

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

IN THE MATTER OF)
P R. C) OAH No. 12-0058-CSS
) CSSD No. 001151991
_____)

DECISION AND ORDER

I. Introduction

This case is P R. C's appeal of a notice denying his request to reduce his ongoing monthly child support obligation by modifying his child support order because he was unemployed. The Child Support Services Division (Division) did not reduce Mr. C's ongoing support obligation for his children, M and P, because it appeared that his unemployment was temporary.

On March 28, 2012 a formal hearing was held to consider Mr. C's appeal.¹ Mr. C participated in the hearing. The custodial parent, K G. C, did not participate.² Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

Based on the evidence in the record, the administrative law judge concludes that Mr. C's ongoing child support should be modified based on the reduction in his earnings. Modified ongoing child support should be set at \$1,098 per month, effective November 1, 2011; \$432 per month, effective January 1, 2012; and then \$432 per month, effective May 1, 2012, based on Mr. C's income during these time frames.

II. Facts

The Division denied Mr. C's request to reduce his ongoing child support obligation.³ Mr. C's existing child support for M and P was set in 2010 at \$1,162 per month.⁴ Mr. C filed a request that his child support be decreased in September of 2011.⁵ The Division issued a notice

¹ The hearing was held under Alaska Statute 25.27.190.

² Ms. C did not provide a contact number for the hearing as instructed on the notice sent to her, and she was not available at her phone number of record at the time set for the hearing.

³ Alaska Civil Rule 90.3(h) governs child support modification actions.

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

⁵ Division's Pre Hearing Brief, page 2, & Exhibit 1.

of the petition for modification on October 6, 2011.⁶

The Division issued a Decision on Request for Modification Review on December 16, 2011.⁷ The Division based its decision to deny Mr. C's request to modify his ongoing child support on his failure to show that his unemployment was not temporary.

Mr. C requested a formal hearing.⁸ At the hearing, Mr. C explained that he had been unemployed since he was laid off before the effective date of the modification and that, despite a diligent job search, he had so far only been able to obtain seasonal employment. Mr. C explained that he will be starting with his new job on May 3, 2012. He is scheduled to work full-time until September 27, 2012, earning \$13 per hour.⁹

The Division filed three new calculations based on an estimate of Mr. C's income in 2011, his annualized income for the first four months of 2012, and his annualized income earning full-time wages in his new job.¹⁰

At the hearing, the Division recommended that Mr. C's ongoing child support be modified and set at \$1,098 per month, effective November 1, 2011; \$432 per month, effective January 1, 2012; and then \$432 per month, effective May 1, 2012, based on these calculations. Mr. C agreed with this recommendation.¹¹

Based on the evidence in the record, I find that it is more likely than not the Division's latest calculations based on Mr. C's income are correct.¹²

III. Discussion

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

Ongoing child support should be calculated using the best estimate of Mr. C's income. The Division correctly recommended that Mr. C's ongoing child support be reduced to the

⁶ Exhibit 3.

⁷ Exhibit 6.

⁸ Exhibit 7.

⁹ Recording of Hearing.

¹⁰ Exhibits II-IV.

¹¹ Recording of Hearing.

¹² Recording of Hearing & Exhibits II-IV.

amount reflected in its latest calculations based on his income during the relevant time frames.

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.¹³ 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.¹⁴ The evidence in the record shows that a material change of circumstances has occurred since Mr. C’s ongoing child support was set at \$1,162 per month in 2010. Mr. C’s income has been limited to his unemployment benefits since he was laid off. The new modified support amounts reflect this change. As discussed at the hearing, the parties may wish to file another request for modification in September of 2012 if Mr. C is still scheduled to be laid off at the end of that month.

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 November 1, 2011, because the petition was issued in October of 2011.

IV. Conclusion

Mr. C’s ongoing child support should be decreased due to the reduction in his earnings from unemployment and his new seasonal job. Mr. C’s modified ongoing child support should be set at \$1,098 per month, effective November 1, 2011; \$432 per month, effective January 1, 2012; and then \$432 per month, effective May 1, 2012, based on the Division’s latest calculations. These child support amounts were calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

The Division’s Modified Administrative Child Support and Medical Support Order issued on December 15, 2010 are modified as follows, as other provisions remain in effect.

1. The petition for modification issued on October 6, 2011 is granted.
2. The Decision on Request for Modification Review issued on December 16, 2011 is overturned.
3. Mr. C’s modified ongoing child support for M and P is set at \$1,098 per month, effective

¹³ Alaska Civil Rule 90.3(h)(1).

¹⁴ Alaska Civil Rule 90.3, Commentary X.

November 1, 2011; \$432 per month, effective January 1, 2012; and then \$432 per month, effective May 1, 2012.

4. The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for M and P.

DATED this 29th day of March 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 17th day of April, 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.]