

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

IN THE MATTER OF)	
M W. T)	OAH No. 11-0291-CSS
)	CSSD No. 00116097
_____)	

DECISION AND ORDER

I. Introduction

This case is M W. T's appeal of an order issued by the Alaska Child Support Service Division (Division). That order denied Mr. T's request for a downward modification of his existing child support obligation for his child, O. Several hearings were held in Mr. T's appeal.¹ The custodial parent, X C. W, participated. Mr. T also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearings were audio-recorded. The record closed at the end of the hearing that was held on November 21, 2011.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concluded that the monthly ongoing child support of \$955, the amount set in the Division's Administrative Child and Medical Support Order dated January 24, 2005, should be modified in accordance with the Division's latest calculations at exhibit 10, which were discussed at the hearing.

These new calculations are based on the Division's estimate of Mr. T's 2011 income based on updated information, and give Mr. T the appropriate deduction for the Children's Insurance Benefit (CIB) payments that O receives because of Mr. T's eligibility for social security benefits.

Based on these calculations, Mr. T's ongoing child support based on his income is \$986 per month, which means that Mr. T owes only \$568 per month when the \$418 credit for CIB payments is applied. Mr. T's child support is therefore set at \$568 per month with the CIB credit effective May 1, 2011.

Mr. T failed to meet his burden of proof to show that his modified ongoing child support

¹ The hearing was held under Alaska Statute 25.27.190.

should be calculated without including the veterans' disability benefits that he has assigned to his wife and other children.

II. Facts

The Division issued an Administrative Child and Medical Support Order on January 24, 2005. In this order, the Division set Mr. T's ongoing child support at \$986 per month based in part on earnings because Mr. T was at that time still employed.² Mr. T filed a request for a downward modification of his monthly ongoing child support obligation on April 6, 2011.³ The Division issued a Petition for Modification of Administrative Support Order on April 15, 2011.⁴

Mr. T did not timely provide the income information that the Division requested. The Division issued a Denial of Modification Review on June 15, 2011.⁵ Mr. T filed a request for a formal hearing explaining that he is currently disabled. During the hearing process, Mr. T and Ms. W were able to establish O's eligibility for CIB payments of \$418 because of Mr. T's eligibility for social security benefits. O began to receive these benefits, including some retroactive benefits going back at least to the month of May 2011.⁶

The Division recalculated Mr. T's ongoing child support based on his current income. Mr. T is disabled and his income is limited to the retirement and disability benefits that he receives. At the hearing, the Division argued that, in accordance with these new calculations, ongoing child support should be set at \$568 per month with the CIB credit.⁷

Mr. T argued that his ongoing child support should be set lower because he himself does not receive the veterans' disability payments the Division used in its calculation because they are sent to his wife.⁸

The Division explained that its latest calculations used an estimate of Mr. T's projected 2011 income which was based on the updated income information provided by Mr. T and the information provided by the Veterans Administration regarding Mr. T's retirement and disability benefits. This estimate includes the veterans' disability benefits and gives Mr. T a credit for O's

² Exhibit 1.
³ Exhibit 2.
⁴ Exhibit 3.
⁵ Exhibit 5.
⁶ Recording of Hearings.
⁷ Exhibit 10.
⁸ Recording of Hearings.

eligibility for CIB payments.⁹

Based on the evidence in the record, I find that it is more likely than not that these new calculations are correct and that the income used in these calculations is correct. Based on the evidence in the record, I also find that it is more likely than not that these calculations are based on the best estimate of Mr. T's 2011 and ongoing income.¹⁰

III. Discussion

Mr. T argued that his ongoing child support should set be lower than the amount set by the Division. In a child support hearing, the person who filed the appeal, in this case Mr. T has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹¹ Mr. T met his burden to show, and the Division agreed, that Mr. T's child support order should be modified in accordance with the Division's new calculations, but Mr. T did not show that his modified child support should be further reduced by not including his veterans' disability benefits to calculate his ongoing monthly child support obligation.

Child support should be set based the income earned when the child support will be paid.¹² The Division's calculation is based on the best estimate of Mr. T's 2011 income including his veterans' disability benefits. Mr. T's testimony regarding these payments was somewhat confusing. It appears that Mr. T believes that he had assigned the payments of \$1,461 per month to his wife and his other dependants. Mr. T explained that he is living with his wife and the other children. The Division confirmed that from the standpoint of the Veterans Administration, Mr. T receives these payments.

Mr. T's ongoing child support should not be set based on income below what the Division projected he will receive in 2011. Even if Mr. T decided to transfer the right to receive these payments to his wife, and the other children who currently live with him, it would not be appropriate to reduce his child support based on this decision to voluntarily transfer part of his income to his spouse.¹³

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.¹⁴ The rule states that a

⁹ Recording of Hearing & Exhibits 10.

¹⁰ Recording of Hearing.

¹¹ Alaska Regulation 15 AAC 05.030(h).

¹² Alaska Civil Rule 90.3, Commentary III.E.

¹³ Alaska Civil Rule 90.3, Commentary III.C.

¹⁴ Alaska Civil Rule 90.3(h)(1).

material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.¹⁵ Monthly child support of \$568 would be more than a 15 percent decrease from the current order of \$955 per month.

A support order cannot be modified retroactively.¹⁶ 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 May 1, 2011, because the petition was served in April of 2011.¹⁷

IV. CHILD SUPPORT ORDER

1. The Denial of Modification Review issued on June 15, 2011 is overturned.
2. The Petition for Modification of Administrative Support Order issued on April 15, 2011 is granted.
3. Mr. T's modified ongoing child support for O is \$986 per month effective May 1, 2011.
4. Mr. T is entitled to a credit of \$418 per month against his child support obligation for O for CIB payments including the retroactive CIB payments made for O. This means that Mr. T's modified ongoing child support obligation with the CIB credit is \$568 per month.
5. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for O.
6. All other provisions of the Administrative Review Decision issued October 24, 2011 and the Administrative Child and Medical Support Order issued on January 24, 2005 remain in effect.

DATED this 14th day of December, 2011.

By: Signed
Mark T. Handley
Administrative Law Judge

¹⁵ Alaska Civil Rule 90.3, Commentary X.

¹⁶ Alaska Civil Rule 90.3(h)(2).

¹⁷ 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 5th day of January, 2012.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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