

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

IN THE MATTER OF:)

D. E., JR.)

) OAH No. 10-0413-CSS
) CSSD Case No. 001156125
)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of D. E., Jr. for the support of N. J. G. The custodian of record is H. S.

The Child Support Services Division issued a modified administrative child support order adding N. to a previously-issued administrative order for support for A. D. G. The modified order set support for two children at the rate of \$164 per month, effective September 1, 2009.

Mr. E. filed an appeal in which he contested paternity. The case was remanded to the division to conduct paternity testing and was rescheduled for hearing after the division conducted genetic testing, which had confirmed Mr. E.'s paternity. Mr. E. was called at his telephone number of record at the scheduled hearing time but he did not answer. Mr. E. has not since contacted the Office of Administrative Hearings. Ms. S. participated in the telephonic hearing, as did Erinn Brian, a representative of the division.

Based on the evidence in the record, the division's decision is sustained.

II. Facts

D. E., Jr. and H. S. are the parents of two children, A. D. and N. J. G.

Mr. E.'s work history over the past four years shows sporadic employment as a restaurant worker, at wages from \$9-12 per hour.¹ His income from wages and unemployment compensation over the last three calendar years has averaged \$11,142.²

In April, 2009, the Child Support Services Division established Mr. E.'s ongoing support obligation for A. at the amount of \$302 per month effective May 1, 2009, based on his reported

¹ Ex. 7, p. 2.

² See Ex. 7; Aff. of E. Brian.

wage at the time of \$11 per hour, which is equivalent to annual wages of \$22,880, plus an Alaska Permanent Fund dividend.³

Mr. E.'s actual income in 2009 was about \$12,060, including wages (\$9,848), an Alaska Permanent Fund dividend (\$1,305) and Alaska unemployment benefits (\$907).⁴ The division issued a modified order on March 23, 2010, adding N. to the order, and setting modified ongoing support for two children at the rate of \$164 per month, effective September 1, 2009,⁵ based on reported 2009 income of \$9,439 as of that date.⁶

At the time that it issued the modified order in March, 2010, the division projected that Mr. E.'s income in 2010 would be \$18,720, based on his actual wage of \$9.00 per hour at the time.⁷ As it turned out, Mr. E. earned substantially less than that in 2010. He was laid off in April, 2010,⁸ and he remained unemployed and received unemployment compensation through September, 2010.⁹ Mr. E.'s actual income in 2010 was about \$7,141, consisting of wages (\$4,378),¹⁰ unemployment compensation (\$1,482),¹¹ and an Alaska Permanent Fund dividend (\$1,281).

II. Discussion

The annual child support payment for two children in the absence of shared custody is 27% of the adjusted annual income.¹² When the child support obligation changes by an amount greater than 15% of the existing order, a material change of circumstances is presumed and the existing order may be modified.¹³ On appeal, the burden is on the appealing party to show that the division's decision is in error.¹⁴ When the appealing party fails to appear at the hearing, a decision on appeal may be issued based on the evidence in the record.¹⁵

³ Ex. 1, pp. 4, 9. The order set support for 2008 at the rate of \$240 per month, based on actual income in 2008 of \$20,079, including wages (\$16,810), the Alaska Permanent Fund dividend (\$2,069) and energy rebate (\$1,200). Ex. 1, pp. 4, 8.

⁴ Ex. 7.

⁵ Ex. 5, p. 1.

⁶ Ex. 5, pp. 4, 10.

⁷ Ex. 5, p. 11.

⁸ Ex. 7, p. 2.

⁹ Ex. 7, pp. 1-2; Aff. of E. Brian.

¹⁰ Ex. 7, p. 1; Aff. of E. Brian.

¹¹ *Id.*

¹² Civil Rule 90.3(a)(2)(A); 15 AAC 125.010, -.070(a).

¹³ Civil Rule 90.3(h)(1).

¹⁴ 15 AAC 05.030(h).

¹⁵ 15 AAC 05.030(j).

The division modified Mr. E.'s support order in March, 2010, effective September 1, 2009. The original order had been set at \$302 per month, based on projected annual income substantially in excess of Mr. E.'s actual income, and a downward modification was therefore appropriate (absent a showing of voluntary unemployment). In his request for appeal, dated August 10, 2010, Mr. E. indicated that he was unemployed at the time he filed the appeal. However, the modified order was effective in September, 2009, and at that time Mr. E. was employed. His history shows sporadic employment, and his modified ongoing support obligation was set at a level that is consistent with his actual income during the time the order has been in effect.¹⁶ Since an ongoing support obligation should be set at the level commensurate with the obligor's expected income during the time the support will be paid,¹⁷ in retrospect it appears that Mr. E.'s obligation was set at the correct level.

IV. Conclusion

Mr. E. did not show that the division's March 22, 2010, decision to modify the support order based on his reported income in 2009 was incorrect. The modified support order should therefore be affirmed.

CHILD SUPPORT ORDER

1. The Modified Administrative Child Support and Medical Support Order dated March 22, 2010, is **AFFIRMED**.

2. Modified ongoing support remains set at \$164 per month for two children, unless and until a new petition for modification is issued and granted.¹⁸

DATED: April 13, 2011.

Signed

Andrew M. Hemenway
Administrative Law Judge

¹⁶ From the beginning of the fourth quarter of 2009 through the end of the third quarter of 2010 the last four full quarters for which complete income information is available, Mr. E.'s total income from wages (\$6,772) and unemployment compensation (\$1,677) was \$8,449, which would yield a monthly child support obligation of \$172 per month under the division's standard calculator. *See* Ex. 7; Aff. of E. Brian.

¹⁷ *See* 15 AAC 125.030(a).

¹⁸ *See, e.g., In Re R.W.F.* OAH No. 10-0346-CSS, Memorandum and Order Clarifying Modified Support and Denying Reconsideration (October 13, 2010) (modified ongoing support obligation remained in effect in years subsequent to effective date of modified order, where purported change in obligation was not included within the portion of the document that expressly modifies the amount of the monthly support obligation).

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 5th day of May, 2011.

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

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