

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

In the Matter of)	
G Q, JR.)	
)	OAH No. 13-0210-CSS
_____)	CSSD No. 001140204

DECISION AND ORDER

I. Introduction

This case is the appeal of the modification of Mr. G Q, Jr.'s existing child support order for his two oldest children, A and B. The Child Support Services Division (Division) initiated this order because T A. D, A and B's mother, the custodial parent, requested a modification. The modification order increased Mr. Q's ongoing child support obligation, setting it at \$553 per month based on his 2012 estimated income.

Ms. D and Mr. Q both filed appeals in this case. Mr. Q and Ms. D 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 March 13, 2013. Mr. Q and Ms. D both participated. Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on March 13, 2013.

At the hearing, Mr. Q was concerned about how he would be able to pay the increased child support and still provide adequately for his four younger children who live with him. Having reviewed the record in this case, and after due deliberation, I conclude that the Division's modification order should be adjusted to \$512 per month, based on the new calculations that the Division submitted after the hearing. These new calculations use updated information on Mr. Q's current income and provide deductions for retirement contributions and union dues. There is no clear and convincing evidence in the record that manifest injustice would result if the support award is set in accordance with these calculations.

II. Facts

This case is a modification action.¹ Mr. Q's ongoing child support for his children, A

¹ Alaska Civil Rule 90.3(h) governs modification actions.

and B, was previously set in 2011 at \$273 per month.²

The Division initiated a modification action because Ms. D filed a request for modification in November of 2012.³ The Division issued notice of the petition for modification on November 8, 2012.⁴ The Division issued a Modified Administrative Child and Medical Support Order on January 7, 2013.⁵ The Division's order set Mr. Q's ongoing child support obligation at \$553 per month, effective December 1, 2012.⁶

Mr. Q and Ms. D requested a formal hearing. With his request for a formal hearing, Mr. Q provided updated income information.⁷ The Division recalculated Mr. Q's modified ongoing child support using the income information he provided.⁸ This calculation resulted in an ongoing child support obligation at \$512 per month.⁹ Ms. D provided information about her household's finances prior to the hearing. Mr. Q provided information about his household's finances at the hearing.¹⁰

At the hearing, Mr. Q was concerned that having to pay any additional child support will have an adverse impact on his household's finances and the children living with him who are younger than A and B. Mr. Q has four younger children who are living in his household with him and his wife, the children's mother. Mr. Q works as a janitor for the local school district. His estimated 2012 taxable gross income was \$30,348.53.¹¹ Mr. Q's wife earned money as a substitute teacher aid before her last pregnancy. Ms. Q also has some work history as an office worker in an insurance company. She is concerned that it will be difficult to find work that will pay more than their day care expenses would be.¹²

Prior to the hearing, the Division provided new calculations based on the updated information on Mr. Q's retirement contributions and union dues.¹³ Based on the evidence in the

² Exhibit 1 & the Division's Pre-Hearing Brief, page 1.

³ Exhibit 2.

⁴ Exhibit 3.

⁵ Exhibit 5.

⁶ The Division's Pre-Hearing Brief, page 1 & Exhibit 5.

⁷ Mr. Q's appeal is found at Exhibit 6.

⁸ Exhibit 8.

⁹ Exhibit 8.

¹⁰ Exhibit 9 & A.

¹¹ Recording of Hearing-Testimony of Mr. Q & Exhibit 8.

¹² Recording of Hearing-Testimony of Ms. Q.

¹³ Recording of Hearing & Exhibit 10.

record, I find that it is more likely than not that the Division's latest calculations are correct and are based on the correct income information. These calculations set Mr. Q's monthly child support obligation for A and B at \$512.¹⁴ I also find that Mr. Q did not provide clear and convincing evidence that manifest injustice would result if the support award is set at this monthly amount.¹⁵

A and B's mother, Ms. D, is a single parent living with the two older children. A and B have no special needs, but Ms. D also lives in an Alaska city with a high cost of living. Ms. D did not object to setting ongoing child support at \$512 per month based on the updated calculations made by the Division. Ms. D argued that it would be unfair to her and her children to further reduce the monthly amount.¹⁶

III. Discussion

In a child support hearing, a person who files the appeal has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁷ The evidence provided by the Division and Mr. Q did show that the Division's order was incorrect. The Division filed new calculations based on his current earnings.¹⁸

Ongoing child support should be calculated based on Mr. Q's income unless good cause exists to raise child support above or reduce it below the amount calculated using the income formula in Civil Rule 90.3(a). To establish good cause, the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."¹⁹

Mr. Q did not show that it would be unjust to require him to pay \$512 per month in ongoing child support. Mr. Q did not show that he and his wife will be unable to support themselves and Mr. Q's younger children if his ongoing child support for A and B is increased to \$512 per month. Mr. Q has another adult in his household who can earn income and help care

¹⁴ Recording of Hearing & Exhibits 7 & 8.

¹⁵ Recording of Hearing & Exhibits 9 & A.

¹⁶ Recording of Hearing-Testimony of Ms. D.

¹⁷ Alaska Regulation 15 AAC 05.030(h).

¹⁸ Alaska Regulation 15 AAC 125.340.

¹⁹ Alaska Civil Rule 90.3(c).

for his younger children.²⁰

This new order is an increase of \$239 per month. While paying \$512 per month in ongoing child support may require some adjustments, Mr. Q's duty to pay the correct percentage of his income toward the ongoing support of his older children, A and B, takes precedence over his debts and other financial obligations. Mr. Q's obligation to support his younger children would not lower his monthly support obligation for A and B unless a reduction is required to prevent a substantial hardship.²¹ Under Alaska Civil Rule 90.3(a) &(c), Mr. Q has an obligation to pay 27% of his adjusted gross income in child support to A and B.

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.²² 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.²³ Monthly child support of \$512 would be more than a 15 percent increase from the current order of \$273 per month.

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 December 1, 2012, because the petition was issued in November of 2012.

IV. Conclusion

Ongoing child support should be increased due to the increase in Mr. Q's earnings that has occurred since the ongoing monthly support amount was set in 2011. Mr. Q's modified child support should be adjusted based on the new calculations that the Division submitted after the hearing. There is no clear and convincing evidence that manifest injustice would result if the support award is set in accordance with these calculations. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

²⁰ Recording of Hearing.

²¹ Alaska Civil Rule 90.3 Commentary VI.B.2.

²² Alaska Civil Rule 90.3(h)(1).

²³ Alaska Civil Rule 90.3, Commentary X.

V. Child Support Order

1. Mr. Q's modified ongoing child support for A and B, in the monthly amount of \$512, is effective December 1, 2012.
2. The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for A and B.
3. All other provisions of the Division's Modified Administrative Child Support and Medical Support Order issued on January 7, 2013 remain in effect.

DATED this 18th day of March, 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 5th day of April, 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.]