

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

IN THE MATTER OF)	OAH No. 13-1312-CSS
K C. T)	CSSD No. 001124732
_____)	

DECISION AND ORDER

I. Introduction

This case is K C. T’ appeal of an order modifying his child support obligation. The Child Support Services Division (Division) issued this order, increasing Mr. T’ ongoing monthly obligation for the support of his child, H, from \$353 to \$735 effective June 1, 2013.

On December 9, 2013, a formal hearing was held to consider Mr. T’ appeal.¹ Mr. T did not participate in the hearing. The custodial parent, N I. N, participated. Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on December 19, 2013.

Based on the evidence presented at the hearing, the administrative law judge concludes that Mr. T’ modified ongoing child support order should be affirmed. Modified ongoing child support should be set at \$735 per month effective June 1, 2013, based on the Division’s estimate of Mr. T’ current annual income, in accordance with the Division’s order. The evidence at the hearing showed that the annual income amount used in the Division’s calculation was a best estimate of his current income. Mr. T did not show that his three-week-on three-week-off work schedule would be likely to result in his earning less income than the Division used to calculate his modified ongoing monthly child support for H. The Division’s calculations use a current annual income estimate that is consistent with Mr. T’ 2011, 2012 and first two quarters of 2013 reported earnings.

II. Facts

This case is an appeal of the Division’s order increasing Mr. T’ ongoing child support obligation through the modification process.² Mr. T’ child support for his child, H was set in 2004 at \$353 per month for the one child.³

¹ The hearing was held under Alaska Statute 25.27.190.

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

³ Exhibit 2.

Ms. N filed a request for modification on May 14, 2013.⁴ The Division issued notice of the petition for modification on May 20, 2013.⁵

The Division issued a Modified Administrative Child and Medical Support Order on July 23, 2013.⁶ The Division set Mr. T' modified ongoing child support from calculations using his estimated annual income. This projected estimate was \$56,133.24 per year was based on Mr. T' reported earnings for the first quarter of 2013.⁷ The calculations result in a monthly support amount of \$735 per month.⁸ This amount is more than a 15 percent increase from his 2004 monthly amount of \$353.

Mr. T requested a formal hearing. Mr. T provided updated income information. Mr. T explained that he has a three-week-on three-week-off work schedule.⁹

Mr. T did not provide a phone number for the hearing as instructed by the notice sent to him. Mr. T did not answer at his phone numbers of record for the hearing. Mr. T' voice mail did not allow a message to be left. The hearing record was held open for ten days to give Mr. T time to file a request to reschedule the hearing.¹⁰ Mr. T did not file such a request.

Mr. T' reported earnings for the first and second quarters of 2013 were \$26,416.18. Mr. T' reported earnings all four quarters of 2012 were \$48,831.48. These earnings records and other reported earnings provided by the Division and discussed at the hearing indicate that Mr. T' will probably earn an income that is close to the Division's estimate of his annual earnings.¹¹

Based on the evidence in the record, I find that it is more likely than not that the Division's calculation at Exhibit 4, page 7, and the income amounts used in this calculation are correct.¹²

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. T, has the

⁴ Exhibit 1.
⁵ Exhibit 3.
⁶ Exhibit 4, page 7.
⁷ Recording of Hearing & Exhibit 4, page 7.
⁸ Exhibit 4.
⁹ Mr. T' request for a formal hearing is found at Exhibit 5.
¹⁰ Recording of Hearing.
¹¹ Exhibits 4 & 8.
¹² Recording of Hearing & Exhibits 4, 5 & 8.

burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹³ Mr. T did not meet his burden of proof to show that the ongoing monthly amount in the Division's order was incorrect. Mr. T's concern was that the Division may have overestimated his earnings because of Mr. T's three-week-on three-week-off work schedule, but the Division calculated Mr. T's child support based on its estimate of his annual income using the first reported quarter of his earnings with his current employers in 2013 multiplied by four. Although Mr. T's quarterly earnings have fluctuated somewhat over the last few years, nothing in the record indicates that he tends to earn significantly more in the first quarter of the year. The Division's estimate of his annual earnings is consistent with his quarterly earnings in 2013 as well as his annual earnings for the past two calendar years.

Ongoing child support should be calculated based using the best estimate 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. The new monthly amount calculated by the Division is correct, and there is not clear and convincing evidence in the record showing that an injustice will occur if ongoing child support is set at this amount.¹⁴ Mr. T seemed concerned about the modification primarily because he did not understand the increase in his child support was based on his annual rather than his weekly earnings.

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.¹⁵ 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.¹⁶

The evidence in the record shows that a material change of circumstances has occurred since Mr. T's ongoing child support was set at \$353 per month. The modified ongoing amount calculated at \$735 per month for two children is more than a 15 percent change from the outstanding order of \$353 per month. A material change of circumstances justifying an upward

¹³ Alaska Regulation 15 AAC 05.030(h).

¹⁴ Recording of Hearing.

¹⁵ Alaska Civil Rule 90.3(h)(1).

¹⁶ Alaska Civil Rule 90.3, Commentary X.

modification of ongoing child support has occurred.

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

IV. Conclusion

Mr. T' ongoing child support should be modified based on the Division's calculations. Modified ongoing child support should be set at \$735 per month, effective June 1, 2013, based on the Division's estimate of Mr. T' current income in accordance with the Division's order. The child support amount in this order was 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 July 23, 2013 is affirmed.

DATED this 31st day of December 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 21st day of January, 2014

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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