

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

IN THE MATTER OF	)	OAH No. 13-0115-CSS
K F. W	)	CSSD No. 001091441
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**DECISION AND ORDER**

**I. Introduction**

This case is K F. W's appeal of the modification of his existing child support order for his child, G. T C. W, the child's mother, is the custodial parent. The Child Support Services Division (Division) issued the modification order at Mr. W's request. The Division modified Mr. W's ongoing child support obligation, by setting it at the minimum monthly amount of \$50, based on his incarceration.

Mr. W requested a formal hearing. This request was referred to the Alaska Office of Administrative Hearings. Administrative Law Judge Mark T. Handley was assigned to conduct the formal hearing, which was held on April 10, 2013. Mr. W participated. Ms. W did not participate.<sup>1</sup> Russell L. Crisp, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

At the hearing, Mr. W explained that he would not always be able to pay \$50 per month while he was incarcerated because he does not always earn that much.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification order should be upheld. The law requires that child support be set at no less than \$50 per month.

**II. Facts**

This case is a modification action.<sup>2</sup> Mr. W's ongoing child support for his child, G, was previously set in 1999 at \$290 per month based on his income.<sup>3</sup>

The Division initiated a modification action at Mr. W's request, which was received on

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<sup>1</sup> Ms. W did not provide a phone number for the hearing as instructed on the notice sent to her and the person who answered her phone number of record when she was called at the time set for the hearing explained that the number was no longer Ms. W's phone number.

<sup>2</sup> Alaska Civil Rule 90.3(h) governs modification actions.

<sup>3</sup> Exhibit 2 & the Division's Pre-Hearing Brief, page 1.

June 11, 2012.<sup>4</sup> Mr. W filed the request because he is incarcerated.<sup>5</sup>

The Division issued notice of the petition for modification on September 24, 2012.<sup>6</sup> The Division issued a Modified Administrative Child and Medical Support Order on December 6, 2012.<sup>7</sup>

The Division's modification order set Mr. W's ongoing child support obligation at \$50 per month effective October 1, 2012.<sup>8</sup>

Mr. W requested a formal hearing.<sup>9</sup> At the hearing, Mr. W explained that he would not always be able to pay \$50 per month while he was incarcerated because he does not always earn that much. Mr. W has been in jail since 1999. He is not scheduled to be released until 2019.<sup>10</sup>

Based on the evidence in the record, I find that Mr. W did not show that it was more likely than not that the Division's calculations used to set his modified ongoing child support, or the income used in those calculations, were incorrect.<sup>11</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case, Mr. W, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>12</sup> Mr. W did not show that the Division's modification order was incorrect.

The Division correctly reduced Mr. W's support to the minimum amount of \$50 per month based on Mr. W's continued lack of income due to his incarceration. The Alaska law requires that child support be set at no less than \$50 per month, and the Alaska Supreme Court has said that a minimum order is generally appropriate when an obligor is incarcerated.<sup>13</sup> The Division could not set Mr. W's modified ongoing child support obligation below this amount.

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<sup>4</sup> Exhibit 3 & Division's Pre Hearing Brief.

<sup>5</sup> Recording of Hearing-Testimony of Mr. W.

<sup>6</sup> Exhibit 4.

<sup>7</sup> Exhibit 6.

<sup>8</sup> The Division's Pre-Hearing Brief, page 1 & Exhibit 7.

<sup>9</sup> Exhibit 6 & Recording of Hearing-Testimony of Mr. W.

<sup>10</sup> Recording of Hearing.

<sup>11</sup> Recording of Hearing-Testimony of Mr. W.

<sup>12</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>13</sup> See *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998) & *Douglas v. State, Department of Revenue* 880 P.2d 113 (Alaska 1994).

**IV. Conclusion**

I conclude that the Division correctly established a child support obligation in this case. The child support amount in the Division’s order was calculated using the primary custody formula in Civil Rule 90.3 without variance.

**V. Child Support Order**

The Division’s Modified Administrative Child and Medical Support Order issued on December 6, 2012 is affirmed.

DATED this 11<sup>th</sup> day of April, 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 3<sup>rd</sup> day of May, 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.]