

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

IN THE MATTER OF)	
S D. T)	OAH No. 12-1034-CSS
)	CSSD No. 001161857
_____)	

DECISION AND ORDER

I. Introduction

This case is S D. T's appeal of a notice denying his request to reduce his ongoing monthly child support obligation by modifying his child support order. The Child Support Services Division (Division) declined this request to reduce Mr. T's support of his child, C.

On January 17, 2013, a formal hearing was held to consider Mr. T's appeal.¹ Mr. T participated in the hearing. The custodial parent, G J. E also participated. Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

Based on the testimony presented at the hearing, the administrative law judge concludes that Mr. T's ongoing child support should be modified based on the reduction in his earnings. Modified ongoing child support should be set at the minimum, \$50 per month, effective November 1, 2012, based on Mr. T's lack of income due to his incarceration and in-patient treatment. Modified ongoing child support should be set back at the amount in the current order \$255 per month, effective July 1, 2013, which gives Mr. T time to find work again after his release.

II. Facts

The Division denied Mr. T's request to reduce his ongoing child support obligation.² Mr. T's existing child support for C was set in 2010 at \$255 per month.³ Mr. T filed a request that his child support be decreased in October of 2012.⁴ The Division issued notice of the petition for modification on October 25, 2012.⁵ Mr. T filed an affidavit of income asserting that he did

¹ The hearing was held under Alaska Statute 25.27.190.
² Alaska Civil Rule 90.3(h) governs child support modification actions.
³ Division's Pre Hearing Brief, page 1, & Exhibit 1.
⁴ Division's Pre Hearing Brief, page 1, & Exhibit 2.
⁵ Exhibit 3.

not have any income because he was incarcerated and in treatment.⁶

The Division issued a Decision on Request for Modification Review on December 12, 2012.⁷ The Division based its decision to deny Mr. T's request to modify his ongoing child support on his failure to timely provide documentation of his inability to earn an income.⁸

Mr. T requested a formal hearing.⁹ Mr. T explained that he was in an in-patient pre-release facility and that he was not working.¹⁰

At the hearing, Mr. T explained that he was hoping to find work as a truck driver after his release in February of 2012, and that he also hoped to have C living with him, because Ms. E would be going to jail shortly after his release.¹¹

At the hearing, the Division proposed that Mr. T's ongoing child support be modified and reduced to the minimum of \$50 per month based on his lack of income until six months from the month of scheduled release. Ms. E and Mr. T did not raise any objections to this recommendation.¹²

Based on the evidence in the record, I find that it is more likely than not the Division's conclusion that Mr. T's expected income qualifies for the minimum monthly child support amount until six month after his release when he has had an opportunity to find employment is correct.¹³

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. T, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁴ Mr. T met his burden of proof to show that the ongoing monthly amount of his child support order should be modified.

Ongoing child support should be calculated based using the best estimate of Mr. T income. The Division correctly recommended that Mr. T's ongoing child support be reduced to

⁶ Exhibit 4.
⁷ Exhibit 5.
⁸ Exhibit 5 & Recording of Hearing.
⁹ Exhibit 6.
¹⁰ Recording of Hearing.
¹¹ Recording of Hearing.
¹² Recording of Hearing.
¹³ Recording of Hearing & Exhibits 5 & 6.

the minimum amount of \$50 per month based on Mr. T's current inability to earn income. The law requires that child support be set at no less than \$50 per month.¹⁵

If C starts to live with his father, Mr. T should notify his Division caseworker.

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 evidence in the record shows that a material change of circumstances has occurred since Mr. T's ongoing child support was set at \$255 per month in 2010. The modified ongoing amount set at the minimum of \$50 per month is more than a 15 percent change from the outstanding order of \$255 per month. A material change of circumstances justifying a downward modification of ongoing child support has occurred.

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 should be effective November 1, 2012, because the petition was issued in October of 2012.

IV. Conclusion

Mr. T's ongoing child support should be decreased due to the decrease in his earnings that has occurred due to his incarceration and treatment. Mr. T should still pay \$50 per month due to his low income until he has had an opportunity to find work. The child support amount in this order is set at the minimum under Civil Rule 90.3(c)(1)(B).

V. Child Support Order

1. The Division's Decision on Request for Modification Review issued on December 12, 2012, is overturned.
2. The petition for modification issued on October 25, 2012 is granted.
3. Mr. T modified ongoing child support for C is set at \$50 per month, effective November 1, 2012,

¹⁴ Alaska Regulation 15 AAC 05.030(h).

¹⁵ *Wright v. Gregorio*, 855 P.2d 772 (Alaska 1993) & Alaska Civil Rule 90.3(c)(1)(B).

¹⁶ Alaska Civil Rule 90.3(h)(1).

¹⁷ Alaska Civil Rule 90.3, Commentary X.

4. Mr. T modified ongoing child support for C is set at \$255 per month, effective July 1, 2013,
5. The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for C.

DATED this 30th day of January 2013.

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 19th day of February, 2013.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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