

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

IN THE MATTER OF)	
S D. L)	OAH No. 13-1397-CSS
)	
_____)	CSSD No. 001106348

DECISION AND ORDER

I. Introduction

This case is S D. L's appeal of the modification of his existing child support order for his children, D, M and U. The Alaska Child Support Services Division (Division) issued this order because H B the children's grandfather, requested a modification of Mr. L's ongoing child support.

The modification order increased Mr. L's existing \$50 per month ongoing child support obligation, setting it at \$481 per month based on his estimated income.

Mr. L 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. The hearing was held on October 31, 2013. Mr. L participated in the hearing. Mr. B failed to participate. Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on November 8, 2013.

After the hearing the Division had filed new calculations based on updated income information. These calculations indicated that Mr. L's ongoing modified child support should be set below the monthly amount in the order that Mr. L was appealing.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification order should be adjusted to \$271 per month, based on the new calculations that the Division submitted after the hearing. These new calculations use the best estimate of Mr. L's current income. There is also good cause to move the effective date of this increase from the \$50 monthly order forward to December 1, 2013.

II. Facts

This case is a modification action.¹ Mr. L's ongoing child support for his children, D, M

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

and U, was previously set in 2004 at \$50 per month.²

The Division initiated a modification action because Mr. B filed a request for modification in June of 2013.³ The Division issued notice of the petition for modification on June 28, 2013.⁴

All of the children have been in federal foster care since May 23, 2013. D has been in a boarding school placement since August 24, 2013, so the Division is not currently charging Mr. L ongoing child support for D.⁵

The Division obtained Mr. L's reported earnings from his employers.⁶ The Division issued a Modified Administrative Child and Medical Support Order on September 16, 2013. The Division's order set Mr. L's ongoing child support obligation at \$481 per month, effective July 1, 2013. This monthly amount was calculated based on an estimate of Mr. L's current annual income, using earnings reported by his employers, an Alaska Permanent Fund Dividend, native corporation dividends and unemployment benefits, which totaled \$20,028.53.⁷

Mr. L requested a formal hearing.⁸ At the hearing, Mr. L explained that he was unemployed living with his uncle, and was planning to move to Anchorage to find work.

At the hearing, the Division reviewed more current reported earnings information from Mr. L's employers.⁹ The Division recalculated Mr. L's ongoing child support to be \$271 per month, based on an updated estimate of his 2013 income. This updated estimate of Mr. L's projected 2013 income was \$10,606.26. These calculations included his 2013 earnings, an Alaska Permanent Fund Dividend, native corporation dividends, unemployment benefits.¹⁰

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. L's current annual income. As noted above, these

² Recording of Hearing & Exhibit 1.
³ Exhibit 2 & the Division's Pre-Hearing Brief, page 1.
⁴ Exhibit 3.
⁵ Division's Pre-Hearing Brief, page 1.
⁶ Exhibit 6.
⁷ Exhibit 4.
⁸ Mr. L's appeal is found at Exhibit 5.
⁹ Exhibit 6.
¹⁰ Exhibit 7.

calculations result in a monthly child support obligation for Mr. L for D, M and U of \$271. I also find that Mr. L showed good cause to move the effective date of this increase forward to December of 2013.¹¹

III. Discussion

The evidence at the hearing that showed that \$10,606.26, which is the amount of annual earnings that the Division used in its latest calculations is the best estimate of what Mr. L is likely to earn in 2013. Mr. L's ongoing child support should be based on the best estimate of his current annual income.¹²

Mr. L is understandably concerned about the large increase in his ongoing monthly child support for D, M and U. This large increase is due to the increase in his annual income since his ongoing monthly child support was last set. Under Alaska law, D, M and U are entitled to receive 27% of Mr. L's adjusted gross income.¹³

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.¹⁴ 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.¹⁵ Monthly child support of \$271 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. Following this general rule, the modification should be effective July 1, 2013, because the petition was issued in June of 2013.

The effective date of a modification cannot predate the service of the petition for modification even when it would clearly prevent an injustice.¹⁶ The effective date of a modification can, however, be moved forward upon a mere showing that there is good cause to do so.¹⁷ Moving the effective date of a modification forward from the first of the month

¹¹ Recording of Hearing & Exhibits 6 & 7.

¹² Alaska Civil Rule 90.3(a).

¹³ Alaska Civil Rule 90.3(a)(2)(B).

¹⁴ Alaska Civil Rule 90.3(h)(1).

¹⁵ Alaska Civil Rule 90.3, Commentary X.

¹⁶ *See State, Dept. of Revenue, Child Support Enforcement Div. v. Schofield*, 993 P2d 405, (Alaska 1999).

¹⁷ *Alaska Dept. of Revenue, CSED v. Kevin Lyn Dillon* 977 P 2d 118, (Alaska 1999).

following the service of the petition for modification is not a variance of the child support guidelines, requiring clear and convincing evidence that moving the date forward is needed to prevent an injustice under Civil Rule 90.3(c).

There is good cause to move the effective date forward to December of 2013. Mr. L was unemployed for the past several months, living in his uncle's home. Moving the effective date forward will help avoid putting any additional pressure on his uncle's household's finances. Hopefully Mr. L will be able to find employment soon.

IV. Conclusion

Ongoing child support should be increased due to the increase in Mr. L's earnings that has occurred since the ongoing monthly support amount was set in 2004. Mr. L's modified child support should be adjusted based on the new calculations that the Division submitted prior to the hearing. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Mr. L's modified ongoing child support for D, M and U is set at \$271 per month, effective December 1, 2013.
2. All other provisions of the Division's Modified Administrative Child and Medical Support Order issued on September 16, 2013 remain in effect.

DATED this 25th day of November, 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 14th day of December, 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.]