

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

IN THE MATTER OF	)	OAH No. 10-0560-CSS
P. J. M.	)	CSSD No. 001036799
	)	
_____	)	

**DECISION AND ORDER**

**I. Introduction**

On November 18, 2010, a formal hearing was held to consider the child support obligation of P. J. M. for the support of his children, J., N., B. and K.<sup>1</sup> Mr. M. and the custodial parent, C. M., participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on at the end of the hearing.

This case is Mr. M.'s appeal of the Division's order adding his child, J., to his existing child support order for his other children, N., B. and K. The order also added some arrears for J.'s support and modified his ongoing child support obligation by setting it at a lower monthly amount. Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be adjusted by setting Mr. M.'s ongoing child support at \$50 per month.

**II. Facts**

This case is an add-a-child modification action.<sup>2</sup> Mr. M.'s child support for his children, N., B. and K. was previously set in 2007 at \$583 per month.<sup>3</sup> N. emancipated in on July 11, 2010.<sup>4</sup> The Division initiated a modification action to add J. because J. began receiving public assistance when he was born in March of 2009.<sup>5</sup> Mr. M.'s paternity of J., the new child added to the order, is not in dispute.<sup>6</sup> Mr. M. is named as J.'s father on his birth certificate.<sup>7</sup>

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.

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

<sup>3</sup> Exhibit 1, page 10 & the Division's Pre-Hearing Brief, page 1.

<sup>4</sup> Ex. 4, page 7 & the Division's Pre-Hearing Brief, page 1.

<sup>5</sup> The Division's Pre-Hearing Brief, page 1.

<sup>6</sup> Recording of Hearing.

<sup>7</sup> Division's Pre Hearing Brief.

The Division issued notice of the petition for modification on March 1, 2010.<sup>8</sup> The Division issued a Modified Administrative Child and Medical Support Order on June 4, 2010.<sup>9</sup>

The Division's order set Mr. M.'s ongoing child support obligation at \$233 per month, effective April 1, 2010.<sup>10</sup> Additional arrears totaling \$424 were also added to the prior ongoing monthly amount for the months of April of 2009 through March 2010.<sup>11</sup> This was to pay for the addition of J. from the month J. first received public assistance to the date that Mr. M.'s ongoing child support could be modified.<sup>12</sup>

The Division calculated Mr. M.'s modified ongoing child support using Mr. M.'s estimated 2009 income, based on his 2009 earnings as reported to the Department of Labor, plus a 2009 PFD.<sup>13</sup> Mr. M. requested a formal hearing.<sup>14</sup>

In his request for a formal hearing, Mr. M. wrote that he has been in treatment.<sup>15</sup> At the hearing, Mr. M. explained that he has been at an in-patient treatment facility since December of 2009, with very limited opportunities to earn income. Mr. M. explained that he will not be able to obtain regular employment until after he is released from the program. Mr. M. hopes that this will happen in a few weeks. Mr. M. will have to pay back the treatment facility after he leaves. Mr. M. plans to move back to Anchorage find a job and to live closer to the children.<sup>16</sup>

Mr. M. has a recent request for a modification pending with the Division. At the hearing, the Division agreed that Mr. M.'s ongoing child support effective April 1, 2010 should be set at the minimum of \$50 per month, due to his lack of income during treatment. The Division will be reviewing Mr. M.'s ongoing child support within the next few months due to his pending request for modification. At that time, the Division may be able to obtain more updated income information from Mr. M. after he finishes his treatment.

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<sup>8</sup> Exhibits 3.

<sup>9</sup> Exhibit 4, page 7.

<sup>10</sup> The Division's Pre-Hearing Brief, page 1 & Ex. 3.

<sup>11</sup> Exhibit 4.

<sup>12</sup> The procedure for setting ongoing child support and arrears when adding a new child to an existing child support order is set out in Alaska Regulation 15 AAC 125.340(e).

<sup>13</sup> Ex. 4, page 6.

<sup>14</sup> Ex. 5.

<sup>15</sup> Ex. 5.

<sup>16</sup> Recording of Hearing-Testimony of Mr. M.

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case, Mr. M., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>17</sup> Mr. M. showed that his ongoing child support should be reduced to a minimum order while he is in treatment.<sup>18</sup>

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.<sup>19</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%.<sup>20</sup> A minimum order of \$50 for the children that remain on the order for ongoing child support is more than a 15% decrease from the existing order.

### **IV. Conclusion**

I conclude that Mr. M.'s ongoing child support should be set at \$50 per month, until the Division takes action on the pending request to again modify his ongoing child support.

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

1. Mr. M. owes modified ongoing child support for J., B. and K. in the monthly amount of \$50 for three children, effective April 1, 2010.
2. Mr. M. is liable for additional child support arrears for J. in the monthly amount of \$22 for the months of April 2009 through August 2009, and in the monthly amount of \$42 for the months of September 2009 through March 2010.

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<sup>17</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>18</sup> Recording of Hearing.

<sup>19</sup> Alaska Civil Rule 90.3(h)(1).

<sup>20</sup> Alaska Civil Rule 90.3, Commentary X.

3. All other provisions of the Division's Modified Administrative Child Support and Medical Support Order issued on June 4, 2010 remain 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 9<sup>th</sup> 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.]