

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

IN THE MATTER OF)	OAH No. 10-0372-CSS
D. D. A.)	CSSD No. 001057626
_____)	

DECISION AND ORDER

I. Introduction

On August 11, 2010, a formal hearing was held to consider the child support obligation of D. D. A. (Obligor) for the support of the child, Q.¹ Mr. A. participated in the hearing. The custodial parent, S. D., also participated. Erinn Brian, 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. A.'s appeal of the Division's order modifying his child support obligation. Based on the testimony presented at the hearing, the administrative law judge concludes that Mr. A.'s modified ongoing child support should be increased to \$816 per month as it was in the Division's order, but the effective date should be moved forward to April 1, 2010.

II. Facts

This case is a modification action increasing ongoing child support.² Mr. A.'s existing child support for Q. was set in 1997 at \$270 per month for one child.³ Ms. D. filed a request that his child support be increased in September of 2009.⁴ The Division issued notice of the petition for modification on September 28, 2009.⁵

The Division calculated Mr. A.'s modified ongoing child support based on his estimated 2009 income, using earnings information provided by his employer to the National Department of Labor.⁶

The Division issued a Modified Administrative Child Support and Medical Support

¹ The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.

² Alaska Civil Rule 90.3(h) governs child support modification actions.

³ Division's Pre Hearing Brief, page 1, & Exhibit 1.

⁴ Division's Pre Hearing Brief, page 1, & Exhibit 2.

⁵ Exhibit 3.

Order on February 25, 2010. Mr. A.'s modified ongoing child support was increased to \$816 per month, effective October 1, 2009.⁷ At the hearing, Mr. A. agreed that he did not want to contest ongoing child support amount calculated by the Division.⁸

Mr. A. requested a formal hearing. In that request, Mr. A. wrote that he was deployed to Afghanistan when the modification was initiated and did not become aware of the change in his ongoing amount until the withholding in his pay changed, around April of 2010. Mr. A. provided documentation showing that he was going through a bankruptcy proceeding in 2009, which was not finalized until December of that year.⁹

At the hearing, Mr. A. explained that he was appealing because he did not think it was fair to charge him arrears for the periods before he was aware that his child support might go up. Mr. A. admitted that while his household's finances are strained he could afford to pay the modified ongoing amount of \$816 per month if he did not also have to pay the additional arrears that accrued before he was aware of the increase. Mr. A. stated that he is supporting his two younger children in his household and has another child on the way. Mr. A. also explained that he pays \$50 per month for another child. Mr. A. had some issues with the way that the Division calculated his modified support, but decided at the hearing not to contest the monthly amount.¹⁰

At the hearing, Ms. D. did not object to moving the effective date of the modification forward to April 2010.¹¹

Based on the evidence in the record, there is good cause to move the effective date of modification forward to April 1, 2010.¹² Mr. A. was not aware of the petition to modify his child support order and he recently went through a bankruptcy proceeding. Mr. A. was unable to plan for the increase in his ongoing amount, or save for the arrears that were accruing before the Division was able to start increased withholding from his pay. It would cause a hardship to require him to pay these arrears in addition to the increase in his ongoing child support.¹³

⁶ Ex. 4, page 9.

⁷ See Division's Modified Administrative Child Support and Medical Support Order at Ex. 4.

⁸ Recording of Hearing – Testimony of Mr. A.

⁹ Ex. 9.

¹⁰ Recording of Hearing – Testimony of Mr. A.

¹¹ Recording of Hearing – Testimony of Ms. D.

¹² Recording of Hearing -Testimony of Ms. D. & Mr. A. & Ex. 9.

¹³ Recording of Hearing – Testimony of Mr. A.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. A., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁴ Mr. A. failed to meet his burden of proof to show that the ongoing monthly amount in Division's order was incorrect. As discussed at the hearing, Mr. A. did meet his burden to show that the effective date should be moved forward.

Ongoing child support should be calculated based on Mr. A.'s estimated income unless there is a showing by clear and convincing evidence that a variance of the calculated amount based on the child support guidelines is needed to prevent an injustice. Mr. A. did not show either that the amount calculated by the Division was incorrect or that it would create an injustice to set his ongoing child support in the monthly amount obtained from the Division's calculations.¹⁵

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.¹⁶ 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.¹⁷ The evidence in the record shows that a material change of circumstances has occurred since Mr. A.'s ongoing child support was set at \$270 per month. The modified ongoing amount calculated at \$816 per month is more than a 15 percent increase from the outstanding order of \$270 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 would be effective October 1, 2009, because the petition was issued in September of 2009.¹⁸

Moving the effective date of a modification forward from the first of the month following the service of the petition for modification is not a variance of the child support guidelines, requiring clear and convincing evidence that moving the date forward is needed to prevent an

¹⁴ Alaska Regulation 15 AAC 05.030(h).

¹⁵ See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

¹⁶ Alaska Civil Rule 90.3(h)(1).

¹⁷ Alaska Civil Rule 90.3, Commentary X.

¹⁸ Alaska Regulation 15 AAC 125.321.

injustice under Civil Rule 90.3(c). The effective date of a modification cannot predate the service of the petition for modification even when it would clearly prevent an injustice.¹⁹ The effective date of a modification can, however, be moved forward upon a mere showing that there is good cause to make that change.²⁰

IV. Conclusion

Mr. A.'s ongoing child support should be increased due to the increase in his earnings that has occurred since the monthly support amount was set in 1997. It would, however, be unfair to increase ongoing child support for the period of October of 2009 to April of 2010 due to lack of notice and the impact these added arrears would have on Mr. A.'s household.

V. Child Support Order

The Division's Modified Administrative Child Support and Medical Support Order issued on February 25, 2010, is amended as follows, all other provisions remain in effect:

Mr. A. ongoing child support should be increased to \$816 per month effective April 1, 2010.

DATED this 13th day of August 2010.

By: Signed _____
Mark T. Handley
Administrative Law Judge

¹⁹ See *State, Dept. of Revenue, Child Support Enforcement Div. v. Schofield*, 993 P2d 405, (Alaska 1999).

²⁰ *Alaska Dept. of Revenue, CSED v. Kevin Lyn Dillon* 977 P 2d 118, (Alaska 1999).

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 1st day of September, 2010

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

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