

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

IN THE MATTER OF)	OAH No. 11-0332-CSS
C J. H)	CSSD No. 001039524
_____)	

DECISION AND ORDER

I. Introduction

This case is Mr. C J. 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, F, from \$305 to \$490 effective June 1, 2011.

On September 12, 2011, a formal hearing was held to consider Mr. H's appeal.¹ Mr. H participated in the hearing. Prior to the hearing, the custodian of record, Ms. A K stated that she did not wish to participate. Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

Based on the evidence presented at the hearing, the administrative law judge concludes that Mr. H's modified ongoing child support order should be affirmed. Modified ongoing child support should be set at \$490 per month effective June 1, 2011, based on Mr. H's 2010 income in accordance with the Division's order. The evidence at the hearing showed that the Division's order increasing ongoing child support was correct.

II. Facts

This case is an appeal of the Division's order increasing Mr. H's ongoing child support obligation through the modification process.² Mr. H's existing child support for F and her brother, J, was set in 1998 at \$305 per month.³ J is now an adult. Ms. K filed a request for modification in May of 2011.⁴ The Division issued notice of the petition for modification on May 20, 2011.⁵

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.

The Division issued a Modified Administrative Child and Medical Support Order on July 15, 2011.⁶ 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 \$490 per month.⁷ This amount is more than a 15% percent increase from current monthly amount of \$305.

Mr. H requested a formal hearing.⁸ Prior to the hearing, the Division provided summaries of Mr. H's earnings since 2008 as reported by his employers.⁹ At the hearing, Mr. H explained that he had worked as a union laborer and did not earn as much during the winter when construction slows down. Mr. H was concerned that he would fall behind in his child support if it was increased now that he was likely to be living on unemployment benefits between construction jobs.¹⁰ F was born February 21, 1995, and is a junior in high school. Mr. H does not have other minor children living with him or other children for whom he is currently paying ongoing child support.¹¹

The Division's modification order was based on Mr. H's income for 2010 which includes \$20, 925.83 in earnings plus unemployment benefits and a PFD.¹² As Hr. H admitted at the hearing, his earnings in 2010 are less than his 2009 and 2011 reported earnings, and the evidence in the record indicates that Mr. H will probably earn an annual income at least equal to the amount the Division used to calculate his modified child support for the next two years that this order is likely to remain in effect.¹³ Based on the evidence in the record, I find that it is more likely than not the Division's calculation at Exhibit 4 and the income amounts used in this calculation is correct.¹⁴

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.¹⁵ Mr. H was very frank and credible when he testified at the hearing, but did not meet his burden

⁶ Exhibit 4.

⁷ Exhibit 4, page 6.

⁸ Exhibit 5.

⁹ Exhibit 6.

¹⁰ Recording of Hearing – Testimony of Mr. H.

¹¹ Recording of Hearing – Testimony of Mr. H.

¹² Exhibit 4, page 6.

¹³ Recording of Hearing & Exhibit 4 & 6.

¹⁴ Recording of Hearing & Exhibit 4, 5 & 6.

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 calculated amount based on the child support guidelines is needed to prevent an injustice. The new monthly amount calculated by the Division is correct. There is not clear and convincing evidence in the record showing that an injustice will occur if ongoing child support is set at this amount.¹⁶

Mr. H made it clear at the hearing that he was not trying to avoid his child support obligation, but has genuine concerns about how the increase in ongoing support will impact his financial circumstances. Although Mr. H's earnings fluctuate from year to year, and during the year, and he is about to start the time of the year when he usually earns less, these are not unusual circumstances that would justify a reduction in child support.

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. H's ongoing child support was set at \$305 per month. The modified ongoing amount calculated at \$490 per month is more than a 15 percent change from the outstanding order of \$305 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 June 1, 2011, because the petition was issued in May of 2011.

IV. Conclusion

Mr. H's ongoing child support should be modified based on the Division's calculations. Modified ongoing child support should be set at \$490 per month effective June 1, 2011, based on

¹⁵ Alaska Regulation 15 AAC 05.030(h).

¹⁶ See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

¹⁷ Alaska Civil Rule 90.3(h)(1).

¹⁸ Alaska Civil Rule 90.3, Commentary X.

Mr. H's 2010 income.

V. Child Support Order

The Division's Modified Administrative Child and Medical Support Order issued on July 15, 2011 is affirmed.

DATED this 14th day of September 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 13th day of October, 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.]