

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

IN THE MATTER OF)	
G L. D)	OAH No. 13-1229-CSS
)	
_____)	CSSD No. 001148721

DECISION AND ORDER

I. Introduction

This case is G L. D’s appeal of the modification of his existing child support order for his children, B and T. The Alaska Child Support Services Division (Division) issued this order because Mr. D requested a modification.

The modification order increased Mr. D’s existing \$187 per month ongoing child support obligation, setting it at \$419 per month based on his estimated income.

Mr. 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. Mr. D and Ms. F failed to participate in the hearing that was scheduled for October 8, 2013. The hearing was rescheduled at Mr. D’s request and was held on October 29, 2013. Mr. D participated. Ms. F also participated. Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

At the beginning of the hearing it was pointed out to Mr. D that the Division had filed new calculations based on updated income information. These calculations indicated that Mr. D’s ongoing modified child support should be set above the monthly amount in the order that Mr. D was appealing. Mr. D was advised that his ongoing child support could be increased as the result of his appeal, but he chose not to withdraw his appeal. At the hearing, Mr. D was concerned that he would have difficulty paying the new modified ongoing child support amount. Mr. D also complained that his earnings are dependent on how much repair work his employer gets. Mr. D explained that this means he does not know how much he will earn in any week.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s modification order should be adjusted to \$545 per month, based on the new

calculations that the Division submitted prior the hearing. These new calculations use the best estimate of Mr. D's current income. Mr. D did not show by clear and convincing evidence that it would create an injustice if his modified ongoing child support for B and T is increased to this amount based on his increased income.

II. Facts

This case is a modification action.¹ Mr. D's ongoing child support for his children, B and T, was previously set in 2010 at \$187 per month. This monthly amount was calculated based on an estimate of Mr. D's 2009 annual income, which totaled \$8,712.38.² Although Mr. D appears to believe that he was earning more at the time this ongoing amount was set than he is now, the amount used to set his current amount was based his income for a year that apparently when he did not work full-time.³

The Division initiated a modification action because Mr. D filed a request for modification in April of 2013.⁴ The Division issued notice of the petition for modification on April 11, 2013.⁵

Mr. D did not timely provide income information to the Division.⁶ The Division obtained Mr. D's reported earnings from his employer.⁷

The Division issued a Modified Administrative Child and Medical Support Order on August 15, 2013.⁸ The Division's order set Mr. D's ongoing child support obligation at \$419 per month, effective May 1, 2013.⁹ This monthly amount was calculated based on an estimate of Mr. D's current annual income, using the \$10 hourly wage reported by his employer, which totaled \$21,678.¹⁰

Mr. D requested a formal hearing. In this request Mr. D complained about Ms. F refusal to share custody. Mr. D also provided some paystubs and a letter in support of his desire to have

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

² Exhibit 1, page 7.

³ Recording of Hearing & Exhibit 1, page 7.

⁴ Exhibit 2 & the Division's Pre-Hearing Brief, page 1.

⁵ Exhibit 3.

⁶ Division's Pre-Hearing Brief, page 1.

⁷ Exhibit 4.

⁸ Exhibit 6.

⁹ Exhibit 6, page 1.

more visitations with his children.¹¹

Prior to the hearing, the Division received more current reported earnings information from Mr. D's employers.¹² The Division recalculated Mr. D's ongoing child support to be \$545 per month, based on an updated estimate of his 2013 income using an extrapolation of his reported earnings during the first two quarters of 2013. This updated estimate of Mr. D's projected 2013 income was \$28,962.96. These calculations included an Alaska Permanent Fund Dividend.¹³

At the hearing, Mr. D was informed that the Division did not have jurisdiction over child custody or visitation disputes. Mr. D provided more information about his earnings. Mr. D is currently working as an auto repair technician in No Name, Alaska. He sometimes lives with his sister and her child. He has no other ongoing child support orders besides this order for B and T. Mr. D explained that he gets less hours of work in the summer and more in the winter, when vehicles need more repair work due to the cold weather. Mr. D could not explain why he would be likely to earn less in the second half of the year than he had in the first.¹⁴

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. D's current annual income. As noted above, these calculations result in a monthly child support obligation for Mr. D for B and T of \$545. I also find that Mr. D did not provide clear and convincing evidence that manifest injustice would result if the support award is set at this monthly amount.¹⁵

III. Discussion

Mr. D did not provide convincing evidence at the hearing that \$28,962.96, which is the amount of annual earnings that the Division used in its latest calculations, was not the best estimate of what he is likely to earn in 2013. Mr. D's ongoing child support should be based on the best estimate of his current income.¹⁶

¹⁰ Exhibit 6, page 7.

¹¹ Mr. D's appeal is found at Exhibit 7.

¹² Exhibit 8.

¹³ Exhibit 12.

¹⁴ Recording of Hearing.

¹⁵ Recording of Hearing & Exhibits 8 & 12.

¹⁶ Alaska Civil Rule 90.3(a).

Mr. D is understandably concerned about the large increase in his ongoing monthly child support for B and T. This large increase is due to the large increase in his annual income since his ongoing monthly child support was last set. B and T are Mr. D's only children. Under Alaska law, B and T are entitled to receive 27% of Mr. D's adjusted gross income.¹⁷

Ongoing child support should be calculated based on Mr. D'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."¹⁸

Mr. D did not show that it would be unjust to require him to pay \$545 per month in ongoing child support. Mr. D did not show that he will be unable to support himself if his ongoing child support for B and T is increased to \$545 per month. Mr. D earns enough to support himself even with his increased child support obligation.¹⁹ If there is a significant decrease in his earnings, he may wish to request another modification.

While paying \$545 per month in ongoing child support may require some adjustments, Mr. D's duty to pay the correct percentage of his income toward the ongoing support of his children, B and T, takes precedence over his debts and other financial obligations.²⁰ Mr. D will need to find ways to adjust to the impact of his increased ongoing child support obligation as he does his other financial obligations despite the weekly variations.

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.²¹ 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.²² Monthly child support of \$545 would be more than a 15 percent increase from the current order of \$187 per month.

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

¹⁷ Alaska Civil Rule 90.3(a)(2)(B).

¹⁸ Alaska Civil Rule 90.3(c).

¹⁹ Recording of Hearing & Exhibit 8.

²⁰ Alaska Civil Rule 90.3 Commentary VI.B.4.

²¹ 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. D's earnings that has occurred since the ongoing monthly support amount was set in 2010. Mr. D's modified child support should be adjusted based on the new calculations that the Division submitted prior to 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. D's modified ongoing child support for B and T is set at \$545 per month, 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 B and T.

All other provisions of the Division's Modified Administrative Child and Medical Support Order issued on August 15, 2013 remain in effect.

DATED this 30th day of October, 2013.

By: Signed
Mark T. Handley
Administrative Law Judge

²² 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 21st day of November, 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.]