

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

IN THE MATTER OF)	OAH No. 11-0018-CSS
B R P)	CSSD No. 001155455
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is Mr. B R P's appeal of the modification order adding his child, T, to his existing child support order for his other children, C, D, E, F, G, H, I, J, K, and L. The Child Support Service Division (Division) issued this order because there was a public assistance medical application for T. However, the Division is not currently collecting ongoing child support from Mr. P because Ms. P withdrew from the Division's services and there are no cash grants of public assistance currently being paid.

The modification order added no arrears for T's support because he was born in April of 2010, which was after the withdrawal from services and after public assistance grants had ended. The Division modified Mr. P's ongoing child support obligation by setting it at a higher monthly amount based on his 2010 estimated income.

Mr. P requested a formal hearing. This request was referred to the Alaska Office of Administrative Hearings. Administrative Law Judge Mark T. Handley was assigned to conduct the formal hearing, which was held on January 31, 2011. Mr. P and the custodial parent, Q P, both participated. Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

At the hearing, Mr. P did not argue that the Division had over-estimated his 2010 or current income. Both Ms. P and Mr. P were primarily concerned about what they viewed as the excessive arrears that had been established in Mr. P's original child support order. Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification order, which is the subject of this appeal, should be upheld. It is not appropriate to address Mr. and Ms. P's concerns about the original child support order in this appeal of Mr. P's modified ongoing child support order.

II. Facts

This case is an add-a-child modification action.¹ Mr. P's ongoing child support for his children, C, D, E, F, G, H, I, J, K, and L was previously set in 2009 at \$593 per month based on imputed minimum wage income.² The Division has stopped collecting ongoing child support under this order because Ms. P. withdrew from the Division's services.³

The Division initiated a modification action to add T, who was born in April of 2010, even though there was no collection of ongoing child support because T was included in an application for public assistance medical.⁴ Mr. P's paternity of T, the new child added to the order, is not in dispute.⁵ Mr. P is named as T's father on his birth certificate.⁶

The Division issued notice of the petition for modification on August 9, 2010.⁷ The Division issued a Modified Administrative Child and Medical Support Order on November 19, 2010.⁸

The Division's order set Mr. P's ongoing child support obligation at \$1585 per month, for ten children effective September 1, 2010.⁹ Mr. P's oldest child, C, had become an adult by the effective date of the modification order, so the addition of T did not increase the total number of children from the number covered by the original order. No additional arrears were added to the prior ongoing monthly amount of \$593.¹⁰

The Division calculated Mr. P's modified ongoing child support using the estimated income information he provided.¹¹

Mr. P requested a formal hearing. In his request for a formal hearing, Mr. P used the wrong income information and provided a 2009 income tax return.¹²

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

² Exhibit 1 & the Division's Pre-Hearing Brief, page 1.

³ Recording of Hearing & the Division's Pre-Hearing Brief, page 1.

⁴ Recording of Hearing & Exhibit 1.

⁵ Recording of Hearing & the Division's Pre-Hearing Brief, page 1.

⁶ Division's Pre Hearing Brief.

⁷ Exhibit 2.

⁸ Exhibit 4.

⁹ The Division's Pre-Hearing Brief, page 1 & Exhibit 4.

¹⁰ The correct procedure for setting ongoing child support and arrears when adding a new child to an existing child support order, as set out in Alaska Regulation 15 AAC 125.340(e).

¹¹ Exhibit 4.

¹² Mr. P.s's appeal is found at Exhibit 5.

Based on the evidence in the record , I find that Mr. P did not show that it was more likely than not that the Division's calculations used to set his modified ongoing child support or the income used in those calculations were incorrect.¹³

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.¹⁴ Mr. P did not show that the Division's modification order was incorrect. Mr. P agreed at the hearing that the Division's modified ongoing child support was not based on an annual income that exceeded his current earnings.

Mr. and Ms. P were both concerned about the Division's collections of arrears that had been established in the Division's original order. This original order was the Administrative Child and Medical Support Order issued on September 8, 2009. Mr. P believed that he had attempted to appeal that order. Mr. and Ms. P were both concerned about the monthly amounts set in that order and the time period covered by the pre-order arrears that were established in that order. Mr. and Ms. P believe that the order set too much in arrears. They explained that Mr. P' having to pay those arrears is having an adverse impact on the children's household's finances.

Appeals of administrative child support orders are conducted under the procedures set out in 15 AAC 125.118. The procedures in 15 AAC 05.010 and 15 AAC 05.025-15 AAC 05.040 also apply to these appeals. After an Administrative Child and Medical Support Order is issued establishing an obligor's duty to pay child support, a party may file a request for an administrative review.¹⁵ Under 15 AAC 05.030(k), the administrative law judge may waive any administrative appeal requirements or deadlines established in 15 AAC 05.010--15 AAC 05.030 if it appears that strict adherence to the deadline or requirement would work an injustice.

This case was referred to Office of Administrative Hearings an appeal of an administrative modification order. Mr. P appeal was not filed as a late request for an administrative review of the Division's Administrative Child and Medical Support Order issued

¹³ Recording of Hearing and Exhibit 4.

¹⁴ Alaska Regulation 15 AAC 05.030(h).

¹⁵ 15 AAC 125.118(a).

on September 8, 2009. Mr. P request for a formal hearing discusses concerns about the modified ongoing child support amount and does not clearly request a review of the original order.

The Division explained at the hearing that its records do not indicate that Mr. P requested an administrative review of the original order, although Mr. P testified that he had filed such a request. Even though a timely appeal may have been filed, the appeal of the original establishment order is still within the jurisdiction of the Division because the Division has neither conducted an administrative review of that decision nor denied a request for an administrative review.

Once the Division takes action on a request for an administrative review of Administrative Child and Medical Support Order issued on September 8, 2009, either Mr. or Ms. P will have 30 days to request a formal hearing to appeal that action. The issues Mr. or Ms. P raised regarding the pre-order arrears that were established in the original order would then be within the jurisdiction of an administrative law judge.

IV. Conclusion

I conclude that the Division correctly modified Mr. P's ongoing child support and added T to his child support order. Mr. and Ms. P should address their concerns about the Administrative Child and Medical Support Order issued on September 8, 2009, with the Division by attempting to obtain an administrative review of that order.

V. Child Support Order

The Division's Modified Administrative Child and Medical Support Order issued on November 19, 2010, is affirmed.

DATED this 1st day of February, 2011.

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 23rd day of February, 2011

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

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