

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

IN THE MATTER OF)	
D. J. K. Jr.)	OAH No. 10-0506-CSS
)	
_____)	CSSD No. 001141505

DECISION AND ORDER

I. Introduction

On October 19, 2010, a formal hearing was held to consider the child support obligation of D. J. K., Jr. (Obligor) for the support of his child, R. Mr. K. participated in the hearing. R.'s mother, M. L. K., the custodial parent, also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed on November 16, 2010.

This case is Mr. K.'s appeal of the Division's order modifying his monthly child support obligation for his child, R. Because there has not been a material change since Mr. K.'s ongoing monthly child support obligation for R. was last set at \$588, his child support order should not be modified.

II. Facts

Mr. K.'s ongoing monthly child support obligation was set at \$588 per month in 2007.¹ The Division reviewed this child support order at Ms. K.'s request.²

The Division issued a Notice of Petition for Modification on July 26, 2010.³ The Division issued a Modified Administrative Child and Medical Support Order on September 16, 2010.⁴ In this order, the Division set Mr. K.' modified ongoing child support at \$672 per month based on estimated income using reported income for two quarters of 2009.⁵ This estimate did not include a deduction for supporting his older child, C., in his home. Mr. K. requested a formal hearing.⁶

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 4.

⁵ Exhibit 4, page 6.

⁶ Exhibit 5.

At the hearing, Mr. K. explained that the Division had not used the correct income information for him now that he was stationed outside Alaska. Mr. K. also explained that he is supporting an older child in his home.⁷

After the hearing, a post hearing order was issued. This order set out the deadline for Mr. K. to provide his most recent three military Leave and Earning Statements and the birth certificates of his child C., who is older than R.. This order also set out the deadline for the Division to file new calculations and a position statement based on this new information. This order then set a deadline for Ms. K. and Mr. K. to respond to the Division's new calculations and position statement.

Mr. K. provided the information as ordered and the Division filed new calculations.⁸ The Division's new calculations result in a monthly ongoing child support for R. of \$598 per month.⁹ The Division calculated that this is only a 1.7% increase from \$588, which is the monthly amount under the present order. The Division recommended that the present order not be modified.¹⁰ Neither Ms. K. nor Mr. K. filed a response to the Division's new calculations and recommendation.

III. Discussion

Alaska 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.¹¹ 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%.¹²

In a child support hearing, the person who filed the appeal, in this case Mr. K., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹³

Mr. K. showed that there has not been a material change in circumstances that would justify a modification since his child support was set at the minimum of \$88 per month. At the hearing Ms. K. explained that she had filed the request for a modification only to ensure that R.

⁷ Recording of Hearing.

⁸ Exhibits 8-11.

⁹ Exhibit 10.

¹⁰ Division's Post-Hearing Brief.

¹¹ Alaska Civil Rule 90.3(h)(1).

¹² Alaska Civil Rule 90.3, Commentary X.

¹³ Alaska Regulation 15 AAC 05.030(h).

was receiving the correct amount of monthly child support. In its post hearing brief, the Division agreed that the petition for modification should be denied.

IV. CHILD SUPPORT ORDER

1. The Division’s Modified Child and Medical Support Order issued on September 16, 2010 is overturned.
2. The Notice of Petition for Modification issued on July 26, 2010 is denied.
3. Mr. Mr. K.’s ongoing child support will remain at the minimum of \$588 per month in accordance with the Division’s Administrative Child and Medical Support Order dated July 12, 2007, which remains in effect.

DATED this 19th day of November, 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 9th day of December, 2010

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

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