

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

IN THE MATTER OF	)	
	)	
K S. M	)	OAH No. 12-1046-CSS
<hr style="width:100%; border: 0.5px solid black;"/>	)	CSSD No. 001182676

**DECISION AND ORDER**

**I. Introduction**

This case is K S. M’s appeal of an order issued by the Alaska Child Support Services Division (Division). That order established his child support obligation for his child, N. On January 22, 2013, a formal hearing was held on Mr. M’s appeal.<sup>1</sup> B V, the custodial parent, participated in the hearing. Mr. M also participated. Erinn Brian, Child Support Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

Having reviewed the record in this case and after due deliberation, the Administrative Law concludes that the Division’s Amended Administrative Child and Medical Support Order should be affirmed. The calculations and income used to set monthly arrears and ongoing child support amounts in that order are not in dispute, and there is not clear and convincing evidence that it would work an injustice for child support to be set in those amounts. Mr. M’s has enough income to pay child support in these monthly amounts set in the Division’s order without causing a hardship to his younger children who are currently living in his household.

**II. Facts**

The Division established a child support order for Mr. M’s child, N because it received a petition under the Uniform Interstate Family Support Act (UIFSA) dated March 19, 2012.<sup>2</sup> Paternity is no longer in dispute. Mr. M was determined to be N’s father in a paternity order after genetic testing.<sup>3</sup>

The Division issued an Administrative Child and Medical Support Order on August 16, 2012.<sup>4</sup> Mr. M appealed his child support order.<sup>5</sup>

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.170.  
<sup>2</sup> Exhibit 1.  
<sup>3</sup> Division’s Pre-hearing Brief, page 1, Exhibits 2-5 & Recording of Hearing.  
<sup>4</sup> Exhibit 6.

The Division issued an Amended Administrative Child and Medical Support Order on November 29, 2012.<sup>6</sup> The Division set Mr. M's monthly ongoing child support at \$1,208. The order also established arrears beginning in March of 2012.<sup>7</sup> Mr. M requested a formal hearing.<sup>8</sup>

Mr. M works as a union heavy equipment mechanic. Mr. M earned over \$100,000 in 2012. He lives with his wife, who earns \$24,000 per year, and their three children who are younger than N.<sup>9</sup> These three younger children are the subject of a court custody order, which currently only gives Mr. M custody for up to 120 days per year, but they are living with him now and he is petitioning for primary custody. Mr. M also has a child support order for \$600 per month for another child, who is older than N. Mr. M believes that he may have to work only for the construction season in future years if his employer loses its winter road maintenance contract.<sup>10</sup>

Mr. M did not dispute the calculations that the Division used to set his child support for than N. Mr. M argued that setting child support in this monthly amount, \$1,208, would make it difficult to meet his current financial obligations, including the support of his three children in his home.<sup>11</sup>

Mr. M provided information about his household finances. Mr. M's household does not have significant debt, and his younger children do not have any special needs.<sup>12</sup> Ms. V also provided household financial information. Ms. V is a single mother with three children living in her home. Ms. V works part-time and receives public assistance. She earns less than \$5000 per year. Ms. V explained that she had told Mr. M when she was pregnant with N and when N was born, but Mr. M indicated that he would not be able to pay child support.<sup>13</sup>

Based on the evidence in the record, it is more likely than not that the Division's calculations are correct and that the income amounts used in these calculations are the best estimates of Mr. M's 2012 income.<sup>14</sup> Furthermore, Mr. M did not show by clear and convincing

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<sup>5</sup> Exhibit 7.  
<sup>6</sup> Exhibit 10.  
<sup>7</sup> Exhibit 10.  
<sup>8</sup> Exhibit 12.  
<sup>9</sup> Recording of Hearing – Testimony of Mr. M & Exhibit 11.  
<sup>10</sup> Recording of Hearing – Testimony of Mr. M & Exhibit 13.  
<sup>11</sup> Recording of Hearing – Testimony of Mr. M & Exhibit 12.  
<sup>12</sup> Exhibit 13.  
<sup>13</sup> Recording of Hearing – Testimony of Ms. V & Exhibit 15.  
<sup>14</sup> Recording of Hearing & Exhibit 10.

evidence that it would be manifestly unjust to set his arrears and ongoing child support at \$1,208 per month.<sup>15</sup>

### **III. Discussion**

Mr. M argued that his child support order should be lower than the amount set by the Division. In a child support hearing, the person who filed the appeal, in this case, Mr. M, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>16</sup> Mr. M did not meet his burden of showing that his child support order should be adjusted.

Mr. M and his wife are able to provide financial support for the children living in their home. Mr. M will not be required to continue pay child support to their mother if he is granted primary custody and could also attempt to obtain a child support order for these children if he is granted primary custody. The evidence in the record shows that Mr. M's household has more than enough income to support these children without financial hardship and to pay his child support obligations to his two older children. A parent may obtain a reduction in the amount calculated in a primary custody calculation only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>17</sup> These are no unusual circumstances in this case that would require that child support for N be set lower to avoid an injustice. If Mr. M's income is reduced next year, he may request a modification of his ongoing child support.

### **IV. Conclusion**

I conclude that the Division's order should be affirmed. Mr. M did not dispute that the monthly amount in that order was calculated correctly. Mr. M did not present clear and convincing evidence showing that child support for N must be set below \$1,208 per month to avoid an injustice. The child support amount in this order was calculated using the primary custody formula in Civil Rule 90.3(a).

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<sup>15</sup> Recording of Hearing.

<sup>16</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>17</sup> Alaska Civil Rule 90.3(c).

**V. Child Support Order**

The Division’s Amended Administrative Child and Medical Support Order issued on November 29, 2012, is affirmed.

DATED this 23<sup>rd</sup> 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 14<sup>th</sup> day of February, 2013.

By: Signed \_\_\_\_\_  
Signature  
Angela Rodell \_\_\_\_\_  
Name  
Deputy Commissioner \_\_\_\_\_  
Title

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