

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

IN THE MATTER OF)	OAH No. 12-0007-CSS
M C. A)	CSSD No. 001148910
_____)	

DECISION AND ORDER

I. Introduction

On January 30, 2012, a formal hearing was held to consider the child support obligation of M C. A (Obligor) for the support of his child, D (Obligee).¹ The Custodian, J A, participated. Mr. A also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on March 6, 2012.

This case is Mr. A's appeal of the Division's order modifying his ongoing child support obligation for his child, D. Mr. A was concerned about some of the income information the Division had used to calculate his ongoing child support.

Having reviewed the record in this case and after due deliberation, the administrative law judge concludes that Mr. A's housing allowance should be included as income. The amounts set in the Division's Modified Administrative Child and Medical Support Order should be adjusted in accordance with the Division's latest calculations, which result in a modified ongoing child support obligation of \$1,057 per month effective January 1, 2012. This adjustment is based on updated income information obtained during the appeal.

II. Facts

This case is a modification action.² Mr. A's ongoing child support for his child, D was previously set in 2009 at \$630 per month.³ This ongoing child support amount was set in 2008.⁴

The Division initiated a modification action at Ms. A's request.⁵ The Division issued notice of the petition for modification on September 28, 2011.⁶ The Division issued a Modified Administrative Child and Medical Support Order on December 16, 2011.⁷

¹ The hearing was held under Alaska Statute 25.27.170.
² Alaska Civil Rule 90.3(h) governs modification actions.
³ Exhibit 1 & the Division's Pre-Hearing Brief, page 1.
⁴ Exhibit 1.
⁵ Division's Pre-Hearing Brief, page 1 & Recording of Hearing.
⁶ Exhibit 2.
⁷ Exhibit 4.

The Division's order set Mr. A's ongoing child support obligation at \$978 per month, effective October 1, 2011.⁸ The Division calculated Mr. A's modified ongoing child support using estimated income information.⁹

After the hearing, the Division made new calculations as requested. These calculations used Mr. A's January 2012 Leave and Earnings Statements averaging his monthly COLA for being stationed in Germany. These calculations result in a monthly child support amount of \$1,057.¹⁰ This represents a slight increase that is primarily attributable to an increase in income due to his Overseas Housing Allowance (OHA) and his Cost of Living Allowance (COLA) pay Mr. A now receives.

Based on the evidence in the record, I find that it is more likely than not that these calculations are correct and that the income used in these calculations is correct.¹¹

III. Discussion

Mr. A also argued that his child support order should be lower than the amount set by the Division. In a child support hearing, the person who filed the appeal, in this case Mr. A, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹² Mr. A only met his burden in showing that he some adjustments needed to be made to his modified order based on updated income information. These adjustments however, had the effect of increasing his ongoing child support.

Alaska Civil Rule 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."¹³ A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹⁴ Good cause includes a finding of unusual circumstances.¹⁵

Mr. A was frustrated that he felt that he had just finished paying off his child support arrears through a great deal of effort and some financial hardship when the modification was initiated. Mr. A may have difficulty meeting his modified ongoing child support obligation for D, but this case does not present unusual circumstances of the type contemplated by Civil Rule

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

⁹ Exhibit 3.

¹⁰ Exhibit 9.

¹¹ Recording of Hearing & Ex. 6 & 9.

¹² Alaska Regulation 15 AAC 05.030(h).

¹³ Alaska Civil Rule 90.3(a)(1).

¹⁴ Alaska Civil Rule 90.3(c).

¹⁵ Civil Rule 90.3(c)(1)(A).

90.3(c). Mr. A did not provide clear and convincing evidence that manifest injustice will result if the child support amount of \$1,057 per month based on his current income and calculated under Civil Rule 90.3(a) is not decreased.

In addition to his basic pay, Mr. A receives additional pay for housing and food, which do not show up on his W-2 as income. If Mr. A was not employed by the military, he would not receive the housing and food benefits and would be required to pay those living expenses out of his basic wage. That is why OHA, BAQ, BAS, VHA or COLA, which is received by a full-time active duty member, are included as income for child support purposes. The Alaska Civil Rule Commentary explains that the first step in determination of child support is calculating a "parent's total income from all sources." This phrase is interpreted broadly to include benefits which would have been available for support if the family had remained intact. The income used to calculate child support includes Armed Service Members' base pay plus allowances for quarters, rations, COLA and specialty pay.¹⁶

Mr. A was concerned that his child support might be set based on a higher level of income than his is likely to receive in the future because some of his income includes Overseas Housing Allowance and COLA that change from pay period to pay period depending on the relative values of the dollar and the euro. This is an understandable concern, but one that can best be dealt with through the modification process. The Division's latest calculations are based on his latest paystub at the time of the hearing and appear close to the average while reflect a slight downward recent trend average the amount he has been receiving.

In Alaska, the Division has the authority to modify an existing child support order if there is a material change in circumstances. An increase or decrease in an obligor parent's income to the point that the child support amount changes more than 15% is a material change in circumstances. At the time the review was conducted, the resulting child support amount had changed more than 15%.

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 would be effective October 1, 2011, because the petition was issued in September of 2011.¹⁷

¹⁶ See Alaska Civil Rule 90.3 Commentary III.A.28 *Defining Income*.

¹⁷ Alaska Regulation 15 AAC 125.321.

Moving the effective date of a modification forward from the first of the month following the service of the petition for modification is not a variance of the child support guidelines, requiring clear and convincing evidence that moving the date forward is needed to prevent an injustice under Civil Rule 90.3(c). The effective date of a modification cannot predate the service of the petition for modification even when it would clearly prevent an injustice.¹⁸ The effective date of a modification can, however, be moved forward upon a mere showing that there is good cause to make that change.¹⁹

In this case, although the Division mailed the petition for modification on September 28, 2011, Mr. A was living in Germany and was out in the field at that time and did not receive the petition until late December 2011 or early January 2012. While Ms. A testified that she had emailed Mr. A when she requested the modification review, this would not provide the same notice that the actual petition would provide. The intent of the law is that the modification should be prospective from the date that the noncustodial parent receives the petition. This policy ensures that the noncustodial parent will be able to have time to plan for any changes in the ongoing monthly obligation. In this case Mr. A not receiving the actual petition within a few day of when it was sent due to his overseas posting and field duty is good cause to move the effective date of the modification forward to January 1, 2012.

IV. Conclusion

Mr. A child support modified ongoing child support should be set at \$1,057 per month effective January 1, 2012 in accordance with the Division's latest calculations. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

CHILD SUPPORT ORDER

1. Mr. A's modified ongoing child support for D is at \$1,057 per month effective January 1, 2012.
2. All other provisions of the Modified Administrative Child and Medical Support Order issued on December 16, 2011 remain in effect.

DATED this 25th day of May, 2012.

By: Signed _____
Mark T. Handley
Administrative Law Judge

¹⁸ See *State, Dept. of Revenue, Child Support Enforcement Div. v. Schofield*, 993 P2d 405, (Alaska 1999).

¹⁹ *Alaska Dept. of Revenue, CSED v. Kevin Lyn Dillon* 977 P 2d 118, (Alaska 1999).

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 12th day of June, 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.]