

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

IN THE MATTER OF)	
K L. T)	OAH No. 12-0809-CSS
_____)	CSSD No. 001160722

DECISION AND ORDER

I. Introduction

This case is the custodial parent, N C. U’s appeal of an order denying a request to increase K L. T’s ongoing monthly child support obligation. The Child Support Services Division (Division) did not increase Mr. T’s ongoing support obligation for his child, F, based on calculations using Mr. T’s reported income for 2012.

On November 15, 2012 a formal hearing was held to consider Ms. U’s appeal.¹ Mr. T did not participate in the hearing.² The custodial parent, N C. U, participated. Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on November 23, 2012.

Based on the evidence in the record, the administrative law judge concludes that Mr. T’s ongoing child support should be modified and set at \$312 per month.

II. Facts

Mr. T’s existing ongoing child support for F was set in February of 2011 at \$50 per month.³ Mr. T’s child support for F for 2010 was set at \$312 based on his estimated income and deductions for 2010. The reduction to \$50 per month for 2011 and ongoing was set based on calculations that assumed that Mr. T would earn no income.⁴ Ms. U filed a request that his child support be modified in August of 2012.⁵ The Division issued a notice of the petition for modification on August 20, 2012.⁶

The Division issued a Decision on Request for Modification Review on October 5,

¹ The hearing was held under Alaska Statute 25.27.190.

² Mr. T did not provide a contact number for the hearing as instructed on the notice sent to him. Mr. T was not available at his phone numbers of record at the time set for the hearing.

³ Division’s Pre Hearing Brief, page 1, & Exhibit 1.

⁴ Exhibit 1, page 9.

⁵ Division’s Pre Hearing Brief, page 1, & Exhibit 2.

⁶ Exhibit 3.

2012.⁷ The Division left Mr. T's ongoing child support for F at the minimum of \$50 per month based on Mr. T's reported 2012 income information.⁸

Ms. U requested a formal hearing.⁹ At the hearing, Ms. U explained that Mr. T had worked as a wildland firefighter this past summer and was now working with the No Name. Mr. T is paid \$18.39 per hour but the work is seasonal. Mr. T does not have any disabilities that prevent him from working. Ms. U also explained that she has another, younger child with Mr. T and has requested the Division's services to add child support for that child to the order for F.¹⁰

At the hearing, the Division explained that Mr. T has another child support order for two older children set in a court case at \$1,350 per month in 2007.¹¹

Based on the evidence in the record, I find that it is more likely than not that Mr. T's estimated 2010 income results in a minimum child support order of \$312 per month for F.¹²

III. Discussion

Ms. U asked for an upward modification to increase Mr. T's ongoing monthly child support because Mr. T is working and could or is earning a level of income in excess of the assumption of a complete lack of earnings on which his ongoing monthly obligation of \$50 was set.

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.¹³ 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.¹⁴ The evidence in the record shows that a material change of circumstances has occurred since Mr. T's ongoing child support was set at \$50 per month in 2011.

Mr. T should have his ongoing child support modified and set above the minimum because he is now working and earning an income. It is difficult to estimate Mr. T's current

⁷ Exhibit 4.

⁸ Exhibit 4.

⁹ Exhibit 5.

¹⁰ Recording of Hearing.

¹¹ Recording of Hearing.

¹² Recording of Hearing & Exhibit 1, page 9.

¹³ Alaska Civil Rule 90.3(h)(1).

income because of his failure to provide income information. His 2010 monthly amount of \$312 per month was calculated with the last reliable information of Mr. T's estimated annual income and earning capacity during a year when he was actually working, as he is now. The amount set in this modification is likely to be temporary because the Division will probably re-set the ongoing child support amount again when Ms. U's request to add her younger child to F's order is processed. Although the Division filed new calculation's based on reported 2012 earnings for 2012 after the hearing, these calculations probably underestimate Mr. T's current annual earnings and earning capacity based of the other evidence in the record that shows that Mr. T probably will continue to have the opportunity to work more hours and earn more income than is reflected in the year-to-date 2012 earnings reported by some of his employers.¹⁵ The income and deductions used to calculate Mr. T's 2010 monthly amount of \$312 is the best estimate of his current income and earning capacity and ability to pay child support for F in the record.

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.¹⁶ 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.¹⁷ The new ongoing monthly amount of \$312 based on estimated earnings and earning capacity is more that a 15% increase for the minimum \$50 per month order set based on no employment in 2011.

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 September 1, 2012, because the petition was issued in August of 2012.¹⁸

IV. Conclusion

Mr. T's ongoing child support should be increased due to the increase in his earnings and earning capacity from when those were estimated to be zero when his current ongoing child support was set at \$50 per month. Mr. T's modified ongoing child support should be set at \$312

¹⁴ Alaska Civil Rule 90.3, Commentary X.

¹⁵ Recording of Hearing & Exhibits 6 & 7.

¹⁶ Alaska Civil Rule 90.3(h)(1).

¹⁷ Alaska Civil Rule 90.3, Commentary X.

¹⁸ *Alaska Dept. of Revenue, CSED v. Kevin Lyn Dillon* 977 P 2d 118, (Alaska 1999).

per month, effective September 1, 2012. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

The Administrative Child Support and Medical Support Order issued on January 12, 2011 is modified as follows, as other provisions remain in effect.

1. The Division's Decision on Request for Modification Review on October 22, 2012 is overturned.
2. The Notice of the Petition for Modification issued on August 27, 2012 is granted.
3. Mr. T's modified ongoing child support for F is set at \$312 per month, effective September 1, 2012.
4. The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for F.

DATED this 27th 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 13th 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.]