

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

In the Matter of	)	
P K. P	)	
_____	)	OAH No. 12-0763-CSS
	)	CSSD No. 001100102

**DECISION AND ORDER**

**I. Introduction**

This case is Mr. P K. P's appeal of the modification of his existing child support order for his other child, K. The Child Support Service Division (Division) issued this order because B L. Q, K's mother requested a modification.

The modification order increased Mr. P's ongoing child support obligation, setting it at \$851 per month based on his 2012 estimated income.

Mr. P 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 November 8, 2012. Mr. P and the custodial parent, Ms. Q, both participated. Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on November 8, 2012.

At the hearing, Mr. P complained that the Division had not sent notice of the modification process to his correct address. Mr. P was also concerned about how he would be able to pay the increased child support and still provide adequately for his younger child who lives with him. Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification order should be adjusted to \$906 per month based on the new calculations that the Division submitted after the hearing. These new calculations use an updated estimate of Mr. P's current income. There is not clear and convincing evidence in the record that manifest injustice would result if the support award is set in accordance with these calculations.

**II. Facts**

This case is a modification action.<sup>1</sup> Mr. P's ongoing child support for his child, K was

---

<sup>1</sup> Alaska Civil Rule 90.3(h) governs modification actions.

previously set in 2003 at \$605 per month.<sup>2</sup>

The Division initiated a modification action because Ms. Q filed a request for modification in June of 2012.<sup>3</sup>

The Division issued notice of the petition for modification on June 29, 2012 by first class mail to Mr. P's former address. Mr. P was on a military deployment at that time.<sup>4</sup> The Division issued a Modified Administrative Child and Medical Support Order on September 4, 2012.<sup>5</sup> Mr. P received notice of the modification in early October of 2012.

The Division's order set Mr. P's ongoing child support obligation at \$851 per month, effective July 1, 2012.<sup>6</sup>

Mr. P requested a formal hearing. In his request for a formal hearing, Mr. P provided updated income information.<sup>7</sup> The Division recalculated Mr. P's modified ongoing child support using the income information he provided.<sup>8</sup> This calculation resulted in ongoing child support obligation at \$920 per month. Mr. P provided information about his household's finances prior to the hearing.

At the hearing, Mr. P and Ms. Q both provided information about their households' finances. Mr. P was concerned that having to pay any additional child support will have an adverse impact his household's finances and the child living with him who is younger than K. Mr. P has a child who is nine years old living in his household with him and his wife the child's mother. Mr. P is in the military. His estimated annual gross income including employer provided benefits is \$62,011.68. Mr. P's wife earns \$1,200 to 1,600 per month working on-call as a dental hygienist. In response to a question by the Division, Mr. P explained that he has 2% of his base pay placed in a retirement account.<sup>9</sup>

K's mother, Ms. Q, is a single parent with three children. Ms. Q earns \$30,816 per year.

---

<sup>2</sup> Exhibit 1 & the Division's Pre-Hearing Brief, page 1.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Exhibit 3& Recording of Hearing.

<sup>5</sup> Exhibit 5.

<sup>6</sup> The Division's Pre-Hearing Brief, page 1 & Exhibit 5.

<sup>7</sup> Mr. P's appeal is found at Exhibit 6.

<sup>8</sup> Exhibit 6.

<sup>9</sup> Recording of Hearing.

K has no special needs, but it costs more to support her now that she is a teenager.<sup>10</sup>

After the hearing, as requested, the Division provided new calculations based on the updated information on Mr. P's retirement contributions.<sup>11</sup> Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations are correct and are based on the correct income information. These calculations result in monthly child support obligation for Mr. P for K of \$906. I find that there is good cause to move the effective date of the modification forward to November 1, 2012. I also find that Mr. P did not provide clear and convincing evidence that manifest injustice would result if the support award is set in these monthly amounts.<sup>12</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case, Mr. P, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>13</sup> The evidence provided by the Division and Mr. P did show that the Division's order was incorrect. Based on updated income information, the Division's filed new calculations based on his current earnings.<sup>14</sup>

