

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

IN THE MATTER OF)	OAH No. 10-0461-CSS
G. P.)	CSSD No. 001097098
_____)	

DECISION AND ORDER

I. Introduction

On October 6, 2010, a hearing was held to consider the appeal of G. P., to consider his child support obligation for his child I. K. P., the custodian of record in this case, participated. Mr. P. also participated. The Child Support Services Division (Division) was represented by Erinn Brian, Child Support Services Specialist.

This case is Mr. P.'s appeal of the Division's Denial of Modification of Administrative Support Order, which denied Mr. P.'s request for a downward modification of his ongoing child support order for his child, I. This order was issued on August 26, 2010.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be upheld. Mr. P.'s ongoing child support obligation for I. should remain at \$294 per month.

II. Facts

This case is a modification action.¹ The Division had originally denied Mr. P.'s request for modification review because the Division determined that there would not be a 15% change in Mr. P.'s ongoing child support amount based on Mr. P.'s reported income. Mr. P.'s current ongoing child support is set at less than minimum wage full-time employment, because Mr. P. was retired military and had only been working intermittently when his child support was set after a formal hearing in 2001.²

After the Division denied his request for a downward modification, Mr. P. requested a formal hearing. In his request for a formal hearing, Mr. P. explained that he is unemployed and

¹ Alaska Civil Rule 90.3(h) governs modification actions.

² Exhibits 1-5.

living on his retirement less what is being collected for child support under different orders for his children.³

At the hearing, Mr. P. explained what he owes under different child support orders. Mr. P. testified that he is unemployed, but admits that he could probably find work but does not want to. Mr. P. testified that he lives with his sister and pays her \$100 per month for rent. Mr. P. receives over \$21,000 per year in retirement before child support and other deductions. Mr. P. admitted that he does not have any disabilities that prevent him from working full-time.⁴

The Division denied Mr. P.'s request for a reduction in his child support because based only on his retirement income, with a deduction for the ongoing child support that is actually being collected for his only older child that is not yet an adult, Mr. P.'s child support amount for I. would be \$299 per month, which is more, but not 15% more, than his current order of \$294 per month.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. P. , has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁵ At the hearing, Mr. P. did not show that he could not earn an income in addition to his retirement income.⁶ Mr. P. is not entitled to deductions from his income for the purpose of calculating his ongoing child support obligation for I. for the amounts that are being collected for arrears for his older children or the amounts that are not actually being collected for ongoing child support for his older child that is still a minor.⁷

In this case it is not necessary to impute income to uphold the Division's order. Mr. P. is not entitled to a reduction in his ongoing child support for I. even if his unrealized earning capacity is not taken into account.⁸

IV. Conclusion

I conclude that the Division correctly denied Mr. P.'s request for a downward

³ Exhibits 6.

⁴ Recording of Hearing-Testimony of Mr. P.

⁵ Alaska Regulation 15 AAC 05.030(h).

⁶ Recording of Hearing.

⁷ Alaska Civil Rule 90.3 Commentary III D. requires that child support must actually be paid to be deductible. Child support arrears owed to older and in this case primarily adult children are merely debts, which normally do not justify a reduction in ongoing child support under Alaska Civil Rule 90.3 Commentary VI B 5.

modification of his ongoing child support.

V. Child Support Order

The Division's Notice of Denial of Modification Review issued on August 26, 2010, is affirmed.

DATED this 6th 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.]

⁸ Exhibit 6 page 4.