

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

IN THE MATTER OF	)	OAH No. 12-0019-CSS
B K. H	)	CSSD No. 001150021
	)	
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**DECISION AND ORDER**

**I. Introduction**

On February 9, 2012, a formal hearing was held to consider the child support obligation of B K. H (Obligor) for the support of his child, T (Obligee).<sup>1</sup> The Custodian, J R. S, participated. Mr. H also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on February 17, 2012.

This case is Mr. H’s appeal of the Division’s order modifying his ongoing child support obligation for his child, T. Mr. H was concerned about some of the income information the Division had used to calculate his ongoing child support. Mr. H argued that his housing allowance should not be included as income. Mr. H also argued that the Division did not have jurisdiction to modify his child support order because the parents and the child are no longer residents of Alaska and he has filed a petitioned with a Texas court on child support and custody issues.

Having reviewed the record in this case and after due deliberation, the administrative law judge concludes that Mr. H’s housing allowance should be included as income. The Division has jurisdiction to modify Mr. H’s Alaska child support order even if the parents and the child are no longer residents of Alaska until another court or tribunal assumes jurisdiction over his child support obligation for T. 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 \$849 per month effective November 1, 2011. This adjustment is based on updated income information obtained during the appeal.

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.170.

## **II. Facts**

This case is a modification action.<sup>2</sup> Mr. H's ongoing child support for his child, T was previously set in 2009 at \$446 per month.<sup>3</sup> This ongoing child support amount was based on calculations that failed to include the value of Mr. H's employer-provided housing as income, even though he was living in employer-provided housing at that time.<sup>4</sup>

The Division initiated a modification action at Ms. S's request.<sup>5</sup> The Division issued notice of the petition for modification on October 20, 2011.<sup>6</sup> The Division issued a Modified Administrative Child and Medical Support Order on January 3, 2012.<sup>7</sup>

The Division's order set Mr. H's ongoing child support obligation at \$816 per month, effective November 1, 2011.<sup>8</sup> The Division calculated Mr. H's modified ongoing child support using the income information he provided.<sup>9</sup>

After the hearing, the Division made new calculations as requested. These calculations used Mr. H's 2011 Leave and Earnings Statement. These new calculations removed the PFD from his income, accounted for Mr. H's bonus pay as taxable rather than nontaxable, and removed the deduction for unemployment insurance that he does not pay. These calculations result in a monthly child support amount of \$849.<sup>10</sup> This represents a slight increase that is primarily attributable to an increase in income due to specialty pay Mr. H 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.<sup>11</sup>

## **III. Discussion**

Mr. H challenged the Division's authority to modify his child support order because Mr. H asserts that neither of the parents or the child is still living in Alaska. Ms. S left Alaska shortly before she requested the modification and Mr. H was no longer living in Alaska when the request

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<sup>2</sup> Alaska Civil Rule 90.3(h) governs modification actions.

<sup>3</sup> Exhibit 1 & the Division's Pre-Hearing Brief, page 1.

<sup>4</sup> Exhibit 1, page 6 & Recording of Hearing.

<sup>5</sup> Recording of Hearing & Exhibit 1.

<sup>6</sup> Exhibit 2.

<sup>7</sup> Exhibit 4.

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

<sup>9</sup> Exhibit 6.

<sup>10</sup> Ex. 7.

<sup>11</sup> Recording of Hearing & Ex. 7.

was filed. Mr. H also argued that he was no longer an Alaska resident when the Division modified the child support order. Mr. H explained that he has petitioned a court in Texas to take jurisdiction over custody and child support.

The Division filed a motion for summary adjudication arguing that it was entitled to have its order upheld as a matter of law because Mr. H's recent leave and earnings statements indicated that Alaska was still his state of legal residence. At the hearing, the Division's motion was denied because a determination of whether Mr. H was an Alaska resident would have required an evidentiary hearing if that determination was needed to establish the Division's jurisdiction, and also because there were income issues in dispute.

It is not necessary to determine whether Mr. H was an Alaska resident to establish that the Division had the jurisdictional authority to modify his Alaska child support order. Under Alaska Statute 25.27.140(a) the Division has the authority to establish a child support order if no support order has previously been established for the children. This broad authority is limited under Alaska Statute 25.25.201, which sets out when the Division and Alaska courts have jurisdiction over a nonresident to establish a child support order. There is, however, no dispute that Mr. H was an Alaska resident when the child support order was established.

