

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

IN THE MATTER OF	)	OAH No. 13-0094-CSS
B C. X	)	CSSD No. 001137154
_____	)	

**DECISION AND ORDER**

**I. Introduction**

This case is B C. X's appeal of an order modifying his child support obligation. The Child Support Services Division (Division) issued this order increasing Mr. X's ongoing monthly obligation for the support of his children, L, Q, Z, and E, from \$612 for four children to \$815 for four children effective October 1, 2012.

On February 13, 2013, a formal hearing was held to consider Mr. X's appeal.<sup>1</sup> Mr. X did not participate in the hearing.<sup>2</sup> The custodial parent, D J. U, participated. Russell Crisp, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on February 25, 2013.

Based on the evidence presented at the hearing, the administrative law judge concludes that Mr. X's modified ongoing child support order should be affirmed. Modified ongoing child support should be set at \$815 per month effective October 1, 2012, based on the Division's estimate of Mr. X's current annual income, in accordance with the Division's order. The evidence at the hearing showed that the annual income amount used in the calculation supporting the Division's order increasing ongoing child support was correct.

**II. Facts**

This case is an appeal of the Division's order increasing Mr. X's ongoing child support obligation through the modification process.<sup>3</sup> Mr. X's original child support for his four children, L, Q, Z, and Y was set in 2009 at \$409 per month for four children.<sup>4</sup> The child Y was adopted out of the family, but another child of the relationship, E who had not been added to the

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.190.

<sup>2</sup> Mr. X did not provide a phone number for the hearing as instructed on the notice sent to him. He did not file a timely request to reschedule the hearing. He did not answer at his phone number of record when he was called at the time set for the hearing.

<sup>3</sup> Alaska Civil Rule 90.3(h) governs child support modification actions.

<sup>4</sup> Exhibit 1 & Recording of Hearing.

order was born.<sup>5</sup>

Mr. X's current child support for four children, L, Q, Z, and E was set in 2010, after a formal hearing, at \$612 for four children. This order removed the child Y, who was adopted out of the family from the order, but added the youngest child, E, to the order.<sup>6</sup>

Ms. U filed a request for modification in 2012.<sup>7</sup> The Division issued notice of the petition for modification on September 12, 2012.<sup>8</sup>

The Division issued a Modified Administrative Child and Medical Support Order on November 16, 2012.<sup>9</sup> The Division set Mr. X's modified ongoing child support based on calculations using estimated earnings of \$15 per hour, which result in a monthly support amount of \$815 per month for four children.<sup>10</sup> This amount is more than a 15 percent increase from his current monthly amount of \$612. This order did not include the child Y, but included the youngest child, E.

Mr. X requested a formal hearing, explaining that he was no longer employed.<sup>11</sup> Prior to the hearing, the Division provided summaries of Mr. X's earnings since 2010, as reported by his employers, and new calculations based on his estimated 2012 income, which resulted in a monthly child support amount of \$575 for four children.<sup>12</sup>

At the hearing, Ms. U explained that Mr. X had told her that he had quit his job in Alaska where he was working on pipeline insulation and had moved to Oklahoma to work in a garage door insulation job that an uncle had helped him obtain. Mr. X does not know how much this new job pays.<sup>13</sup>

The Division's modification order was based on Mr. X's estimated earnings, using his hourly wage, plus a PFD.<sup>14</sup> The record indicates that Mr. X will probably earn an annual income at least equal to the amount the Division used to calculate his modified child support.<sup>15</sup> Based

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<sup>5</sup> Exhibit 3.  
<sup>6</sup> Exhibits 2, & 3 & Recording of Hearing.  
<sup>7</sup> Exhibit 4.  
<sup>8</sup> Exhibit 5.  
<sup>9</sup> Exhibit 6.  
<sup>10</sup> Exhibit 7.  
<sup>11</sup> Exhibits 9 & 10.  
<sup>12</sup> Exhibit 8.  
<sup>13</sup> Recording of Hearing – Testimony of Ms. U.  
<sup>14</sup> Exhibit 5, page 8.  
<sup>15</sup> Recording of Hearing & Exhibit 5, page 8 & Exhibit 8.

on the evidence in the record, I find that it is more likely than not the Division's calculation at Exhibit 6 and the income amounts used in this calculation are correct.<sup>16</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case, Mr. X, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>17</sup> Mr. X did not meet his burden of proof to show that the ongoing monthly amount in the Division's order was incorrect. Although the Division recalculated Mr. X's child support based on his reported 2012 earnings and other income, Mr. X did not show that it is more likely than not that he will earn less than the income used in the Division's original modification calculation. These original calculations at exhibit 6 are based on an hourly wage of only \$15 per hour, which is the wage that he was earning in Alaska.

Mr. X did not provide evidence that he quit his job to take a lower paying job in another state. Most of Mr. X's request for a formal hearing detailed the amount of time that the children spent with him. Mr. X will not be able to exercise the weekly visitation he described in his request for a hearing while he is living in another state.

There is no child custody order in this case.<sup>18</sup> Mr. X would be eligible for a visitation credit only if a custody order or an agreement with Ms. U provided at least 27 consecutive days of visitation with the children.<sup>19</sup> Mr. X would also actually have to exercise visitation in order to qualify for the credit.<sup>20</sup> However, Ms. U stated at the hearing that she did not, at this time, plan to allow any out-of-state visitation. It would not be appropriate to award a visitation credit without a visitation order or an agreement that extended visitation would take place in the future.<sup>21</sup>

Ongoing child support should be calculated based using the best estimate of Mr. X's income unless there is a showing by clear and convincing evidence that a variance of the calculated amount based on the child support guidelines is needed to prevent an injustice. The

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<sup>16</sup> Recording of Hearing & Exhibit 5.

<sup>17</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>18</sup> Recording of Hearing.

<sup>19</sup> See *Turinsky v. Long*, 910 P2d 590, (Alaska 1996), which states: "Child support awards should be based on a custody and visitation order."

<sup>20</sup> This requirement is found in Alaska Civil Rule 90.3(a)(3) and discussed in Alaska Civil Rule 90.3 Commentary IV.B.

new monthly amount calculated by the Division is correct. There is not clear and convincing evidence in the record showing that an injustice will occur if ongoing child support is set at this amount.<sup>22</sup>

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>23</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>24</sup> The evidence in the record shows that a material change of circumstances has occurred since Mr. X’s ongoing child support was set at \$612 per month. The modified ongoing amount calculated at \$815 per month for four children is more than a 15 percent change from the outstanding order of \$612 per month. Mr. X voluntarily changed his employment since the Division calculated his modified child support, but he has not shown that he will be earning less at his new job. A material change of circumstances justifying an upward 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 October 1, 2012, because the petition was issued in September of 2012.

#### **IV. Conclusion**

Mr. X’s ongoing child support should be modified based on the Division’s calculations. Modified ongoing child support should be set at \$815 per month for four children effective October 1, 2012, based on the Division’s estimate of Mr. X’s current income in accordance with the Division’s order. The amount in this order is only for four children. It is not completely clear that the child Y should also be included in the order. There was apparently a tribal adoption, but there is no documentation of that adoption in the record. The five-child monthly amount for this order would be \$882. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

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<sup>21</sup> Recording of Hearing.

<sup>22</sup> See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

<sup>23</sup> Alaska Civil Rule 90.3(h)(1).

<sup>24</sup> Alaska Civil Rule 90.3, Commentary X.

**V. Child Support Order**

The Division’s Modified Administrative Child and Medical Support Order issued November 16, 2012 is affirmed.

DATED this 25th day of February 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 15<sup>th</sup> day of March, 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.]