a formal hearing. In that request, Mr. H. wrote that he wanted a DNA test.<sup>11</sup>

The Division issued a determination denying Mr. H.'s new request for genetic testing on January 25, 2010. The Division explained that it did not have the authority to process Mr. H.'s request because he had failed to follow through on his earlier request, and because more than three years had passed since his paternity had been established in the default order. The denial also explained that Mr. H. could seek genetic testing by filing a disestablishment action in court and it provided information on obtaining assistance through the Family Law Self-Help Center.<sup>12</sup>

At the hearing, Mr. H. explained that he was appealing because he wanted to contest paternity. Mr. H. stated that he was working on initiating a disestablishment action in court.<sup>13</sup> At the hearing, Ms. L. volunteered to participate in private genetic testing to relieve Mr. H.'s doubts about his paternity without being put to the expense of a court proceeding.<sup>14</sup>

Mr. H. did not assert that the monthly amounts that the Division had set in the modification order were incorrect. Mr. H. did not provide clear and convincing evidence that it would be unjust to set his ongoing child support at \$583 per month.<sup>15</sup>

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<sup>7</sup> Exhibit 11.

<sup>8</sup> Ex. 13, page 6.

<sup>9</sup> Ex. 13, page 6 & Recording of Hearing.

<sup>10</sup> See Division's Modified Administrative Child Support and Medical Support Order at Ex. 13.

<sup>11</sup> See Mr. H.'s request for a formal hearing at Ex. 14.

<sup>12</sup> The Division's denial of Mr. H.'s request for genetic testing is found at Ex. 15. The three-year limit on administrative disestablishment actions is found at Alaska Statute 25.27.166(b)(2).

<sup>13</sup> Recording of Hearing -Testimony of Mr. H.

<sup>14</sup> Recording of Hearing – Testimony of Ms. L.

<sup>15</sup> Recording of Hearing -Testimony of Mr. H. & Mr. H.'s request for a formal hearing at Ex. 14.

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case, Mr. H. has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>16</sup> Mr. H. failed to meet his burden of proof to show that the Division's order was incorrect. As discussed at the hearing, Mr. H. should work diligently to resolve any his issues regarding paternity as soon as he can and keep his to his child support caseworker informed of any developments.

Ongoing child support should be calculated based on Mr. H.'s estimated income unless good cause exists to raise child support above or reduce it below the amounts calculated using the income formula in Civil Rule 90.3(a). Mr. H. did not show either that the amount calculated by the Division was incorrect or that there was good cause to set support at a different amount.<sup>17</sup>

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.<sup>18</sup> The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.<sup>19</sup> The evidence in the record shows that a material change of circumstances has occurred since Mr. H.'s ongoing child support was set at \$229 per month.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. Following this general rule, the modification should be effective May 1, 2009, because the petition was served in April of 2009.<sup>20</sup>

### **IV. Conclusion**

Mr. H. ongoing child support should be increased to \$583 per month effective May 1, 2009 in accordance with the Division's modification order.

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<sup>16</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>17</sup> See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

<sup>18</sup> Alaska Civil Rule 90.3(h)(1).

<sup>19</sup> Alaska Civil Rule 90.3, Commentary X.

<sup>20</sup> Alaska Regulation 15 AAC 125.321.

**V. Child Support Order**

The Division’s Modified Administrative Child Support and Medical Support Order issued on December 16, 2009, is affirmed.

DATED this 17th day of February 2010.

By: Signed  
Mark T. Handley  
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 12th day of March, 2010

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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