

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

IN THE MATTER OF)

N P. U)

) OAH No. 12-0276-CSS

) CSSD No. 001136480

DECISION AND ORDER

I. Introduction

This case is Mr. U's appeal of the Division's order modifying his ongoing monthly child support obligation for his child, B.

On August 27, 2012, a formal hearing was held to Mr. U's appeal. Mr. U participated in the hearing. B's mother, K D. D, the custodial parent, also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

Because there has not been a material change since Mr. U's ongoing monthly child support obligation for B was last set at \$204, his child support order should not be modified.

II. Facts

Mr. U's ongoing monthly child support obligation was set at \$204 per month in an Administrative Child and Medical Support Order dated May 25, 2005.¹ The Division reviewed this child support order at Ms. D's request.²

The Division issued a Notice of Petition for Modification on April 12, 2012.³ The Division issued a Modified Administrative Child and Medical Support Order on June 28, 2012.⁴ In this order, the Division set Mr. U' modified ongoing child support at \$419 per month based on estimated income using his hourly wage during the first part of 2011.⁵ Mr. U requested a formal hearing.⁶

At the hearing, Mr. U explained that the Division had not used the correct income information for him because he lost the full-time job at the hospital in No Name, Alaska where he made the hourly wage that the Division used to calculate his modified child support. Mr. U explained that since he lost that job in 2011, he has been working on-call as a Nurse's Aide and

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3.
⁴ Exhibit 5.
⁵ Exhibit 5.
⁶ Exhibit 6.

as a fisherman. Mr. U also explained that he and his wife are supporting his three younger children in his home. Mr. U provided detailed information about his employment history and his financial situation at the hearing.⁷

At the hearing, neither Ms. D nor the Division objected to a proposal that the present order not be modified at this time.⁸

III. Discussion

Alaska 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.⁹ The rule states that a material change of circumstances “will be presumed” (the quotes were in a different font) if the modified support amount would alter the outstanding support order by 15%.¹⁰

In a child support hearing, the person who filed the appeal, in this case Mr. U, has the burden of proving by a preponderance of the evidence that the Division’s order is incorrect.¹¹

Mr. U showed that there has not been a material change in circumstances that would justify a modification since his child support was set at \$204 per month. At the hearing Ms. D explained that she had filed the request for a modification only to ensure that B was receiving the correct amount of monthly child support. At this time, Mr. U’s earning capacity is difficult to estimate. Given his job skills and the small community he lives in, it may be some time before he has enough employment history to be able to determine if there has been a material change in circumstances since his child support was set at \$204 per month. As discussed at the hearing, the parties may wish to request another modification review in six months to a year.

IV. Conclusion

There has not been a material change since Mr. U’s ongoing monthly child support obligation for B was last set at \$204. Mr. U’s child support order should not be modified. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

⁷ Recording of Hearing –Testimony of Mr. U.

⁸ Recording of Hearing.

⁹ Alaska Civil Rule 90.3(h)(1).

¹⁰ Alaska Civil Rule 90.3, Commentary X.

¹¹ Alaska Regulation 15 AAC 05.030(h).

IV. CHILD SUPPORT ORDER

1. The Division’s Modified Child and Medical Support Order issued on June 28, 2012 is overturned.
2. The Notice of Petition for Modification issued on April 12, 2012 is denied.
3. Mr. U’s ongoing child support will remain at the minimum of \$204 per month in accordance with the Division’s Administrative Child and Medical Support Order dated May 25, 2005, which remains in effect.

DATED this 14th day of September, 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 5th day of October, 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.]