

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

IN THE MATTER OF	)	
	)	
E D. D	)	OAH No. 12-0475-CSS
_____	)	CSSD No. 001120086

**DECISION AND ORDER**

**I. Introduction**

This case is E D. D’s appeal of the Division’s order modifying his ongoing monthly child support obligation for his child, O.

On October 16, 2012, a formal hearing was held for Mr. D’s appeal. Mr. D participated in the hearing. O’s mother, N D. D, the custodial parent, also participated. Erinn Brian, 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. D’s ongoing monthly child support obligation for O was last set at \$718, his child support order should not be modified.

**II. Facts**

Mr. D’s ongoing monthly child support obligation was set at \$718 per month in a Modified Administrative Child and Medical Support Order dated May 22, 2008.<sup>1</sup> The Division reviewed this child support order at Ms. D’s request.<sup>2</sup> The Division issued a Notice of Petition for Modification on August 6, 2012.<sup>3</sup>

The Division first denied the petition based on a mistaken determination that Mr. D had initiated the modification and then withdrawn his request for a modification. After the Division realized that Ms. D had requested the modification, the Division reinstated action on the petition for modification.<sup>4</sup>

The Division issued a Decision and Modification of Child Support and Medical Support Order on September 13, 2012.<sup>5</sup> In this order, the Division set Mr. D’s modified ongoing child

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Exhibit 3.  
<sup>4</sup> Division’s Pre-Hearing Brief at page 1 & Exhibits 4-6.  
<sup>5</sup> Exhibit 7.

support at \$837 per month based on estimated income.<sup>6</sup> Mr. D requested a formal hearing and provided paystubs from his current employment.<sup>7</sup>

Prior to the hearing, the Division provided new calculations based on this updated income information. These calculations result in an ongoing child support amount of \$694 per month.<sup>8</sup>

### **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.<sup>9</sup> 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%.<sup>10</sup>

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

Mr. D showed that there has not been a material change in circumstances that would justify a modification since his child support was set at \$718 per month. At this time, Mr. D’s income results in a monthly child support amount that is less than he was paying before the latest modification action, but there has been a material change in circumstances since his child support was set at \$718 per month. A monthly amount of \$694 is less than a 15% change from \$718 per month.

### **IV. Conclusion**

There has not been a material change since Mr. D’s ongoing monthly child support obligation for O was last set at \$718. Mr. D’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).

### **V. CHILD SUPPORT ORDER**

1. The Division’s Decision and Modification of Child Support and Medical Support Order issued on September 13, 2012 is overturned.
2. The Notice of Petition for Modification issued on August 6, 2012 is denied.

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<sup>6</sup> Exhibit 7, page 8.

<sup>7</sup> Exhibits 8 & 9.

<sup>8</sup> Exhibit 10.

<sup>9</sup> Alaska Civil Rule 90.3(h)(1).

<sup>10</sup> Alaska Civil Rule 90.3, Commentary X.

<sup>11</sup> Alaska Regulation 15 AAC 05.030(h).

3. Mr. D's ongoing child support will remain at the minimum of \$718 per month in accordance with the Division's Modified Administrative Child and Medical Support Order dated May 22, 2008, which remains in effect.

DATED this 23<sup>rd</sup> 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 13<sup>th</sup> day of November, 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.]