

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

IN THE MATTER OF)
J E. M) OAH No. 11-0340-CSS
) CSSD No. 001103094
_____)

DECISION AND ORDER

I. Introduction

This case is J E. M appeal of a notice denying his request to reduce his ongoing monthly child support obligation to \$50 per month by modifying his child support order. The Child Support Services Division (Division) did reduce Mr. M’s ongoing support obligation for his child, M but to \$260 per month not \$50.

On September 21, 2011 a formal hearing was held to consider Mr. M’s appeal.¹ Mr. M participated in the hearing. The custodial parent, D O also participated. Erinn Brian, Child Support Services Specialist, represented the Division. Two post hearing orders were issued after the hearing. The hearing was audio-recorded. The record closed on October 27, 2011.

Based on the evidence in the record, the administrative law judge concludes that Mr. M’s ongoing child support should be modified based on the reduction in his earnings. Modified ongoing child support should be set at \$100 per month, effective July 1, 2011, based on Mr. M’s low income due to his disability.

II. Facts

The Division denied Mr. M’s request to reduce his ongoing child support obligation.² Mr. M’s existing child support for M was set in 2001 at \$435 per month.³ Mr. M filed a request that his child support be decreased in March of 2011.⁴ The Division issued a notice of the petition for modification on March 14, 2011.⁵

The Division issued a Notice of Denial of Modification on May 2, 2011.⁶ The Division

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 2.
⁴ Division’s Pre Hearing Brief, page 1, & Exhibit 1.
⁵ Exhibit 3.
⁶ Exhibit 4.

based its decision to deny Mr. M's request to modify his ongoing child support on his failure to timely provide documentation of his disability.⁷ Mr. M then provided some medical evidence and again requested a modification. The Division issued another petition for modification on June 9, 2011.⁸ The Division issued Modified Administrative Child and Medical Support order on August 17, 2011, setting modified ongoing child support at \$260 per month effective July 1, 2011.

Mr. M requested a formal hearing.⁹ At the hearing, Mr. M explained that he was disabled, but he had only provided one letter with limited information about his medical condition. Ms. O explained that Mr. M was currently being prosecuted in Wisconsin for his failure to pay her child support. Ms. O testified that she did not believe that Mr. M could not work. After the hearing, the Division received additional documentation of Mr. M disability and his income from as a member of a Native American tribe. The medical records show that Mr. M has chronic back and neck pain caused by degenerative disc disease and obesity. Mr. M's treatment for this pain is regular high doses of methadone.

The Division also filed new calculations based on an estimate of Mr. M income without any earnings.¹⁰ The Division filed a post hearing brief recommending that Mr. M's ongoing child support be modified and set at \$100 per hour based on his these calculations. Ms. O and Mr. M did not file any objections to this recommendation.

Based on the evidence in the record, I find that it is more likely than not the Division's conclusion that Mr. M's current income qualifies for \$100 ongoing monthly child support amount is correct.

III. Discussion

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

Ongoing child support should be calculated based using the best estimate of Mr. M's

⁷ Exhibit 4.

⁸ Exhibits 5 & 7.

⁹ Exhibit 10.

¹⁰ Recording of Hearing & Exhibits 8 & 12.

income. The Division correctly recommended that Mr. M's ongoing child support be reduced to the amount of \$100 per month based on Mr. M's inability to earn additional income due to his disability.

Although Mr. M has applied for social security, M apparently does not yet 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.

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

As explained at the hearing, Mr. M cannot initiate a disestablishment action or receive an order for paternity testing through this appeal of his child support modification. In order to obtain an order for genetic testing, Mr. M needs to initiate a disestablishment action in court. The criminal proceedings against Mr. M for his failure to pay support do not change his eligibility for modification of his ongoing child support order. This order is prospective and does not change Mr. M's liability for arrears that accrued before the effective date of this modification order.

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.¹¹ 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.¹² The evidence in the record shows that a material change of circumstances has occurred since Mr. M's ongoing child support was set at \$435 per month in 2008. The modified ongoing amount set at the minimum of \$100 per month is more

¹¹ Alaska Civil Rule 90.3(h)(1).

¹² Alaska Civil Rule 90.3, Commentary X.

than a 15 percent change from the outstanding order of \$435 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. M'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 M is receiving CIB payments, Mr. M must still pay \$100 per month despite his low income.

V. Child Support Order

The Division's Modified Administrative Child Support and Medical Support Order issued on August 17, 2011 adjusted as follows, as other provisions remain in effect.

- Mr. M modified ongoing child support for M is set at \$100 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 M.

DATED this 9th day of January 2012.

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 30th day of January, 2012

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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