

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

IN THE MATTER OF)	OAH No. 11-0298-CSS
K M. M)	CSSD No. 001121420
_____)	

DECISION AND ORDER

I. Introduction

This case is K M. M’s appeal of an order issued by the Child Support Services Division (Division), which modified his monthly child support obligation for the second time in 2011. The order being appealed is the Division’s Modified Administrative Child and Medical Support Order, which raised Mr. M’s monthly ongoing child support order for his child, G, from \$50 to \$678. This order was issued on June 28, 2011 and was effective June 1, 2011.

On July 19, 2011, a hearing was held to consider Mr. M’s appeal. J L. H, G's mother, did not participate. Mr. M participated. The Child Support Services Division (Division) was represented by Andrew Rawls, Child Support Services Specialist.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be vacated. Mr. M’s ongoing child support order for G should remain at \$50 per month, because Mr. M did not file a new request for a modification after the April 7, 2011 modification that set his support at the minimum amount, and collection of ongoing child support is suspended because G is living with his father.

II. Facts

This case is a modification action.¹ Mr. M’s health care provider had filed a request for a modification of Mr. M’s ongoing child support on his behalf with a power of attorney. This request was dated January 19, 2011. This request was filed because Mr. M had suffered a stroke.²

The Division began to process that request, but before the modification was complete,

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

² Exhibit 5.

Mr. M filed his own request for a modification that he dated March 13, 2011.³ The Division had granted this request in a Modified Administrative Child Support and Medical Support Order that was issued on April 7, 2011. This order set ongoing Mr. M's child support at \$50 per month effective March 1, 2011 based on Mr. M's disability.⁴

Mr. M did not appeal the April 7, 2011 modification order, but on May 17, 2011 the Division received another copy of the request for modification dated March 13, 2011 that Mr. M had filed before the April 7, 2011 modification order was issued.⁵ The Division treated this copy of Mr. M's March 13, 2011 request for a modification as a request to modify the April 7, 2011 modification order.⁶

The Division issued another modification order based on an estimate of Mr. M's disability income. This estimate did not use the correct income information and the calculations based on this information did not give Mr. M credit for the Children's Insurance Benefits that his child, G receives as a result of Mr. M's eligibility for Social Security Benefits. Based on these calculations the Division issued a second Modified Administrative Child Support and Medical Support Order in 2011 on June 28, 2011.⁷

This second 2011 modification order raised Mr. M's monthly ongoing child support order for his child, G, from \$50 to \$678.⁸ The Division then issued a Notification of Correction to a Modified Amended Administrative Child Support and Medical Support Order on July 26, 2011. This notification simply corrected a typographical error in the findings of fact in the second 2011 modification. Mr. M requested a formal hearing.⁹

At the hearing, Mr. M explained that his child, G is now living with him. G is 16 years old.¹⁰ Mr. M is concerned about the monthly amount in his withholding order, which includes arrears and interest. Mr. M agreed that he did not want to modify the first modification, which

³ Exhibit 7.
⁴ Exhibit 9.
⁵ Exhibits 7 & 10.
⁶ Exhibit 11 & Recording of Hearing.
⁷ Exhibit 13.
⁸ Exhibit 13.
⁹ Exhibits 14.
¹⁰ Division's Pre-Hearing Brief, page 1.

had set his support at the minimum monthly amount. The Division and Mr. M agreed that the second 2011 modification should be vacated because it was initiated due to confusion about receiving a second copy of Mr. M's earlier modification request.¹¹

III. Discussion

The order on appeal in this case, the second 2011 modification, should be vacated. Mr. M did not request a second modification in 2011. Mr. M did not appeal the first 2011 modification. The second modification order was initiated based on a misreading of the second copy of Mr. M's earlier modification request, which the Division did not receive until after the first modification order was issued. The correction of the second 2011 modification order should also be vacated because it only refers to the second 2011 modification order.

Mr. M's ongoing child support should remain at \$50 per month in accordance with the first 2010 modification order. As discussed at the hearing, the Division will not collect ongoing child support while G is living with Mr. M. It will not be necessary to review Mr. M's ongoing child support for a modification unless G stops living with his father, Mr. M, before he becomes an adult in the next 16 months.

IV. Conclusion

I conclude that Mr. M's order for ongoing child support should remain at the minimum of \$50 per month.

V. Child Support Order

1. The Division's Modified Administrative Child Support and Medical Support Order issued on June 28, 2011 and the Notification of Correction to a Modified Amended Administrative Child Support and Medical Support Order issued on July 26, 2011 are vacated.

2. All provisions of the Division's Modified Administrative Child Support and

¹¹ Recording of Hearing.

Medical Support Order issued on April 7, 2011 which set ongoing child support at \$50 per month effective March 1, 2011, remains in effect.

DATED this 19th day of August 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 9th day of September, 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.]