

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

IN THE MATTER OF	)	
B D. V	)	OAH No. 12-0057-CSS
	)	CSSD No. 001121251
_____	)	

**DECISION AND ORDER**

**I. Introduction**

This case is the custodial parent, L L. G’s appeal of a child support order issued by the Alaska Child Support Service Division (Division). That order granted B D. V’s request for a downward modification of his existing child support obligation for his children, J and T. A hearing was held in Mr. V’s appeal.<sup>1</sup> Ms. G participated. Mr. V also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on April 30, 2012.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concluded that the monthly ongoing child support should be modified in accordance with the Division’s latest calculations at exhibits 14, 15 and 16, submitted after the hearing.

These new calculations are based on the Division’s estimate of Mr. V’s 2011 and 2012 income using updated information, and give Mr. V the appropriate credit for the projected Children’s Insurance Benefit (CIB) payments that J and T receive because of Mr. V’s eligibility for social security benefits.

Based on these calculations, Mr. V’s modified ongoing child support for December of 2011, based on his 2011 income is \$481 per month with a projected CIB credit of \$404, which means that Mr. V would owe only \$77 for that month if the projected \$404 credit for CIB payment is applied. Mr. V’s child support for December of 2011 is therefore set at \$481 per month.

Mr. V’s modified ongoing child support for January through June of 2012, based on his estimated annualized income during those months is \$464 per month with a projected CIB credit of \$404, which means that Mr. V owes only \$60 for those months if the projected \$404

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.190.

credit for CIB payment is applied. Mr. V's child support for January through May of 2012 is therefore set at \$464 per month.

Mr. V's modified ongoing child support for June of 2012 and ongoing, after S, Mr. V's other child no longer qualifies for CIB payments is \$519 per month with a projected CIB credit of \$606, which means that Mr. V owes \$0 for the months beginning June of 2012 if the projected \$606 credit for CIB payment is applied. Mr. V's child support for January through June of 2012 is therefore set at \$519 per month.

## **II. Facts**

The Office of Administrative Hearings issued a decision and order setting Mr. V's ongoing child support on November 16, 2006. This order set Mr. V's ongoing child support at \$356 per month based on imputed earnings.<sup>2</sup> Mr. V filed a request for a downward modification of his monthly ongoing child support obligation on November 8, 2011.<sup>3</sup> The Division issued a Petition for Modification of Administrative Support Order on November 17, 2011.<sup>4</sup>

Mr. V provided some of the income information that the Division requested.<sup>5</sup> Mr. V was able to establish J and T's eligibility for CIB payments because of Mr. V's eligibility for social security benefits. J and T began to receive these benefits, including some retroactive benefits going back at least to the month of December 2011.<sup>6</sup> The Division issued a Modified of Administrative Support Order on February 6, 2012. This order set ongoing child support at \$50 per month effective December 1, 2012. Ms. G requested a formal hearing. Ms. G was concerned that she might have to pay back some child support.<sup>7</sup>

The Division recalculated Mr. V's ongoing child support based on his current income.<sup>8</sup> Mr. V is disabled and his income is limited disability benefits that he receives, the CIB payments his children receive, and a PFD. Mr. V has another older child, S, who has a different mother and is not living with Mr. V. The child, S also receives CIB payments. S's CIB payments reduce the amount that J and T receive. S will not qualify for CIB payments after May of 2012 and Mr. V will no longer have an ongoing child support obligation for her. Mr. V's monthly child support obligation for J and T will therefore increase starting in June of 2012, but the CIB

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<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 4.

<sup>6</sup> Recording of Hearing & Exhibits 10-13.

<sup>7</sup> Recording of Hearing & Exhibits 6 & 7.

credit for J and T will also probably increase enough to effectively pay all of his ongoing child support.

After the hearing, the Division recalculated Mr. V's modified child support based on updated income information.<sup>9</sup>

The Division explained that its latest calculations used an estimate of Mr. V's projected 2011 and 2012 incomes, which was based on the updated income information provided by Mr. V and the information provided by the Social Security Administration regarding Mr. V and his children's CIB and disability benefits.<sup>10</sup>

Based on the evidence in the record, I find that it is more likely than not that these new calculations are correct and that the income used in these calculations is correct. Based on the evidence in the record, I also find that it is more likely than not that these calculations are based on the best estimate of Mr. V's 2011 and 2012 and ongoing income.<sup>11</sup>

### **III. Discussion**

Ms. G was concerned that she might have to pay back some child support Ms. G's concerns were addressed at the hearing. Any reductions in Mr. V's child support due to CIB credits will be compensated by the CIB payments Ms. G will receive for the children.

In a child support hearing, the person who filed the appeal, in this case Ms. G, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>12</sup> The evidence did show, and the Division agreed, that Mr. V's child support order should be modified in accordance with the Division's new calculations.

Child support should be set based the income earned when the child support will be paid.<sup>13</sup> The Division's calculations are based on the best estimates of Mr. V's 2011 and 2012 income including his children's CIB benefits.

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.<sup>14</sup> The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter

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<sup>8</sup> Recording of Hearing & Exhibits 14-16.

<sup>9</sup> Exhibit 10.

<sup>10</sup> Recording of Hearing & Exhibits 10.

<sup>11</sup> Recording of Hearing & Exhibits 10-16.

<sup>12</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>13</sup> Alaska Civil Rule 90.3, Commentary III.E.

<sup>14</sup> Alaska Civil Rule 90.3(h)(1).

the outstanding support order by 15 percent.<sup>15</sup> Monthly child support of in the ne amounts calculated by the Division would be more than a 15 percent increase from the current order of \$356 per month. These amounts will largely be set off by the CIB credits that Mr. V should receive.

A support order cannot be modified retroactively.<sup>16</sup> Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. This modification should be effective December 1, 2011, because the petition was served in November of 2011.<sup>17</sup> The modified ongoing monthly amount should change twice in 2012 because there is another material change of circumstances that year with different income and Mr. V's older child, S no longer qualifying for child support or CIB payment about half way through that year. Separate ongoing amounts are therefore set effective January 2012 and June 2012.

#### **IV. Conclusion**

Mr. V's modified ongoing monthly child support should be adjusted in accordance with the Division's latest calculations. The Division should give credits against these monthly amounts for CIB payments made to J and T. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

#### **V. CHILD SUPPORT ORDER**

1. The Modified Administrative Support Order issued on February 6, 2012 is adjusted as follows. All other provisions of that order remain in effect.
2. Mr. V's modified ongoing child support for J and T is \$481 per month effective December 1, 2011; \$464 per month effective January 1, 2012; and \$519 per month effective June 1, 2012.
3. Mr. V is entitled to monthly credit against his child support obligation for J and T for CIB payments including the retroactive CIB payments made for J and T. This means that Mr. V's effective modified ongoing child support obligation with the CIB credit will be significantly less than the amounts set above.

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<sup>15</sup> Alaska Civil Rule 90.3, Commentary X.

<sup>16</sup> Alaska Civil Rule 90.3(h)(2).

<sup>17</sup> Alaska Regulation 15 AAC 125.321.

4. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for J and T.

DATED this 25<sup>th</sup> day of June, 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 31<sup>st</sup> day of July, 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.]