

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

IN THE MATTER OF)	OAH No. 13-1156-CSS
B U. T)	CSSD No. 001131112
_____)	

DECISION AND ORDER

I. Introduction

This case is B U. T's appeal of an order modifying his child support obligation. The Child Support Services Division (Division) issued this order increasing Mr. T's ongoing monthly obligation for the support of his children, K and E, from \$367 for two children to \$631 for two children effective July 1, 2013.

On September 10, 2013, a formal hearing was held to consider Mr. T's appeal.¹ Mr. T participated in the hearing. The custodial parent, T J, also participated. Russell Crisp, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on at the end of the hearing.

Based on the evidence presented at the hearing, the administrative law judge concludes that Mr. T's modified ongoing child support order should be affirmed. Modified ongoing child support should be set at \$631 per month effective July 1, 2013, based on the Division's estimate of Mr. T'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. Mr. T's did not provide clear and convincing evidence that it would be manifestly unjust to set his ongoing child support at this monthly amount.

II. Facts

This case is an appeal of the Division's order increasing Mr. T's ongoing child support obligation through the modification process.² Mr. T's ongoing child support for his two children, K and E was last modified in June of 2012, when the monthly amount was set at \$367

¹ The hearing was held under Alaska Statute 25.27.190.

² Alaska Civil Rule 90.3(h) governs child support modification actions.

for two children.³

Ms. J filed a new request for modification in May of 2013.⁴ The Division issued the Notice of Petition for Modification on June 12, 2013.⁵

The Division issued a Modified Administrative Child and Medical Support Order on August 13, 2013.⁶

The Division set Mr. T's modified ongoing child support based on calculations using annual income estimated from recent reported earnings from his employer plus a PFD, which result in a monthly support amount of \$631 per month for two children.⁷ This amount is more than a 15 percent increase from his current monthly amount of \$367.

Mr. T requested a formal hearing.⁸

At the hearing, Mr. T explained that he did not think it was fair to increase his child support so much. Mr. T was concerned about arrears that accrued when he was in jail but had not received a downward modification despite his inability to earn income. Mr. T was also concerned because he does not receive any reduction in his child support for the child living with him, who is younger than K and E.⁹

The Division's modification order was based on Mr. T's estimated annual income, using his recent reported earnings, plus a PFD.¹⁰ The record indicates that Mr. T will probably earn an annual income at least equal to the amount the Division used to calculate his modified child support.¹¹ Based on the evidence in the record, I find that it is more likely than not the Division's calculation at Exhibit 5 and the income amounts used in this calculation are correct.¹² Mr. T did not show by clear and convincing evidence that it would be manifestly unjust to set his ongoing child support for K and E at \$631 per month.¹³

³ Exhibit 1.
⁴ Exhibit 2.
⁵ Exhibit 3.
⁶ Exhibit 5.
⁷ Exhibit 5.
⁸ Exhibit 6.
⁹ Recording of Hearing – Testimony of Mr. T.
¹⁰ Exhibit 5, page 6.
¹¹ Recording of Hearing & Exhibit 5, page 6 & Exhibit 9.
¹² Recording of Hearing & Exhibits 5 & 9.
¹³ Recording of Hearing.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. T, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁴ Mr. T did not meet his burden of proof to show that the ongoing monthly amount in the Division's order was incorrect. The Division calculated Mr. T's child support based on his reported earnings and a PFD. Mr. T did dispute that it is more likely than not that he will earn the annual income used in the Division's modification calculation.

Most of Mr. T request for a formal hearing is his understandable frustration with the increase in his ongoing child support, and with the arrears that were being assessed for earlier periods. At the hearing, many of Mr. T's questions about child support law were addressed.

Ongoing child support should be calculated based using the best estimate of Mr. T'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. Under Alaska law, Mr. T's having a younger child, with a different mother, to support in his home does not lower his monthly support obligation for his older children, K and E, absent a reduction is required to prevent a substantial hardship.¹⁵ The new monthly amount calculated by the Division is correct. There is not clear and convincing evidence in the record showing that a substantial hardship will occur if ongoing child support is set at this amount.¹⁶

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.¹⁷ 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.¹⁸ The evidence in the record shows that a material change of circumstances has occurred since Mr. T's ongoing child support was set at \$367 per month. The modified ongoing amount calculated at \$631 per month for two children is more than a 15 percent change from the outstanding order of \$367 per month. A material change of circumstances justifying an upward modification of ongoing child support has occurred.

¹⁴ Alaska Regulation 15 AAC 05.030(h).

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

¹⁶ See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

¹⁷ Alaska Civil Rule 90.3(h)(1).

¹⁸ Alaska Civil Rule 90.3, Commentary X.

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 July 1, 2013, because the petition was issued in June of 2013.

IV. Conclusion

Mr. T's ongoing child support should be modified based on the Division's calculations. Modified ongoing child support should be set at \$631 per month for two children effective July 1, 2013, based on the Division's estimate of Mr. T's current income in accordance with the Division's order. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

The Division's Modified Administrative Child and Medical Support Order issued August 13, 2013 is affirmed.

DATED this 23rd day of September 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 10th day of October, 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.]