

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

IN THE MATTER OF)	OAH No. 12-0353-CSS & 12-0354-CSS
M J. L)	CSSD No. 001066331 & 001171891
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is M J. L's appeal of the modification order adding his child, L, to his existing child support order for his other children, M, B, D and S.

Mr. L requested a formal hearing. This request was referred to the Alaska Office of Administrative Hearings. Administrative Law Judge Mark T. Handley was assigned to conduct the formal hearing, which was held on September 18, 2012. Mr. L did not participate. The custodial parent, F B, participated. Russell Crisp, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on October 2, 2012. There are two child support orders in this case because one or more of the children has been in foster care. The appeals for both cases were consolidated at the hearing with the Division's consent.

In his request for a hearing, Mr. L did not argue that the Division had over-estimated the income used to calculate his modified ongoing child support, or that those calculations were incorrect. Instead, Mr. L wrote that his children B and M were living with Mr. L and his mother. Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification orders, which are the subject of this appeal, should be upheld. The evidence in the record shows that B and M are in foster care, which is consistent with the calculations in the Division's order.

II. Facts

This case is an add-a-child modification action.¹ Mr. L's ongoing child support for his children, M, B, D and S was previously set in 2002 at \$50 per month.²

The Division initiated a modification action to add L, who was born in 2005, because L

¹ Alaska Civil Rule 90.3(h) governs modification actions. Alaska Regulation 15 AAC 125.340 governs administrative add-a-child modifications.

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

was included in an application for public assistance.³ Mr. L's paternity of L, the new child added to the order, is not now in dispute.⁴ Mr. L is named as L's father on a default administrative paternity order, which was not appealed.⁵

The Division issued an Administrative Child and Medical Support Order on August 1, 2012.⁶ The Division also issued a Modified Administrative Child and Medical Support Order on August 1, 2012.⁷

The Division's orders set Mr. L's ongoing child support obligation at \$77 per month, for eight children with five children in third party custody effective January 1, 2012.⁸

The Division calculated Mr. L's modified ongoing child support using Mr. L's estimated income information provided by Mr. L's employers.⁹

Mr. L requested a formal hearing. In his request for a formal hearing, Mr. L asserted that B and M were living with Mr. L and his mother¹⁰

After the hearing, as requested, the Division filed a submission to record, which explained that its investigations had confirmed that B was in state custody, placed with Mr. L's mother and that M was also in state custody. These placements are consistent with Ms. B's testimony at the hearing.¹¹

Based on the evidence in the record, I find that Mr. L did not show that it was more likely than not that the Division's calculations used to set his modified ongoing child support or the income and child custody placements on which in those calculations were incorrect.¹²

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. L, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹³ Mr. L did not show that the Division's modification order was incorrect. Mr. L did not appear at the

³ Exhibit 2.
⁴ Recording of Hearing & Exhibit 3.
⁵ Recording of Hearing & Exhibit 6.
⁶ Exhibit 4.
⁷ Exhibit 5.
⁸ Exhibit 4 & 5.
⁹ Exhibit 4, page 7.
¹⁰ Mr. L's appeal is found at Exhibit 6.
¹¹ Exhibit 4 & Recording of Hearing.
¹² Recording of Hearing- Testimony of Ms. B.

hearing. Mr. L did not provide a phone number to call for the hearing as instructed in the notice of the hearing that was sent to him. When his phone number of record was called at the time scheduled for the hearing he requested, the phone was answered by a child, who indicated that Mr. L was at a medical appointment. Mr. L did not file a request the hearing be rescheduled.¹⁴

Alaska Civil Rule 90.3(i) instructs for setting child support in third-party custody situations. First, a support calculation Civil Rule 90.3(a) is made based on the income of the noncustodial parent for all of the children of the relationship, then the monthly amount is reduced by the percentage of the children of the relationship in third party custody. The Division used this formula was used to set Mr. L's ongoing modified child support.

IV. Conclusion

I conclude that the Division correctly modified Mr. L's ongoing child support and added L to his child support order. The child support amounts in the existing order were calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

The Division's Modified Administrative Child and Medical Support Order issued on August 1, 2012, is affirmed.

DATED this 9th day of October, 2012.

By: Signed
Mark T. Handley
Administrative Law Judge

¹³ Alaska Regulation 15 AAC 05.030(h).

¹⁴ Recording of hearing.

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 26th 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.]