

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

In the Matter of)	
E L. L)	
)	OAH No. 11-0447-CSS
_____)	CSSD No. 001135772

DECISION AND ORDER

I. Introduction

This case is Mr. E L. L's appeal of the modification order adding his child, M, to his existing child support order for his other child, K. The Child Support Service Division (Division) issued this order because there was an application for child support services for M.

The modification order added arrears for M's support going back to the month of the application for services. The Division modified Mr. L's ongoing child support obligation by setting it at a higher monthly amount based on his 2010 and 2011 estimated incomes.

Mr. L requested a formal hearing. This request was referred to the Alaska Office of Administrative Hearings. Administrative Law Judge Mark T. Handley was assigned to conduct the formal hearing, which was held on December 12, 2011. Mr. L and the custodial parent, B W, both participated. Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on January 6, 2012.

At the hearing, Mr. L argued that the Division had over-estimated his 2011 income. Mr. L was also concerned about how he would be able to pay the increased child support and still provide adequately for his three younger children who live with him. Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification order for 2011 and ongoing child support should be adjusted based on the new calculations that the Division submitted after the hearing. These new calculations use an updated estimate of Mr. L's 2011 income. There is not clear and convincing evidence in the record that manifest injustice would result if the support award is set in accordance with these calculations.

II. Facts

This case is an add-a-child modification action.¹ Mr. L's ongoing child support for his child, K was previously set in 2007 at \$241 per month.²

The Division initiated a modification action to add M, who was born in January of 2006, because Ms. W filed a request for services in May of 2010.³ Mr. L's paternity of M, the new child added to the order, is not now in dispute.⁴ Mr. L is named as M's father in an affidavit of paternity. Mr. L filed an affidavit of paternity and the Division's denial of his request for genetic testing was not appealed.⁵

The Division issued notice of the petition for modification on June 21, 2011.⁶ The Division issued a Modified Administrative Child and Medical Support Order on September 7, 2011.⁷

The Division's order set Mr. L's ongoing child support obligation at \$704 per month, for two children effective September 1, 2010.⁸ The addition of M increased the total number of children from the number covered by the original order going back to the date that services were requested, so that additional arrears were added to the prior ongoing monthly amount of \$241 going back to May 1, 2010.⁹

The Division calculated Mr. L's modified ongoing child support using the income information he provided.¹⁰ Mr. L requested an Administrative Review.¹¹ The Division issued an Administrative Review Decision on November 7, 2011. This Administrative Review Decision affirmed the September 7, 2011 Modified Administrative Child and Medical Support Order.¹²

Mr. L requested a formal hearing. In his request for a formal hearing, Mr. L provided

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

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

³ Recording of Hearing & Exhibit 1.

⁴ Recording of Hearing & the Division's Pre-Hearing Brief, page 1.

⁵ Exhibit 3 & Division's Pre Hearing Brief.

⁶ Exhibit 2.

⁷ Exhibit 4.

⁸ The Division's Pre-Hearing Brief, page 1 & Exhibit 4.

⁹ The correct procedure for setting ongoing child support and arrears when adding a new child to an existing child support order, as set out in Alaska Regulation 15 AAC 125.340(e).

¹⁰ Exhibit 6.

¹¹ Exhibit 7.

¹² Exhibit 9.

updated income information.¹³

At the hearing, Mr. L and Ms. W both provided information about their households' finances. Mr. L was concerned that having to pay any additional child support will have an adverse impact his household's finances and the children living with him who are younger than M and K. Mr. L has three children who are under five years old living in his household with him and his fiancée, the children's mother. Mr. L recently went through bankruptcy, which extinguished most of his debts. Mr. L's fiancée earns \$8.00 per hour and works 6 hours per week. Because their children are so young, she stays home to care for them. M and K's mother, Ms. W, is pregnant. That child's father does not earn very much income. Ms. W had to take some time off in 2011 for medical reasons and will need to take maternity leave soon. She earns about \$40,000 per year. K has special needs, which require frequent medical visits which will no longer be covered by public assistance after a few more months.¹⁴

After the hearing, as requested, the Division provided new calculations and a summary of support obligation based on this updated income information as well as a copy of the form that the Division completed based on the information Mr. L provided about his household's finances at the hearing.¹⁵

After the hearing, in a letter dated June 4, 2011, Ms. W expressed some concerns about the monthly amounts in the Division's latest calculations. Ms. W also provided information about the payments she has received. Ms. W argued that Mr. L's child support obligation for M and K should not be reduced due to his younger children or his financial difficulties. Ms. W points out that she has had to work through her pregnancies.¹⁶

Based on the evidence in the record, I find that Mr. L did show that that the Division's calculations used to set his modified ongoing child support or the income used in those calculations should be adjusted based on the updated income information that he provided. Based on the evidence in the record, I find that it is more likely than not the Division's latest calculations are correct and are based on the correct income information for the relevant time frames. These calculations result in monthly child support obligation for Mr. L for M and K of

¹³ Mr. L's appeal is found at Exhibit 13.

