

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

IN THE MATTER OF)	OAH No. 12-0803-CSS
T H)	CSSD No. 001136216
_____)	

DECISION AND ORDER

I. Introduction

This case is T H’s appeal of an order issued by the Child Support Services Division (Division), which denied his request to lower his monthly child support obligation. The order being appealed is the Division’s Decision on Request for Modification Review, which denied Mr. H’s petition for a downward modification of his ongoing child support order for his child, M. This order was issued on September 18, 2012.

On November 15, 2012, a hearing was held to consider Mr. H’s appeal. E E. Q, the custodial parent, participated. Mr. H also participated. The Child Support Services Division (Division) was represented by Russell Crisp, Child Support Services Specialist.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be upheld. Mr. H’s ongoing child support obligation for M should remain at \$563 per month, because there has not yet been a change in the parties’ circumstances that would justify a modification of child support.

II. Facts

This case is a modification action.¹ The Division denied Mr. H’s request for modification review because the Division determined that there would not be a 15% change in Mr. H’s ongoing child support amount based on Mr. H’s reported income. Mr. H’s current ongoing child support was set based on an estimate of his income and child support payment to his older child in 2008.²

The Division denied Mr. H’s request for a downward modification, because, based on the

¹ Alaska Civil Rule 90.3(h) governs modification actions.
² Exhibits 2.

information he provided on his current income, the Division calculated that his child support would increase to \$635 per month. This amount is not a 15% increase from the current amount, however, so the Division did not modify Mr. H's ongoing child support obligation for M.³ After the Division denied his request for a downward modification, Mr. H requested a formal hearing.⁴

Mr. H earns about \$57,799 per year. The job he is currently working is scheduled to last for three years. He has no children living with him. He lives with his wife who is currently unemployed receiving workers' compensation while she receives treatment for carpal tunnel syndrome.⁵

At the hearing, Mr. H explained he thought the Division had over-estimated his current earnings and ongoing child support obligation, but after working through the Division's estimates and calculations at the hearing Mr. H conceded that his current income would result in an increase in his monthly child support amount. Even though he earns slightly less than he did in 2008, the monthly amount Mr. H currently pays for ongoing child support is only \$266.77, which is much less than \$585, the monthly amount used in the calculation when his ongoing child support for M was set at \$563 per month.⁶ The Division calculations at the hearing based on additional information resulted in ongoing child support for M resulted in a monthly amount of \$623, which is still more, but not 15% more, than his current order of \$563 per month.⁷

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. H, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁸ At the hearing, Mr. H did not show that the Division's determination that his ongoing child support obligation for M should not be modified was incorrect.⁹

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the

³ Exhibits 6.

⁴ Exhibits 7.

⁵ Recording of Hearing-Testimony of Mr. H.

⁶ Exhibits 2 & 6.

⁷ Recording of Hearing.

⁸ Alaska Regulation 15 AAC 05.030(h).

⁹ Recording of Hearing.

change shows that a material change of circumstances has occurred.¹⁰ 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.¹¹ The evidence in the record shows that a material change of circumstances has not occurred since Mr. H’s ongoing child support was set at \$563 per month in 2008.

Alaska law provides that child support should be calculated based on the noncustodial parent’s total income from all sources, less a very limited number of expenses.¹² Child support should be calculated based on the noncustodial parent’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.”¹³

Mr. H’s did not show that it would be unjust to require him to continue to pay \$563 per month in ongoing child support. Mr. H did not show that he and his wife will be unable to support themselves his ongoing child support for is not modified downward. Mr. H’s income would result in a higher monthly obligation if a modification was appropriate at this time. Mr. H’s has no children in his household. Mr. H’s has another adult in his household who has an income.¹⁴

IV. Conclusion

I conclude that the Division correctly denied Mr. H’s request for a downward modification of his ongoing child support. The child support amount in his current order was calculated using the primary custody formula in Civil Rule 90.3(a).

¹⁰ Alaska Civil Rule 90.3(h)(1).

¹¹ Alaska Civil Rule 90.3, Commentary X.

¹² Alaska Civil Rule 90.3 Commentary III.A & D.

¹³ Alaska Civil Rule 90.3(c).

¹⁴ Recording of Hearing.

V. Child Support Order

The Division’s Decision on Request for Modification Review issued on September 18, 2012, is affirmed.

DATED this 19th 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 11th day of December, 2012.

By: Signed
Signature
Terry L. Thurbon
Name
Chief Administrative Law Judge
Title

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