

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

In the Matter of )  
T C. K )  
 ) OAH No. 12-0770-CSS  
 ) CSSD No. 001167179  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case is Mr. T C. K's appeal of the modification of his existing child support order for his other child, D. The Child Support Service Division (Division) issued this order because B M. B, D's mother, requested a modification.

The modification order increased Mr. K's ongoing child support obligation, setting it at \$785 per month based on his estimated income.

Mr. K 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 13, 2012. Mr. K participated. Ms. B did not participate.<sup>1</sup> Russell L. Crisp, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on November 13, 2012.

At the hearing, Mr. K was concerned that the Division had used more income than he would actually earn in 2012 to calculate his modified ongoing child support amount. At the hearing, the Division also noticed that Mr. K did not receive the full deduction for paying child support for his older child in those calculations. Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification order should be adjusted to \$713 per month based on the new calculations that the Division submitted after the hearing. These new calculations use an updated estimate of Mr. K's current income and give him the appropriate deduction for his ongoing child support payments for his older child.

**II. Facts**

This case is a modification action.<sup>2</sup> Mr. K's ongoing child support for his child, D was previously set in 2010 at \$515 per month.<sup>3</sup>

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<sup>1</sup> Ms. B provided a letter with notice that she did not wish to participate in the hearing.

<sup>2</sup> Alaska Civil Rule 90.3(h) governs modification actions.

<sup>3</sup> Exhibit 2.

The Division initiated a modification action because Ms. B filed a request for modification in June of 2012.<sup>4</sup>

The Division issued notice of the petition for modification on June 18, 2012.<sup>5</sup>

The Division issued a Modified Administrative Child and Medical Support Order on August 29, 2012.<sup>6</sup> The Division's order set Mr. K's ongoing child support obligation at \$785 per month, effective July 1, 2012.<sup>7</sup>

Mr. K requested a formal hearing. In his request for a formal hearing, Mr. K provided a letter from his employer explaining that he could not count on continuing to receive overtime pay.<sup>8</sup>

Prior to the hearing, D's mother, Ms. B filed a letter in which she explained that she would not participate in the hearing due to a long-term protective order. Ms. B is a single parent. Ms. B also provided information about her household's finances and argued that it would not be a hardship for Mr. K to pay the increase in his ongoing child support.<sup>9</sup>

At the hearing, the Division recalculated Mr. K's modified ongoing child support using the year-to-date pay amount in his November 2012 paystub to extrapolate his estimated 2012 earnings and adjusting the deduction for child support for his older child to reflect the actual amount in his order.<sup>10</sup> This calculation resulted in ongoing child support obligation at \$713 per month. Mr. K provided some information about his household's finances at the hearing. Mr. K has a child living with him and his wife who is younger than D. Mr. K also pays child support for a child who is older than D.<sup>11</sup>

After the hearing, as requested, the Division provided new calculations based on the updated information on Mr. K's retirement contributions.<sup>12</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

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<sup>4</sup> Exhibit 1 & the Division's Pre-Hearing Brief, page 1.

<sup>5</sup> Exhibit 3.

<sup>6</sup> Exhibit 5.

<sup>7</sup> Exhibit 5.

<sup>8</sup> Mr. K's appeal is found at Exhibit 6.

<sup>9</sup> Exhibit A.

<sup>10</sup> Exhibit 7.

<sup>11</sup> Recording of Hearing.

<sup>12</sup> Recording of Hearing & Exhibit 10.

based on the correct income information. These calculations result in monthly child support obligation for Mr. K for D of \$713. 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. K did not provide clear and convincing evidence that manifest injustice would result if the support award is set in these monthly amounts.<sup>13</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case, Mr. K, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>14</sup> The evidence provided by the Division and Mr. K 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, his Veteran's benefits and his ongoing child support order for his older child.<sup>15</sup>

Based on the evidence in the record, I find that it is more likely than not that these new calculations are correct and use the best estimate of Mr. K's current annual income.

Ongoing child support should be calculated based on Mr. K's current annual 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>16</sup>

Mr. K did not show that it would be unjust to require him to pay \$713 per month in ongoing child support. Mr. K did not show that he and his wife will be unable to support themselves and Mr. K's younger child if Mr. K's ongoing child support for D is increased to \$713 per month. Mr. K has another adult in his household who can earn income and help care for their child.<sup>17</sup>

While paying \$713 per month in ongoing child support may require some adjustments, Mr. K's duty to pay the correct percentage of his income toward the ongoing support of his older

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<sup>13</sup> Recording of Hearing & Exhibits 6-10.

<sup>14</sup> Alaska Regulation 15 AAC 05.030(h).

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

<sup>16</sup> Alaska Civil Rule 90.3(c).

<sup>17</sup> Recording of Hearing.

child, D, takes precedence over his debts and other financial obligations. Mr. K's obligation to support his younger child would not lower his monthly support obligation for D unless a reduction is required to prevent a substantial hardship.<sup>18</sup> Under Alaska Civil Rule 90.3(a) &(c), Mr. K has an obligation to pay 20% of his adjusted gross income in child support to D, less a deduction for paying child support for his older child.

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>19</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 percent.<sup>20</sup> Monthly child support of \$713 would be more than a 15 percent increase from the current order of \$515 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.

#### **IV. Conclusion**

Ongoing child support should be increased due to the increase in Mr. K's earnings that has occurred since the ongoing monthly support amount was set in 2010. Mr. K'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. K's modified ongoing child support for D in the monthly amount of \$713, effective July 1, 2012.

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<sup>18</sup> Alaska Civil Rule 90.3 Commentary VI.B.2.

<sup>19</sup> Alaska Civil Rule 90.3(h)(1).

<sup>20</sup> Alaska Civil Rule 90.3, Commentary X.

2. The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for D.

All other provisions of the Division's Modified Administrative Child and Medical Support Order issued on August 29, 2012 remain in effect.

DATED this 15<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 4<sup>th</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.]