

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

IN THE MATTER OF)	
X J. N)	OAH No. 13-1016-CSS
)	
_____)	CSSD No. 001147411

DECISION AND ORDER

I. Introduction

This case is X J. N’s appeal of the modification of his existing child support order for his child, H. The Alaska Child Support Services Division (Division) issued this order because D G. Z, H’s mother, requested a modification.

The modification order increased Mr. N’s existing \$229 per month ongoing child support obligation, setting it at \$811 per month based on his estimated income.

Mr. N 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 August 14, 2013. Mr. N participated. Ms. Z also participated. Russell Crisp, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on August 14, 2013.

At the hearing, Mr. N was concerned that he would have difficulty paying the new modified ongoing child support amount. Mr. N has a child in his household and another on the way. Mr. N also has other child support orders for other children. Mr. N explained that he is not eligible for an Alaska Permanent Fund Dividend, which had been included in the Division’s calculation. Right after the hearing, the Division provided new calculations that did not include an Alaska Permanent Fund Dividend in Mr. N’s annual income estimation.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s modification order should be adjusted to \$898 per month, based on the new calculations that the Division submitted after the hearing. These new calculations use the best estimate of Mr. N’s current income. Mr. N did not show by clear and convincing evidence that it would create an injustice if his modified ongoing child support for H is increased to this amount based on his increased income.

II. Facts

This case is a modification action.¹ Mr. N's ongoing child support for his child, H, was previously set in 2007 at \$229 per month. This monthly amount was calculated based on an estimate of Mr. N's 2007 income, which totaled \$15,666.39.²

The Division initiated a modification action because Ms. Z filed a request for modification in April of 2013.³ The Division issued notice of the petition for modification on April 24, 2013.⁴

Mr. N provided his most recent paystubs and his 2012 federal income tax return in response to the Division's request for updated income information.⁵ The Division issued a Modified Administrative Child and Medical Support Order on June 11, 2013.⁶ The Division's order set Mr. N's ongoing child support obligation at \$811 per month, effective May 1, 2013.⁷ This monthly amount was calculated based on an estimate of Mr. N's annual income, which totaled \$63,306. Mr. N requested a formal hearing.⁸ Prior to the hearing, the Division recalculated Mr. N's ongoing child support to be \$909 per month, based on an updated estimate of his 2013 income using an extrapolation of his earnings during the first quarter of 2013. This updated estimate of Mr. N's projected 2013 income was \$72,097.13. These calculations included an Alaska Permanent Fund Dividend.⁹

At the hearing, Mr. N provided more information about his household finances and his other child support obligations. Mr. N is currently working as an no name repair technician. He lives with the mother of his two-year-old child. They are expecting another child. He has another ongoing child support order for a child who is younger than H, and a third child support order that is only seeking arrears. The child in Mr. N's household and the three children covered by Mr. N's child support orders each have a different mother. All of Mr. N's other children are

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

² Exhibit 1.

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

⁴ Exhibit 3.

⁵ Exhibit 4.

⁶ Exhibit 5.

⁷ Exhibit 5.

⁸ Mr. N's appeal is found at Exhibit 6.

⁹ Exhibit 7.

younger than H. Mr. N's only other ongoing child support order, for a child other than H, that is still collecting ongoing support, is set at \$215 per month. The mother of the two-year-old child living in Mr. N's household is not working. She is expecting their second child. She has training as a pharmacy technician and plans to seek work after their second child is born. Mr. N testified that he does not receive an Alaska Permanent Fund Dividend because he has not lived in Alaska for the past five years.¹⁰

After the hearing, the Division recalculated Mr. N's modified ongoing child support using his estimated 2013 earnings without including an Alaska Permanent Fund Dividend as income. This latest updated estimate of Mr. N's projected 2013 income with no Alaska Permanent Fund Dividend was \$71,291.13.¹¹ These calculations resulted in the \$898 monthly amount, which is an increase from \$811, the monthly amount in the Division's modification order that Mr. N appealed, but a slight decrease from \$909, the monthly ongoing obligation in the Division's updated calculations that were filed before the hearing.¹²

Based on the evidence in the 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 new calculations use the best estimate of Mr. N's current annual income. As noted above, these calculations result in a monthly child support obligation for Mr. N for H of \$898. I also find that Mr. N did not provide clear and convincing evidence that manifest injustice would result if the support award is set at this monthly amount.¹³

III. Discussion

Mr. N admitted at the hearing that \$71, 219.13, the annual earnings that the Division used in its latest calculations, is a good estimate of what he is likely to earn in 2013. Mr. N's ongoing child support should be based on the best estimate of his current income.¹⁴ The evidence shows that Mr. N's annual income does not include an Alaska Permanent Fund Dividend.

Mr. N is understandably concerned about the large increase in his ongoing monthly child

¹⁰ Recording of Hearing.

¹¹ Exhibit 9.

¹² Exhibits 5, 7, & 9.

¹³ Recording of Hearing & Exhibits 4 & 9.

¹⁴ Alaska Civil Rule 90.3, Commentary III.E.

support for H. This large increase is due to the large increase in his annual income since his ongoing monthly child support was last set. H is Mr. N's oldest child. Under Alaska law, H is entitled to receive 20% of Mr. N's adjusted gross income without any reduction for Mr. N's younger children from different relationships.¹⁵

Ongoing child support should be calculated based on Mr. N's current annual income unless good cause exists to raise child support above or reduce it below the amounts 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."¹⁶

Mr. N did not show that it would be unjust to require him to pay \$898 per month in ongoing child support. Mr. N did not show that he and his younger child's mother will be unable to support themselves and Mr. N's younger children if Mr. N's ongoing child support for H is increased to \$898 per month. Mr. N earns a good income and his wife will be able to return to work after their child is born.¹⁷

While paying \$898 per month in ongoing child support may require some adjustments, Mr. N's duty to pay the correct percentage of his income toward the ongoing support of his older child, H, takes precedence over his debts and other financial obligations. Under Alaska law, Mr. N's obligation to support his younger child would not lower his monthly support obligation for H unless a reduction is required to prevent a substantial hardship.¹⁸

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.¹⁹ 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.²⁰ Monthly child support of \$898 would be more than a 15 percent increase from the current order of \$229 per month.

Generally, a new monthly child support amount in a modification action should be

¹⁵ Alaska Civil Rule 90.3 Commentary VI.B.2.

¹⁶ Alaska Civil Rule 90.3(c).

¹⁷ Recording of Hearing.

¹⁸ Alaska Civil Rule 90.3 Commentary VI.B.2.

¹⁹ Alaska Civil Rule 90.3(h)(1).

effective the month after the parties are served with the petition. Following this general rule, the modification would be effective May 1, 2013, because the petition was issued in April of 2013.

IV. Conclusion

Ongoing child support should be increased due to the increase in Mr. N's earnings that has occurred since the ongoing monthly support amount was set in 2007. Mr. N's modified child support should be adjusted based on the new calculations that the Division submitted after the hearing. There is not 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).

V. Child Support Order

1. Mr. N's modified ongoing child support for H is set in the monthly amount of \$898, effective May 1, 2013.
2. The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for H.

All other provisions of the Division's Modified Administrative Child and Medical Support Order issued on June 11, 2013 remain in effect.

DATED this 20th day of August, 2013.

By: Signed _____
Mark T. Handley
Administrative Law Judge

²⁰ Alaska Civil Rule 90.3, Commentary X.

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 12th day of September, 2013.

By: Signed
Signature
Angela M. Rodell
Name
Acting Commissioner
Title

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