¹⁴ Recording of Hearing.

¹⁵ Exhibits 14-17.

¹⁶ Ms. W's June 4, 2011 letter is marked as Exhibit A.

\$400 beginning in May of 2010, \$420 beginning in January of 2011 and \$691 beginning in July of 2011. I also find that Mr. L did not provide clear and convincing evidence that manifest injustice would result if the support award is set in these monthly amounts.¹⁷

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. L, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁸ Mr. L did show that the Division's order was incorrect. Based on updated income information, the Division's filed new calculations based on his current earnings.¹⁹

Ongoing child support should be calculated based on Mr. L's income unless good cause exists to raise child support above or reduce it below the amounts calculated using the income formula in Civil Rule 90.3(a). To establish good cause, the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."²⁰

Mr. L did not show that it would be unjust to require him to pay \$691 per month in ongoing child support. Mr. L did not show that he and his wife will be unable to support themselves and Mr. L's younger children if L's ongoing child support for M and K's is increased to \$691 per month.²¹ Both parents' household financial circumstances are similar. While paying \$691 per month in ongoing child support may require some adjustments, Mr. L's duty to pay the correct percentage of his income toward the ongoing support of his older children, M and K's, takes precedence over his debts and other financial obligations. Mr. L's obligation to support his younger children would not lower his monthly support obligation for M and K unless a reduction is required to prevent a substantial hardship.²² Under Alaska Civil Rule 90.3(a) &(c), Mr. L has an obligation to pay 27% of his adjusted gross income in child support to M and K.

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the

¹⁷ Recording of Hearing.
¹⁸ Alaska Regulation 15 AAC 05.030(h).
¹⁹ Alaska Regulation 15 AAC 125.340.
²⁰ Alaska Civil Rule 90.3(c).
²¹ Recording of Hearing.
²² Alaska Civil Rule 90.3 Commentary VI.B.2.

change shows that a material change of circumstances has occurred.²³ 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.²⁴ Monthly child support of \$691 would be more than a 15 percent increase from the current order of \$241 per month. Furthermore, adding a second child to the order is a material change of circumstances that would justify a modification even without a 15% change in the monthly amount.

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 21, 2011. Before this date, additional arrears M have been added to the prior ongoing monthly amount of \$241 for the months of May of 2010 through June 2011. These additional arrears were calculated using seven-percent of Mr. L's adjusted gross annual income for 2010 and 2011. These additional arrears are to pay for the addition of M from May of 2010, which was the month Ms. W first requested the Division's services for M to July 1, 2011. As noted above, July 1, 2011 is the date that Mr. L's ongoing child support could be modified using his current income to set ongoing child support for both children.²⁵

IV. Conclusion

Mr. L's modified child support should be adjusted based on the new calculations that the Division submitted after the hearing. There is not clear and convincing evidence that manifest injustice would result if the support award is set in accordance with these calculations.

V. Child Support Order

1. Mr. L's modified ongoing child support for M and K in the monthly amount of \$691 for two children, effective July 1, 2011.
2. Mr. L is liable for additional child support arrears for M in the monthly amount of \$159

²³ Alaska Civil Rule 90.3(h)(1).

²⁴ Alaska Civil Rule 90.3, Commentary X.

²⁵ This is the correct procedure for setting ongoing child support and arrears when adding a new child to an existing child support order, as set out in Alaska Regulation 15 AAC 125.340(e). There is no clear explanation in the record for the thirteen-month delay in issuing the modification petition after the request for services for M. Ms. W expressed concern in her January 4, 2012 letter about the lower monthly amounts for this period that are the result of the application of this regulation to the arrears that accrued during this period.

for the months of May 2010 through December 2010 and \$179 for the months of January 2011 through June 2011.

3. All other provisions of the Division's Modified Administrative Child Support and Medical Support Order issued on September 7, 2011 and the Administrative Review Decision issued on November 7, 2011 remain in effect.

DATED this 6th day of February, 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 6th day of March, 2012

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

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