

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

IN THE MATTER OF	)	OAH No. 10-0396-CSS
J D D	)	CSSD No. 001143952
_____	)	

**DECISION AND ORDER**

**I. Introduction**

On August 25, 2010, a formal hearing was held to consider the child support obligation of J D. D (Obligor) for the support of the child, Z.<sup>1</sup> Mr. D participated in the hearing. The custodial parent, S L W, also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed on September 3, 2010.

This case is Mr. D'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. D's modified ongoing child support should be decreased to \$605 per month from April through December of 2009 based on his actual 2009 income, and decreased again to \$195 per month effective January of 2010, based on his estimated 2010 income.

**II. Facts**

This case is a modification action decreasing ongoing child support.<sup>2</sup> Mr. D's existing child support for Z was set in 2007 at \$1,032 per month for one child.<sup>3</sup> Mr. D filed a request that his child support be decreased in February of 2009.<sup>4</sup> The Division issued notice of the petition for modification on March 3, 2009.<sup>5</sup>

The Division first issued a Modified Administrative Child Support and Medical Support Order, then a Denial of Modification Review order, and later issued an Amended Modified Administrative Child Support and Medical Support Order on July 14, 2010.<sup>6</sup> In the Amended Modified Administrative Child Support and Medical Support Order, Mr. D's modified ongoing

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

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

<sup>3</sup> Division's Pre Hearing Brief, page 1, & Exhibit 1.

<sup>4</sup> Division's Pre Hearing Brief, page 1, & Exhibit 2.

<sup>5</sup> Exhibit 3.

<sup>6</sup> Exhibits. 5, 11 & 13.

child support was decreased to \$698 per month, effective April 1, 2009.<sup>7</sup> This amount included a medical insurance coverage credit.<sup>8</sup> The Division calculated Mr. D's modified ongoing child support based on his estimated earnings from his April 2009 paystub.<sup>9</sup>

Mr. D requested a formal hearing. In that request, Mr. D wrote that he made less in 2009 than the amount the Division used in its calculations. Mr. D provided his W-2 for 2009.<sup>10</sup>

At the hearing, Mr. D explained that he was laid-off from his job in the Gulf in 2009 and has only been earning about \$800 to \$1000 per month in 2010. Mr. D stated that he has been actively seeking full-time work in Louisiana, but has had difficulty finding work since he was laid off because of the job market, his felony record and the fact that he is not from that area. Mr. D explained that while he looks for regular work, he has been earning as much as he can by doing odd jobs and working as a handyman. If Mr. D does not find regular work by the spring, he plans to try to find oil field work back in Alaska where he has more employment connections.<sup>11</sup>

At the hearing, Ms. W explained that she has not been receiving support since March. Ms. W indicated that she earns about \$20,000 per year and would be able to continue to support Z if Mr. D's ongoing child support is decreased. Ms. W did not object to setting Mr. D's ongoing modified child support based on his actual 2009 and estimated 2010 income.<sup>12</sup>

After the hearing, as requested, the Division filed new calculations based on Mr. D's actual income for 2009, and his estimated earnings for 2010. These calculations result in a modified amount of \$605 per month for April through December of 2009 and \$195 per month for 2010 and ongoing.<sup>13</sup>

The Division provided two calculations for 2010. The calculation at exhibit 18 is based on the estimate that Mr. D's income will average \$1000 per month for all of 2010. The calculation at exhibit 17 is based on the estimate that Mr. D's 2010 income though the May 8<sup>th</sup> was limited to his unemployment benefits and that after that date, when his unemployment

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<sup>7</sup> Exhibit 13.

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

<sup>9</sup> Exhibit 13, page 6.

<sup>10</sup> Exhibit 14.

<sup>11</sup> Recording of Hearing – Testimony of Mr. D.

<sup>12</sup> Recording of Hearing – Testimony of Ms. W.

<sup>13</sup> Exhibits 16 & 17.

benefits stopped, he will average \$1000 per month in earnings for the rest of 2010. The evidence in the record shows that the estimate that includes unemployment benefits for the first part of 2010 is the more accurate than the estimate that merely assumes that Mr. D will earn \$12,000 in 2010.<sup>14</sup>

Based on the evidence in the record, I find that it is more likely than not the Division's latest calculations at exhibits 16 and 17, and that the income amounts used in those calculations are correct.<sup>15</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case, Mr. D, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>16</sup> Mr. D met his burden of proof to show that the ongoing monthly amount in Division's order was incorrect.

Ongoing child support should be calculated based using the best estimate of Mr. D 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 need to prevent an injustice.<sup>17</sup> The new amounts calculated by the Division are correct. There is not clear and convincing evidence in the record showing that an injustice will occur if ongoing child support is set at those amounts.

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. D's ongoing child support was set at \$1,032 per month. The modified ongoing amounts calculated at \$605 per month and \$195 are both more than a 15 percent change from the outstanding order of \$1,032 per month and from each other. A material change of circumstances occurred in both 2009 and 2010.

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<sup>14</sup> Recording of Hearing & Exhibits 16, 17 & 18..

<sup>15</sup> Recording of Hearing & Exhibits 16 & 17.

<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.

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 April 1, 2009, because the petition was issued in March of 2009. However, there was an additional change in circumstance when Mr. D was laid-off after the petition was issued, which makes it appropriate to set one ongoing amount for 2009 and another for 2010.

#### **IV. Conclusion**

Mr. D's ongoing child support should be decreased due to the decrease in his earnings that has occurred since the ongoing monthly support amount was set in 2007.

#### **V. Child Support Order**

The Division's Amended Modified Administrative Child Support and Medical Support Order issued on July 14, 2010, is amended as follows, all other provisions remain in effect:

- Mr. D modified ongoing child support is set at \$605 per month, effective April 1, 2009,
- Mr. D modified ongoing child support is set at \$195 per month, effective January 1, 2010.
- The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for Z.

DATED this 13<sup>th</sup> day of September 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 8<sup>th</sup> 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.]