

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

IN THE MATTER OF)	OAH No. 13-1658-CSS
N J. D)	CSSD No. 001132814
_____)	

DECISION AND ORDER

I. Introduction

This case is N J. D’s appeal of an order modifying his child support obligation. The Child Support Services Division (Division) issued this order, increasing Mr. D’s ongoing monthly obligation for the support of his children, T and E, from \$644 to \$915 for effective August 1, 2013.

On December 3, 2013, a formal hearing was held to consider Mr. D’s appeal.¹ Mr. D participated in the hearing. The custodial parent, R L. D, chose not to participate. Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

Based on the evidence presented at the hearing, the administrative law judge concludes that Mr. D’s modified ongoing child support order should be affirmed. Modified ongoing child support should be set at \$915 per month effective August 1, 2013, based on the Division’s estimate of Mr. D’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 Division’s calculation was a conservative estimate of his current income. Mr. D did not show that the decrease in his hourly wage that occurred in the summer of 2013 would be likely to result in his earning less income than the Division used to calculate his modified ongoing monthly child support for T and E.

II. Facts

This case is an appeal of the Division’s order increasing Mr. D’s ongoing child support obligation through the modification process.² Mr. D’s child support for his child, T and E as

¹ The hearing was held under Alaska Statute 25.27.190.

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

well as their older siblings, B and K, was set in 2005 at \$859 per month for all four children.³ Since B and K became adults, the Division has only been collecting \$644 in ongoing child support for T and E under the 2005 order.⁴

Mr. D filed a request for modification in July of 2013 because his hourly wage was reduced from \$22.80 to \$17.20.⁵ The Division issued notice of the petition for modification on July 23, 2013.⁶

The Division issued a Modified Administrative Child and Medical Support Order on October 8, 2013.⁷ The Division set Mr. D's modified ongoing child support from calculations using his estimated annual income. This estimate was based on Mr. D's reported earnings for the last two quarters of 2012 and the first two quarters of 2013.⁸ The calculations result in a monthly support amount of \$915 per month for two children.⁹ This amount is more than a 15 percent increase from his 2005 two-child monthly amount of \$644.

Mr. D requested a formal hearing. Mr. D had provided updated income information.¹⁰ Mr. D explained that he was earning a lower hourly wage.¹¹

At the hearing, Mr. D was concerned that he was being asked to pay more monthly child support even though his hourly wage was reduced in July of 2013, and two of his four children were now over 18-years-old.¹²

Mr. D's reported earnings for the third quarter of 2013 indicate that he will continue to earn at least as much, even with his lower hourly wage, as the Division's estimate of his annual earnings.¹³ Because the Division's modification order was based on Mr. D's reported earnings for the last two quarters of 2012 and the first two quarters of 2013, those earnings were made before Mr. D's hourly wage was decreased, but the lower wage did decrease his quarterly

³ Exhibit 1.
⁴ Recording of Hearing.
⁵ Recording of Hearing & Exhibit 7.
⁶ Exhibit 3.
⁷ Exhibit 6.
⁸ Recording of Hearing & Exhibit 6, page 6.
⁹ Exhibit 6.
¹⁰ Exhibit 4.
¹¹ Mr. D's request for a formal hearing is found at Exhibit 5.
¹² Recording of Hearing – Testimony of Mr. D.
¹³ Exhibits 6 & 8.

earnings for the third quarter of 2013.¹⁴

When this was pointed out at the hearing, Mr. D did not dispute that this evidence indicates he earns an annual income at the amount the Division used to calculate his modified child support.¹⁵ Although Mr. D might be entitled to a deduction for union dues that he believes he will soon have to pay, the net result of applying that deduction to an annual income figure that was estimated on his multiplying his third quarter 2013 earnings by four would result in a net increase in his modified ongoing monthly child support, Mr. D did not request this adjustment.¹⁶

Based on the evidence in the record, I find that it is more likely than not that the Division's calculation at Exhibit 6, page 6, and the income amounts used in this calculation are correct.¹⁷

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. D, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁸ Mr. D 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. D's child support based on its estimate of his annual income using four reported quarters of his earnings with his current employers. Mr. D works full-time and also has a part-time job with another employer. Mr. D did not dispute that the reported earnings used in the Division's modification calculation were accurate.

Ongoing child support should be calculated based using the best estimate of Mr. D'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. 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

¹⁴ Exhibit 8.& Recording of Hearing.

¹⁵ Exhibits 6 & 8.& Recording of Hearing.

¹⁶ Recording of Hearing.

¹⁷ Recording of Hearing & Exhibits 8 & 6.

¹⁸ Alaska Regulation 15 AAC 05.030(h).

amount.¹⁹ Mr. D does not have other children.²⁰ Mr. D seemed concerned about the modification primarily because he did not understand the increase in his child support.

At the hearing, Mr. D was given the opportunity to work through the numbers in the calculations and his recent reported earnings to help him understand the increase. In 2005, Mr. D's order was calculated at \$859 per month for four children. That amount represents 36% of his estimated adjusted gross monthly income at that time. Mr. D's estimated annual earnings at that time were \$34,734.92. In 2013, for the modification, Mr. D's order was calculated at \$915 per month for two children. That calculation represents 27% of his estimated monthly adjusted gross income. Mr. D's estimated annual earnings based on four quarters of reported earnings were \$50,002.28.²¹ At the hearing, Mr. D agreed that this estimate probably was not more than he would earn for the foreseeable future.²²

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.²³ 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.²⁴

The evidence in the record shows that a material change of circumstances has occurred since Mr. D's ongoing child support was set at \$859 per month for four children. The modified ongoing amount calculated at \$915 per month for two children is more than a 15 percent change from the outstanding two-child order of \$644 per month. A material change of circumstances justifying an upward 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 August 1, 2013, because the petition was issued in July of 2013.

¹⁹ See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

²⁰ Recording of Hearing.

²¹ Alaska Civil Rule 90.3(a) (2) sets the percentage of adjusted gross income per child at 20% for one child; 27% for two children; 33% for three children; and an additional 3% for every additional child.

²² Recording of Hearing & Exhibits 1, 6 & 8.

²³ Alaska Civil Rule 90.3(h)(1).

²⁴ Alaska Civil Rule 90.3, Commentary X.

IV. Conclusion

Mr. D’s ongoing child support should be modified based on the Division’s calculations. Modified ongoing child support should be set at \$915 per month for two children effective August 1, 2013, based on the Division’s estimate of Mr. D’s 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 October 8, 2013 is affirmed.

DATED this 4th 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 23rd 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.]