

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

IN THE MATTER OF)

K G. J)

) OAH No. 11-0323-CSS

) CSSD No. 001060269

DECISION AND ORDER

I. Introduction

This case is K G. J's appeal of a notice denying his request to reduce his ongoing monthly child support obligation by modifying his child support order. The Child Support Services Division (Division) declined this request to reduce Mr. J's support of his child, F.

On September 7, 2011 and September 27, 2011, a formal hearing was held to consider Mr. J's appeal.¹ Mr. J did not participate in the hearing. The custodial parent, K L. C participated. Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on October 7, 2011.

Based on the testimony presented at the hearing, the administrative law judge concludes that Mr. J's ongoing child support should be modified based on the reduction in his earnings. Modified ongoing child support should be set at the minimum, \$50 per month, effective July 1, 2011, based on Mr. J's lack of income due to his disability.

II. Facts

The Division denied Mr. J's request to reduce his ongoing child support obligation.² Mr. J's existing child support for F was set in 2008 at \$211 per month.³ Mr. J filed a request that his child support be decreased in June of 2011.⁴ The Division issued notice of the petition for modification on June 24, 2011.⁵ Mr. J filed an affidavit of income asserting that he did not have any income other than public assistance medical.⁶

The Division issued a Notice of Denial of Modification on July 29, 2011.⁷ The Division based its decision to deny Mr. J's request to modify his ongoing child support on his failure to

¹ The hearing was held under Alaska Statute 25.27.190.

² Alaska Civil Rule 90.3(h) governs child support modification actions.

³ Division's Pre Hearing Brief, page 1, & Exhibit 1.

⁴ Division's Pre Hearing Brief, page 1, & Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ Exhibit 5.

timely provide documentation of his disability.⁸

Mr. J requested a formal hearing.⁹ Mr. J had earlier explained that he was disabled, but he had only provided a letter showing that he had temporarily qualified for disability medical coverage. On September 26, 2011, the Division received additional documentation of his disability.¹⁰

Mr. J did not provide a phone number for either of the hearing dates as instructed by the notices sent to him. Mr. J did not answer at his phone numbers of record for the hearings. The first hearing was rescheduled at his request. After the September 27, 2011 rescheduled hearing, the record was held open for ten days to give Mr. J time to file a request to reschedule the rescheduled hearing.¹¹ Mr. J did not file such a request.

After the hearing, the Division filed a post hearing brief recommending that Mr. J's ongoing child support be modified and set at the minimum of \$50 per hour based on his lack of income. Ms. C and Mr. J did not file any objections to this recommendation.¹²

Based on the evidence in the record, I find that it is more likely than not the Division's conclusion that Mr. J's current income qualifies for the minimum monthly child support amount is correct.¹³

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. J, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁴ Mr. J met his burden of proof to show that the ongoing monthly amount of his child support order should be modified.

Ongoing child support should be calculated based using the best estimate of Mr. J income. The Division correctly recommended that Mr. J's ongoing child support be reduced to the minimum amount of \$50 per month based on Mr. J's inability to earn income. The law requires that child support be set at no less than \$50 per month.¹⁵

⁸ Recording of Hearing.

⁹ Exhibit 6.

¹⁰ Exhibits 2, 6 & 7.

¹¹ Recording of Hearing.

¹² Division's Post Hearing Brief & Exhibit 7.

¹³ Recording of Hearing & Exhibit 7.

¹⁴ Alaska Regulation 15 AAC 05.030(h).

¹⁵ *Wright v. Gregorio*, 855 P.2d 772 (Alaska 1993) & Alaska Civil Rule 90.3(c)(1)(B).

Although Mr. J receives social security, F apparently does not receive social security Children's Insurance Benefits (CIB) payments. Most parents who are living on Social Security Benefits do not have to pay any child support because the child receives CIB payments as a result of the parent's eligibility for social security. These CIB payments cost the parent nothing and effectively pay the parent's child support obligation for him. CIB payments are first added to the parent's income when calculating child support and then credited against a parent's monthly child support obligation.¹⁶

If F received CIB payments as the result of Mr. J's social security, the CIB payments would be credited against Mr. J's monthly child support obligation. This means that Mr. J's child support obligation would effectively be paid by Social Security. Mr. J or Ms. C would have to apply for these benefits on F's behalf. If F starts to receive CIB benefits Mr. J should notify his Division caseworker so that the appropriate adjustment can be made to his account.

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.¹⁷ 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.¹⁸ The evidence in the record shows that a material change of circumstances has occurred since Mr. J's ongoing child support was set at \$211 per month in 2008. The modified ongoing amount set at the minimum of \$50 per month is more than a 15 percent change from the outstanding order of \$211 per month. A material change of circumstances justifying a downward 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 July 1, 2011, because the petition was issued in June of 2011.

IV. Conclusion

Mr. J's ongoing child support should be decreased due to the decrease in his earnings that has occurred due to his disability. Since there is no evidence that F is receiving CIB payments, Mr. J must still pay \$50 per month despite his low income.

¹⁶ *Miller v. Miller*, 890 P2d 574 (Alaska 1995).

¹⁷ Alaska Civil Rule 90.3(h)(1).

¹⁸ Alaska Civil Rule 90.3, Commentary X.

V. Child Support Order

- The Division’s Notice of Denial of Modification issued on July 29, 2011, overturned.
- The petition for modification issued on June 24, 2011 is granted.
- Mr. J modified ongoing child support for F is set at \$50 per month, effective July 1, 2011,
- The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for F.

DATED this 21st day of October 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 14th day of November, 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.]