

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

IN THE MATTER OF	)	OAH No. 11-0106-CSS
J A. H	)	CSSD No. 001093534
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**DECISION AND ORDER**

**I. Introduction**

This case is Mr. J A. H's appeal of an order modifying his child support obligation. The Child Support Services Division (Division) issued this order increasing Mr. H's ongoing monthly obligation for the support of his child, L, from \$365 to \$1,039 effective January 1, 2011.

On April 10, 2011, a formal hearing was held to consider Mr. H's appeal.<sup>1</sup> Mr. H participated in the hearing. Prior to the hearing, the custodial parent, Ms. C J. S provided notice that she did not wish to participate. Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on April 15, 2011.

Based on the evidence presented at the hearing, the administrative law judge concludes that Mr. H's modified ongoing child support should be adjusted based on the recent reduction in his earnings. Modified ongoing child support should be reduced to at \$483 per month effective March 1, 2011, based on Mr. H's current income. Modified ongoing child support for January and February 2011 should be set at \$1,020 based on Mr. H's 2010 income, because he continued to work at his old job until March of 2011.

**II. Facts**

This case is an appeal of the Division's denial of Ms. S's request to review Mr. H's ongoing child support obligation for a possible modification.<sup>2</sup> Mr. H's existing child support for L was set in 2001 at \$365 per month.<sup>3</sup> Ms. S filed a request for modification in December of 2010.<sup>4</sup> The Division issued notice of the petition for modification on December 16, 2010.<sup>5</sup>

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.190.  
<sup>2</sup> Alaska Civil Rule 90.3(h) governs child support modification actions.  
<sup>3</sup> Division's Pre Hearing Brief, page 1, & Exhibit 1.  
<sup>4</sup> Division's Pre Hearing Brief, page 1, & Exhibit 2.  
<sup>5</sup> Exhibit 3.

The Division issued a Modified Administrative Child and Medical Support Order on March 2, 2011.<sup>6</sup> The Division set Mr. H's modified ongoing child support on calculations that showed his 2010 income would result in a monthly support amount of \$1,107 per month.<sup>7</sup> This amount is more than a 15% percent increase from current monthly amount of \$365.

Mr. H requested a formal hearing.<sup>8</sup> Prior to the hearing, the Division recalculated Mr. H's ongoing child support to be \$1,039.<sup>9</sup> At the hearing, Mr. H explained that he had been dismissed by his employer in March of 2011 and expected to earn only \$40,000 per year with his new employer. Mr. H also explained that he and his wife were expecting a new child and he is paying child support for a child who is older than L.<sup>10</sup>

After the hearing, the Division ran new calculations, which use estimated earnings for 2011 at the new job based on the updated information from Mr. H at the hearing. These new calculations result in modified ongoing monthly child support of \$483. After the hearing, the Division also ran new calculations for the first two months of 2011. These calculations result in modified ongoing monthly child support of \$1,020. Both of these calculations give Mr. H the proper deduction for the child support he pays for his older child.<sup>11</sup>

Based on the evidence in the record, I find that it is more likely than not the Division's latest calculation at Exhibits 9 and 10 and the income amounts used in this calculation are correct.<sup>12</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case, Mr. H has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>13</sup> Mr. H met his burden of proof to show that the ongoing monthly amount in Division's order was incorrect.

Ongoing child support should be calculated based using the best estimate of Mr. H's income unless there is a showing by clear and convincing evidence that a variance of the

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<sup>6</sup> Exhibit 4.

<sup>7</sup> Exhibit 4, page 6.

<sup>8</sup> Exhibit 5.

<sup>9</sup> Exhibit 7, page 1.

<sup>10</sup> Recording of Hearing – Testimony of Mr. H.

<sup>11</sup> The Division's latest calculations, filed after the hearing, are marked as exhibit 9 and 10.

<sup>12</sup> Recording of Hearing & Exhibit 9 & 10.

calculated amount based on the child support guidelines is needed to prevent an injustice.<sup>14</sup> The new amounts calculated by the Division are correct. There is not clear and convincing evidence in the record showing that an injustice will occur if ongoing child support is set at these amounts. Although Mr. H will soon have a new child living with him, a subsequent child from a different relationship is generally not an unusual circumstance that would justify a reduction in child support.<sup>15</sup>

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>16</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>17</sup> The evidence in the record shows that a material change of circumstances has occurred since Mr. H's ongoing child support was set at \$365 per month. The modified ongoing amount calculated at \$483 per month is more than a 15 percent change from the outstanding order of \$365 per month. A material change of circumstances justifying an upward modification of ongoing child support has occurred.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. Following this general rule, the modification should be effective January 1, 2011, because the petition was issued in December of 2010.

#### **IV. Conclusion**

Mr. H's ongoing child support should be modified based on the Division's latest calculations, which properly account for the reduction in his earnings and his child support for his older children. Modified ongoing child support should be reduced to \$483 per month effective March 1, 2011, based on Mr. H's current income. Modified ongoing child support for January and February 2011 should be set at \$1,020 based on Mr. H's 2010 income, because he continued to work at that same job until March of 2011.

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<sup>13</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>14</sup> See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

<sup>15</sup> Alaska Civil Rule 90.3(c) Commentary VI.B.2.

<sup>16</sup> Alaska Civil Rule 90.3(h)(1).

<sup>17</sup> Alaska Civil Rule 90.3, Commentary X.

**V. Child Support Order**

1. Mr. H modified ongoing child support for L is set at \$1,020 per month effective January 1, 2011, and \$483 per month, effective March 1, 2011,
2. The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for L.
3. All other provisions of the Division’s Modified Administrative Child and Medical Support Order on March 2, 2011 remain in effect.

DATED this 19<sup>th</sup> day of April 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 6<sup>th</sup> day of May, 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.]