

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

IN THE MATTER OF)	OAH No. 12-0464-CSS
S B III)	CSSD No. 001123665
_____)	

DECISION AND ORDER

I. Introduction

This case is S B III's appeal of an order modifying his child support obligation. The Child Support Services Division (Division) issued this order increasing Mr. B's ongoing monthly obligation for the support of his children, Z and L, from \$80 to \$263 effective June 1, 2011.

On October 16, 2012, a formal hearing was held to consider Mr. B's appeal.¹ Mr. B participated during part of the hearing. The custodial parent, E C, participated. 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 presented at the hearing, the administrative law judge concludes that Mr. B's modified ongoing child support order should be affirmed. Modified ongoing child support should be set at \$263 per month effective August 1, 2012, based on Mr. B's 2011 income, in accordance with the Division's order. The evidence at the hearing showed that the Division's order increasing ongoing child support was correct.

II. Facts

This case is an appeal of the Division's order increasing Mr. B's ongoing child support obligation through the modification process.² Mr. B's existing child support for Z and L was set in 2006 at \$80 per month. Mr. B was incarcerated, receiving only PFDs and CIRI dividends as income in 2006.³ Ms. C filed a request for modification in July of 2012.⁴ The Division issued notice of the petition for modification on July 11, 2012.⁵

¹ The hearing was held under Alaska Statute 25.27.190.
² Alaska Civil Rule 90.3(h) governs child support modification actions.
³ Exhibit 1.
⁴ Exhibit 2.
⁵ Exhibit 3.

The Division issued a Modified Administrative Child and Medical Support Order on August 20, 2012.⁶ The Division set Mr. B's modified ongoing child support on calculations that showed his 2011 income would result in a monthly support amount of \$263 per month.⁷ This amount is more than a 15% percent increase from his current monthly amount of \$80.

Mr. B requested a formal hearing.⁸ Prior to the hearing, the Division provided summaries of Mr. B's earnings since 2009, as reported by his employers, and estimates of amounts he received in Native dividends.⁹ At the hearing, Mr. B explained that he had worked on-call, but that he was not working now. Mr. B was concerned that he would not be able to pay his child support if it was increased to \$263. During the hearing, Mr. B became frustrated when he was questioned by the Division regarding his employment history and earning capacity and hung up his phone.¹⁰ Before he hung up, Mr. B admitted that he does not have any children living with him or other children for whom he is currently paying ongoing child support.¹¹

The Division's modification order was based on Mr. B's income for 2011, which includes only \$1, 575 in earnings plus unemployment benefits, CIRI dividends, and a PFD.¹² The record indicates that Mr. B will probably earn an annual income at least equal to the amount the Division used to calculate his modified child support.¹³ Based on the evidence in the record, I find that it is more likely than not the Division's calculation at Exhibit 4 and the income amounts used in this calculation is correct.¹⁴

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. B, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁵ Mr. B did not meet his burden of proof to show that the ongoing monthly amount in the Division's order was incorrect.

⁶ Exhibit 4 page 3.
⁷ Exhibit 4.
⁸ Exhibit 5.
⁹ Exhibits 6-8.
¹⁰ Recording of Hearing.
¹¹ Recording of Hearing – Testimony of Mr. B.
¹² Exhibit 4, page 8.
¹³ Recording of Hearing & Exhibits 4-8.
¹⁴ Recording of Hearing & Exhibit 4.
¹⁵ Alaska Regulation 15 AAC 05.030(h).

Ongoing child support should be calculated based using the best estimate of Mr. B's income unless there is a showing by clear and convincing evidence that a variance of the calculated amount based on the child support guidelines is needed to prevent an injustice. The new monthly amount calculated by the Division is correct. There is not clear and convincing evidence in the record showing that an injustice will occur if ongoing child support is set at this amount.¹⁶

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.¹⁷ 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.¹⁸ The evidence in the record shows that a material change of circumstances has occurred since Mr. B's ongoing child support was set at \$80 per month. The modified ongoing amount calculated at \$263 per month is more than a 15 percent change from the outstanding order of \$80 per month. Mr. B has been able to earn some income since he was released from prison, which was not the case when his ongoing child support was last set. A material change of circumstances justifying an upward modification of ongoing child support has occurred.

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 August 1, 2012, because the petition was issued in July of 2012.

IV. Conclusion

Mr. B's ongoing child support should be modified based on the Division's calculations. Modified ongoing child support should be set at \$263 per month effective August 1, 2011, based on Mr. B's 2011 income in accordance with the Division's order. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

¹⁶ See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

¹⁷ Alaska Civil Rule 90.3(h)(1).

¹⁸ Alaska Civil Rule 90.3, Commentary X.

V. Child Support Order

The Division’s Modified Administrative Child and Medical Support Order issued August 20, 2012 is affirmed.

DATED this 23rd day of October 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 19th day of November, 2012

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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