Once an Alaska child support order has been issued by the Division, the Division maintains jurisdiction over that order and has the authority to modify that order until another court or tribunal assumes jurisdiction over the support obligation covered by that order. Alaska has adopted the Uniform Interstate Family Support Act (UIFSA).<sup>12</sup> UIFSA allows only one effective child support order to exist at a time. UIFSA accomplishes this by giving the state that issues a child support order both continuing and exclusive jurisdiction over a child support order the state initiates for as long as the state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued. The law of the initiating state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.<sup>13</sup>

The way UIFSA is structured implicitly insures that a child will not be left without an effective child support order as the result of the parents and the child moving to a new state.<sup>14</sup> If the residence of the obligor, the individual obligee, and the child for whose benefit the support

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<sup>12</sup> UIFSA was adopted in Alaska under AS 25.25.101-903.

<sup>13</sup> *State, Child Support Enforcement Div. v. Bromley*, 987 P.2d 183, 188-89 (Alaska 1999).

order is issued is no longer Alaska, the Division's jurisdiction over the child support order would no longer be exclusive, but it would continue until another state assumes jurisdiction.<sup>15</sup> This does not mean that Alaska could not modify the order before another state assumes jurisdiction. It means that another state could assume jurisdiction and issue an order that would prospectively supersede the Alaska order. There is no evidence that any state other than Alaska has issued a child support order. Mr. H admitted at the hearing that the Texas court had not yet taken any action on his petition.

Mr. H cites Alaska regulation 15 AAC 125.730 as authority for his position that the Division no longer had jurisdiction to modify his Alaska child support order if neither the parents or the child resided in the state. This regulation does not limit the Division's jurisdiction under the UIFSA statutes. Rather, this regulation merely provides direction to the Division on the procedure to follow when a modification is requested when the Division is made aware that all the parties have left Alaska either before the petition is issued or before the modification process is complete.

In this case the Division was not aware that the parties had changed residency either before the petition was issued or before the modification process was complete. Mr. H maintained Alaska as his state of legal residence on his employment records and did not raise the issue of the parties' residency until he appealed the modification order. Once the petition is filed the Division can stop the modification process if the Division discovers that the parties are longer residents only if there is good cause as defined by the regulation. No such discovery was made and there was no determination of good cause to stop the modification process. The modification process was completed and Mr. H's Alaska child support order was modified.

The regulation cited Mr. H simply does not contemplate vacating a modification that has been issued based on a determination that the parties have moved. Such an action also would not even meet the good cause requirement for a decision to stop the modification if the Division had been timely notified of this change. The effective date of this modification is October of 2011 and Mr. H did not file his court action until January of 2012. The means that the other parent would be prejudiced by not having the effective date of upward modification of the Alaska because any new order would not take effect under UIFSA until after new order is issued.

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<sup>14</sup> See AS 25.25.201-209.

<sup>15</sup> See AS 25.25.207.

Vacating the modification would therefore continue the lower monthly amount even though Ms. S is entitled to an upward modification effective October of 2011. The regulation that Mr. H cites is not applicable and it would not be appropriate to grant him the relief he seeks under that regulation even if the modification process had not already been completed.

Even if Mr. H was a nonresident when the Division established his child support obligation, which is far from clear, the Division had jurisdiction to issue this child support order for T. Alaska Statute 25.25.201(4) gives the Division jurisdiction over a parent who was a resident and paid support for the child in Alaska. There is no dispute that Mr. H paid child support for T in Alaska.<sup>16</sup>

Mr. H 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. H, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>17</sup> Mr. H 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."<sup>18</sup> 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."<sup>19</sup> Good cause includes a finding of unusual circumstances.<sup>20</sup>

Mr. H may have difficulty meeting his support obligation for T, but this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3(c). Mr. H did not provide clear and convincing evidence that manifest injustice will result if the child support amount of \$849 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. H receives additional pay for housing and food, which do not show up on his W-2 as income. If Mr. H 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 BAQ, BAS, VHA or COLA, which is received by a full-time active

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<sup>16</sup> Recording of Hearing.

<sup>17</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>18</sup> Alaska Civil Rule 90.3(a)(1).

<sup>19</sup> Alaska Civil Rule 90.3(c).

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.<sup>21</sup>

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%.

#### **IV. Conclusion**

Mr. H child support modified ongoing child support should be set at \$849 per month in accordance with the Division's latest calculations.

#### **CHILD SUPPORT ORDER**

1. The Division's motion for summary adjudication is denied.
2. The Petition for Modification of Administrative Support Order issued on October 20, 2011 is granted.
3. Mr. H's modified ongoing child support for T is at \$849 per month effective October 1, 2011.
4. All other provisions of the Amended Administrative Child and Medical Support Order issued on February 5, 2009 remain in effect.

DATED this 20<sup>th</sup> day of March, 2012.

By: Signed  
Mark T. Handley  
Administrative Law Judge

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<sup>20</sup> Civil Rule 90.3(c)(1)(A).

<sup>21</sup> See Alaska Civil Rule 90.3 Commentary III.A.28 *Defining Income*.

**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 6<sup>th</sup> day of April, 2012

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

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