

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

IN THE MATTER OF)	OAH No. 12-0314-CSS
T L. E)	CSSD No. 001133874
_____)	

DECISION AND ORDER

I. Introduction

This case is T L. E's appeal of an order issued by the Child Support Services Division (Division), which denied her request to lower her monthly child support obligation. The order being appealed is the Division's Decision on Request for Modification Review, which denied Ms. E's petition for a downward modification of her ongoing child support order for her child K. This order was issued on July 20, 2012.

On November 13, 2012, a hearing was held to consider Ms. E's appeal. H W. E, the custodial parent, participated. Ms. E did not participate. The Child Support Services Division (Division) was represented by Erinn Brian, Child Support Services Specialist. The record closed on November 23, 2012. ¹

Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be upheld. Ms. E's ongoing child support obligation for K should remain at \$219 per month, because there has not yet been a change in circumstances that would justify a modification of child support.

II. Facts

This case is a modification action.² Ms. E has another child support obligation for a child who has a different father and is younger than K. The Division denied Ms. E's request for modification review for her child support order for K because Ms. E failed to timely provide income information showing that there would be a 15% change in Ms. E's ongoing child support amount. Ms. E's current ongoing child support was set based on an estimate of her income using her reported earnings in 2004 plus a PFD.³

That order for \$361 per month was issued in 2005 and covered three children, H, K and D, but two of those children, H and D, are now adults. Now that those children have been removed for

¹ This decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a decision if "a person requests a hearing and fails to appear at the hearing.

² Alaska Civil Rule 90.3(h) governs modification actions.

³ Exhibit 1 & Recording of Hearing.

ongoing child support, the current order is \$219 per month for one child, K.⁴

The Division denied Ms. E's request for a downward modification, because Ms. E did not timely provide income information, and did not show that there would result in a 15% increase from the current amount.⁵ After the Division denied her request for a downward modification, Ms. E requested a formal hearing.⁶

The hearing was first rescheduled at Ms. E's request. Ms. E did not provide a phone number for either of the hearing dates as instructed by the notices sent to her. Ms. E did not answer at her phone numbers of record for the hearing. After the rescheduled hearing, the record was held open for ten days to give Ms. E time to file a request to reschedule the rescheduled hearing.⁷ Ms. E did not file such a request.

At the hearing, Mr. E said that he is not sure what Ms. E earns in a year. Mr. E explained his reasons for believing that she works for unreported wages inherited some money, and does not have any disability that would prevent her from working full-time.⁸

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Ms. E, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁹ At the hearing, Ms. E did not show that the Division's determination that her ongoing child support obligation for K should not be modified was incorrect.¹⁰ The Division has the authority to decline to complete its review of a request for modification when, as in this case, the party requesting the review does not provide the required income information.¹¹ Ms. E did not timely provide her income information.

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.¹² 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.¹³ The evidence in the record shows that a material

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

⁵ Recording of Hearing & Exhibit 4.

⁶ Exhibit 5.

⁷ Recording of Hearing.

⁸ Recording of Hearing Testimony of Mr. E.

⁹ Alaska Regulation 15 AAC 05.030(h).

¹⁰ Recording of Hearing.

¹¹ Alaska Regulation 15 AAC 125.316(e).

¹² Alaska Civil Rule 90.3(h)(1).

¹³ Alaska Civil Rule 90.3, Commentary X.

change of circumstances has not occurred since Ms. E's ongoing child support was set at \$361 per month for three children and \$219 per month for one child in 2005.

Ms. E will need to file another request for a modification and timely provide the division with the information it needs to conduct an administrative review if she wants to try to have her ongoing child support amount for K modified. If she is not earning an income close to the amount used to set her support in 2005, Ms. E should be prepared to show the Division that she is not unreasonably underemployed.

IV. Conclusion

I conclude that the Division correctly denied Ms. E's request for a downward modification of her ongoing child support. The child support amount in her current order was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

The Division's Decision on Request for Modification Review issued on July 20, 2012, is affirmed.

DATED this 10th day of January, 2013.

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 February, 2013.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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