

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

IN THE MATTER OF	)	
J. M. K.	)	OAH No. 10-0574-CSS
	)	
_____	)	CSSD No. 001092788

**DECISION AND ORDER**

**I. Introduction**

This case is Mr. J. M. K.'s appeal of the order modifying his child support for his children, C. and M. that was issued by the Alaska Child Support Service Division (CSSD). The order raised Mr. K.'s ongoing monthly child support obligation from \$937 to \$1,362. Mr. K. contested the income information used by CSSD to calculate his modified ongoing child support obligation and argued that a shared custody calculation should be used.

On November 30, 2010, and December 2, 2010, a formal hearing was held to Mr. K.'s appeal.<sup>1</sup> Mr. K. participated at the hearings by phone. The children's mother, M. H., also participated. Erinn Brian, Child Support Services Specialist, represented CSSD. The hearing was audio-recorded. The record closed on December 30, 2010.

Having reviewed the record in this case and after due deliberation, I conclude that Mr. K.'s arrears and ongoing child support obligation should be set at \$1,040.79 per month, in accordance with CSSD's latest calculations. This amount is based on updated income information and shared custody with the children living with Mr. K. 34% of the overnights.

**II. Facts**

**A. History**

Mr. K.'s monthly child support obligation was set at \$937 per month in 2005. This monthly amount was based on Ms. H. having primary custody of the children.<sup>2</sup>

CSSD reviewed this child support order at Ms. H.'s request.<sup>3</sup> CSSD issued a Notice of

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.190.  
<sup>2</sup> Exhibit 1.  
<sup>3</sup> Exhibit 2.

Petition for Modification on August 6, 2010.<sup>4</sup>

CSSD issued a Modified Administrative Child and Medical Support Order on October 20, 2010. CSSD determined that Mr. K.'s ongoing monthly child support should be increased to \$1,164 per month. This monthly amount was also based on Ms. H. having primary custody of the children.<sup>5</sup>

Mr. K. requested a formal hearing.<sup>6</sup> At the hearing, Mr. K. contested CSSD's calculations, explaining that the estimate of his annual income used in CSSD's calculations was not based on his current earnings. Mr. K. provided recent paystubs.

At the November 30, 2010 hearing, Mr. K. explained that Ms. H. and he had been sharing custody of C. and M. since before the petition for modification was filed. Because there was some dispute about the custody arrangement and because the other parties had not had an opportunity to review Mr. K.'s updated income information, the hearing was continued to December 2, 2010. The parents were directed to work together to attempt to resolve any disputes about the custody arrangement.

At the December 2, 2010 hearing, Mr. K. and Ms. H. agreed that the custody arrangement was for C. and M. to spend two nights per week, then three nights per week with Mr. K. on alternating weeks. This results in shared custody with the children spending 34% of the overnights with Mr. K. and 67% of the overnights with Ms. H.

After the December 2, 2010 portion of evidentiary hearing in this appeal, a post hearing order was issued. This order set a date for CSSD to file a new shared custody calculation based on the updated income information provided by the parents and their 67/34 custody arrangement.

CSSD timely filed this calculation, which resulted in an ongoing child support obligation of \$1,040.79 for Mr. K. The order gave Mr. K. and Ms. H. until December 30, 2010 to respond to CSSD's calculations if they wished. No responses were filed.

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<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 5.

<sup>6</sup> Mr. K.'s appeal is found at Exhibit 6.

## **B. Findings**

Based on the evidence in the record, I find that it is more likely than not that:

1. From September 2010 through the present, Mr. K. and Ms. H. have shared custody of C. and M., with the children spending 34% of the overnights with Mr. K. and 67% of the overnights with Ms. H.<sup>7</sup>
2. CSSD's latest shared custody calculation of Mr. K.'s modified monthly ongoing child support obligation at \$1,040.79 is correct and is based on the best estimate of Mr. K.'s and Ms. H.' current incomes and their custody arrangement.<sup>8</sup>

## **III. Discussion**

Shared custody exists when a child resides with a parent at least 30, but no more than 70, percent of the overnights.<sup>9</sup> Under the shared custody formula, the annual amount each parent would pay to the other parent if that parent had sole custody is calculated. That support amount is then multiplied for each parent by the percentage of time the other parent will have physical custody of the child. The parent with the larger amount under this calculation is the obligor parent. The annual award from the obligor parent to the other parent is equal to the difference between the two figures multiplied by 1.5.<sup>10</sup>

Mr. K. and Ms. H. successfully worked together to agree on their custody arrangement for their children. Both Mr. K. and Ms. H. provided updated income information. CSSD proposed that Mr. K.'s modified ongoing child support obligation should be set at \$1,040.79 per month based on the updated income and custody information provided by Mr. K. and Ms. H. There does not appear to be any dispute that Mr. K.'s modified ongoing child support obligation should be set in accordance with CSSD's recommendation.

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>11</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 percent.<sup>12</sup> Monthly child support of \$1,040.79 would be less than a 15 percent increase from the current order of \$937 per month. However, in this case the

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<sup>7</sup> Recording of Hearing.

<sup>8</sup> Recording of Hearing & Ex. 11.

<sup>9</sup> Alaska Civil Rule 90.3(f).

<sup>10</sup> Alaska Civil Rule 90.3(f).

<sup>11</sup> Alaska Civil Rule 90.3(h)(1).

material change is circumstance in the custody change from primary custody with Ms. H. to shared custody.<sup>13</sup>

A support order cannot be modified retroactively.<sup>14</sup> The effective date of a modification cannot predate the service of the petition for modification, even when a delay in processing a modification request occurred.<sup>15</sup> Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. This modification should be effective September 1, 2010, because the petition was served in August of 2010.<sup>16</sup>

**IV. Child Support Order**

1. Mr. K.'s ongoing child support for C. and M. is set in the monthly amount of \$1,040.79, effective September 1, 2010.
2. CSSD shall give the parties the appropriate credit or debit for any out-of-pocket expenses for providing health insurance coverage for C. and M..
3. All other provisions of the Amended Administrative Child and Medical Support Order issued on October 20, 2010 remain in effect.

DATED this 10<sup>th</sup> day of January, 2011.

By: Signed

Mark T. Handley  
Administrative Law Judge

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<sup>12</sup> Alaska Civil Rule 90.3, Commentary X.

<sup>13</sup> A custody change is a material change in circumstances that justifies a modification of child support. *See Boone v. Boone*, 960 P.2d 579 & *Bunn v. House*, 934 P.2d 753, 758 (Alaska 1997).

<sup>14</sup> Alaska Civil Rule 90.3(h)(2).

<sup>15</sup> *State, Dept. of Revenue, Child Support Enforcement Div. v. Schofield*, 993 P2d 405, (Alaska 1999).

<sup>16</sup> Alaska Regulation 15 AAC 125.321.

**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 28<sup>th</sup> day of January, 2011

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

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