

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

IN THE MATTER OF	)	
K N	)	OAH No. 13-0241-CSS
_____	)	CSSD No. 001062351

**DECISION AND ORDER**

**I. Introduction**

This case is K N’s appeal of a child support order issued by the Alaska Child Support Service Division (Division). That order granted custodial parent, U L. M’s request for an upward modification of Mr. N’s existing child support obligation for their child, B. A hearing was held in Mr. N’s appeal.<sup>1</sup> The custodial parent, Ms. M, participated. Mr. N also participated. Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on March 24, 2013.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concluded that the monthly ongoing child support should be modified in accordance with the Division’s calculations at exhibits 5 and the Division’s order should be affirmed.

These calculations are based on the Division’s estimate of Mr. N’s income, and do not give Mr. N any credit for Children’s Insurance Benefit (CIB) payments because B is not currently receiving any CIB payments despite Mr. N’s eligibility for social security benefits. Based on these calculations, Mr. N’s modified ongoing child support effective December of 2012, based is \$144 per month with no projected CIB credit.

Mr. N’s modified ongoing child support is not reduced due to his child support obligations for his other children because these children are all younger than B.

**II. Facts**

The Division issued an order setting Mr. N’s ongoing child support for B on May 11, 1998. This order set Mr. N’s ongoing child support at the minimum, \$50 per month, based on Mr. N’s lack of income.<sup>2</sup> Ms. M filed a request for an upward modification of Mr. N’s monthly ongoing child support obligation on December 14, 2012.<sup>3</sup> The Division issued a Petition for

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.190.  
<sup>2</sup> Exhibit 1.  
<sup>3</sup> Exhibit 2.

Modification of Administrative Support Order on December 18, 2012.<sup>4</sup>

Mr. N provided the income information that the Division requested.<sup>5</sup> Mr. N and Ms. M have so far not been able to establish B's eligibility for CIB payments because of Mr. N's eligibility for social security benefits.<sup>6</sup>

The Division calculated Mr. N's ongoing child support obligation for B based on his current income to be \$144 per month.<sup>7</sup> Mr. N is disabled and his income is limited disability benefits that he receives. Mr. N has three younger older children, who have two different mothers. No children are living with Mr. N. The younger children, do not appear to receive CIB payments, but a significant portion of Mr. N's benefits appears to be withheld to pay child support for these younger children.<sup>8</sup>

The Division explained that its calculations use Mr. N's projected income based on information provided the Social Security Administration regarding Mr. N's disability benefits.<sup>9</sup>

Based on the evidence in the record, I find that it is more likely than not that the calculations the Division made in setting Mr. N's modified ongoing child support obligation at \$144 per month are correct and that the income used in these calculations is correct. Based on the evidence in the record, I also find that it is more likely than not that these calculations are based on the best estimate of Mr. N's ongoing income.<sup>10</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case Mr. N, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>11</sup> The evidence did not show that Mr. N's child support order should not be modified in accordance with the Division's calculations.

Mr. N's obligation to support his younger children should not lower his monthly support obligation for B unless a reduction is required to prevent a substantial hardship.<sup>12</sup> The evidence does not show that this increase will cause a hardship to either Mr. N or his younger children. In

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<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 4.

<sup>6</sup> Recording of Hearing.

<sup>7</sup> Recording of Hearing & Exhibits 4 & 6.

<sup>8</sup> Exhibit 4 is Mr. N's 2013 benefits amount statement that shows deductions.

<sup>9</sup> Recording of Hearing & Exhibit 4.

<sup>10</sup> Recording of Hearing & Exhibits 4 & 6.

<sup>11</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>12</sup> Alaska Civil Rule 90.3 Commentary VI.B.2.

this case it is not clear that Mr. N has done everything that he should do to ensure that B is receiving the correct portion of his benefits. Unless B's child support is set above the minimum amount he will continue to receive less than the correct portion for the one year he has left before he becomes an adult. Furthermore, it does not appear that the parents have taken all the steps that they could to ensure that B receives either the withholding or the CIB payments that he may be entitled to.

As discussed at the hearing, under Alaska law, CIB payments are first added to the parent's income when calculating child support and then credited against a parent's monthly child support obligation. If Mr. N's children were to receive CIB payments as the result of Mr. N's social security, the CIB payments should be credited against Mr. N's monthly child support obligations.<sup>13</sup> This means that most or all of Mr. N child support obligations would effectively be paid by Social Security without a reduction to Mr. N's Social Security benefit. If the parents are able to get CIB payments for B, they should request a modification to ensure that Mr. N's is adjusted and he gets the appropriate credit.

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>14</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>15</sup> Monthly child support of in the amounts calculated by the Division would be more than a 15 percent increase from the current order of \$50 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. This modification should be effective January 1, 2013, because the petition was served in December of 2012.<sup>16</sup>

#### **IV. Conclusion**

Mr. N's modified ongoing monthly child support should be adjusted in accordance with the Division's calculations. The Division's modification order should be upheld. 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>13</sup> *Miller v. Miller*, 890 P2d 574 (Alaska 1995).

<sup>14</sup> Alaska Civil Rule 90.3(h)(1).

<sup>15</sup> Alaska Civil Rule 90.3, Commentary X.

<sup>16</sup> Alaska Regulation 15 AAC 125.321.

**V. CHILD SUPPORT ORDER**

1. The Modified Administrative Support Order issued on January 29, 2013 is affirmed.
2. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for B.

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.]