

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

IN THE MATTER OF)	OAH No. 10-0456-CSS
D J)	CSSD No. 001108153
_____)	

DECISION AND ORDER

I. Introduction

On September 29, 2010, a formal hearing was held to consider the child support obligation of D J (Obligor) for the support of the child, M.¹ Mr. J participated in the hearing. The custodial parent, M M Z, also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed on October 7, 2010.

This case is Mr. J'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. J's modified ongoing child support should be set at \$534 per month effective July 1, 2010, based on his 2009 income.

II. Facts

This case is a modification action increasing ongoing child support.² Mr. J's existing child support for M was set in 2002 at \$416.72 per month for one child.³ Mr. J filed a request that his child support be decreased in June of 2010.⁴ The Division issued a notice of the petition for modification on June 17, 2010.⁵

The Division issued a Modified Administrative Child Support and Medical Support Order on August 24, 2010.⁶ In the Modified Administrative Child Support and Medical Support Order, Mr. J's modified ongoing child support was increased to \$457 per month, effective July 1,

¹ The hearing was held under 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.

⁶ Exhibit 5.

2010.⁷ This amount was based on estimated income using earnings information provided by Mr. J's employer.

Mr. J requested a formal hearing. In that request, Mr. J asked why his child support had been increased and wrote that he did not believe that there had been a 15% percent increase in his pay.⁸

Prior to the hearing, the Division filed new calculations based on income information provided by Mr. J. These calculations resulted in monthly ongoing child support of \$561 per month. This amount included a deduction for Mr. J's retirement contributions.⁹ The Division's new calculations for Mr. J's modified ongoing child support based on his income as reported on his 2009 income tax return.¹⁰

At the hearing, Mr. J explained that he had included \$1,575.44 in interest from his IRA account on his 2009 tax return because the bank had sent him a tax form that included that interest as reportable interest. Mr. J testified that he had moved his IRA money from one IRA account to another IRA with the same bank.¹¹

The documentation in the record and Mr. J's testimony showed that Mr. J's bank had probably incorrectly reported interest on Mr. J's IRA account as taxable interest due to Mr. J's IRA rollover, and that Mr. J had subsequently reported this IRA interest on his 2009 tax return.¹² At the hearing, the Division agreed to run new calculations, which would remove this interest from the income used to set Mr. J's monthly ongoing child support amount.¹³

At the hearing, Ms. Z did not have any objections to this adjustment to Mr. J's modified ongoing child support.¹⁴

⁷ Exhibit 5.

⁸ Exhibit 6.

⁹ Exhibit 4 & Exhibit 5, page 6.

¹⁰ Exhibit 5, page 6.

¹¹ Recording of Hearing – Testimony of Mr. J.

¹² Exhibit 4, pages 12 & 14 & Recording of Hearing – Testimony of Mr. J.

¹³ Recording of Hearing.

¹⁴ Recording of Hearing – Testimony of Ms. M.

After the hearing, as requested, the Division filed new calculations based on Mr. J's reported income for 2009, removing the IRA account interest. These calculations result in a modified amount of \$534 per month.¹⁵

Based on the evidence in the record, I find that it is more likely than not the Division's latest calculations at exhibit 9 and the income amounts used in those calculations are correct.¹⁶

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. J, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁷ Mr. J met his burden of proof to show that the ongoing monthly amount in the Division's order was incorrect.

Ongoing child support should be calculated based using the best estimate of Mr. J 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.¹⁸ 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.¹⁹ 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.²⁰ The evidence in the record shows that a material change of circumstances has occurred since Mr. J's ongoing child support was set at \$416.72 per month. The modified ongoing amount calculated at \$534 per month is more than a 15 percent change from the outstanding order of \$416.72 per month. A material change of circumstances justifying an upward modification of ongoing child support has occurred.

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 July 1, 2010, because the petition was issued in June of 2010.

¹⁵ Exhibits 9.

¹⁶ Recording of Hearing & Exhibit 9.

¹⁷ Alaska Regulation 15 AAC 05.030(h).

¹⁸ See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

¹⁹ Alaska Civil Rule 90.3(h)(1).

IV. Conclusion

Mr. J's ongoing child support should be increased due to the increase in his earnings that has occurred since the ongoing monthly support amount was set in 2002.

V. Child Support Order

The Division's Modified Administrative Child Support and Medical Support Order issued on August 24, 2010, is amended as follows with all other provisions remain in effect:

- Mr. J modified ongoing child support is set at \$534 per month, effective July 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 M.

DATED this 8th day of October 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 1st day of November, 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.]

²⁰ Alaska Civil Rule 90.3, Commentary X.