Ongoing child support should be calculated based on Mr. P's income unless good cause exists to raise child support above or reduce it below the amounts calculated using the income formula in Civil Rule 90.3(a). To establish good cause, the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>15</sup>

Mr. P did not show that it would be unjust to require him to pay \$906 per month in ongoing child support. Mr. P did not show that he and his wife will be unable to support themselves and Mr. P's younger child if P's ongoing child support for K is increased to \$906 per month. Both parents' household financial circumstances are similar. Mr. P's household finances are probably more secure than Ms. Q's even with the increase in ongoing support for K. Mr. P

---

<sup>10</sup> Recording of Hearing.

<sup>11</sup> Recording of Hearing & Exhibit 10.

<sup>12</sup> Recording of Hearing & Exhibits 6-10.

<sup>13</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>14</sup> Alaska Regulation 15 AAC 125.340.

has more income, fewer children to support in his household, and he has another adult in his household who can earn income and help care for the children.<sup>16</sup>

While paying \$906 per month in ongoing child support may require some adjustments, Mr. P's duty to pay the correct percentage of his income toward the ongoing support of his older child, K, takes precedence over his debts and other financial obligations. Mr. P's obligation to support his younger child would not lower his monthly support obligation for K unless a reduction is required to prevent a substantial hardship.<sup>17</sup> Under Alaska Civil Rule 90.3(a) &(c), Mr. P has an obligation to pay 20% of his adjusted gross income in child support to K.

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>18</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>19</sup> Monthly child support of \$906 would be more than a 15% increase from the current order of \$605 per month. Furthermore, adding a second child to the order is a material change of circumstances that would justify a modification even without a 15% change in the monthly amount.

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 would be effective July 1, 2012, because the petition was issued in June of 2012.

The effective date of a modification cannot predate the service of the petition for modification even when it would clearly prevent an injustice.<sup>20</sup> The effective date of a modification can, however, be moved forward upon a mere showing that there is good cause to do so.<sup>21</sup> Moving the effective date of a modification forward from the first of the month following the service of the petition for modification is not a variance of the child support guidelines, requiring clear and convincing evidence that moving the date forward is needed to

---

<sup>15</sup> Alaska Civil Rule 90.3(c).

<sup>16</sup> Recording of Hearing.

<sup>17</sup> Alaska Civil Rule 90.3 Commentary VI.B.2.

<sup>18</sup> Alaska Civil Rule 90.3(h)(1).

<sup>19</sup> Alaska Civil Rule 90.3, Commentary X.

<sup>20</sup> *See State, Dept. of Revenue, Child Support Enforcement Div. v. Schofield*, 993 P2d 405, (Alaska 1999).

<sup>21</sup> *Alaska Dept. of Revenue, CSED v. Kevin Lyn Dillon* 977 P 2d 118, (Alaska 1999).

prevent an injustice under Civil Rule 90.3(c).

Given his recent return from active duty in the war zone, and the delay in his notification of the modification process, there is good cause to move the effective date forward to November of 2012, the month after Mr. P received formal notice of the modification process. Mr. P did not have a real opportunity help his household make adjustments to his household finances to accommodate an increase in his ongoing child support for K while he was deployed and before he received notice of the modification.

#### **IV. Conclusion**

Ongoing child support should be increased due to the increase in Mr. P's earnings that has occurred since the ongoing monthly support amount was set in 2003. The effective date of the modification should be moved forward for good cause. Mr. P's modified child support should be adjusted based on the new calculations that the Division submitted after the hearing. There is not clear and convincing evidence that manifest injustice would result if the support award is set in accordance with these calculations. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

#### **V. Child Support Order**

1. Mr. P's modified ongoing child support for K in the monthly amount of \$906, effective November 1, 2012.
2. The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for K.
3. All other provisions of the Division's Modified Administrative Child Support and Medical Support Order issued on September 4, 2012 remain in effect.

DATED this 9<sup>th</sup> day of November, 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 3<sup>rd</sup> day of December, 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.]