

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

IN THE MATTER OF)	OAH No. 13-1773-CSS
U A. Q)	CSSD No. 001141142
_____)	

DECISION AND ORDER

I. Introduction

This case is U A. Q’ appeal of an order modifying his child support obligation. The Child Support Services Division (Division) issued this order increasing Mr. Q’ ongoing monthly obligation for the support of his child, N, from \$719 to \$1,100 for effective October 1, 2013.

On December 31, 2013, a formal hearing was held to consider Mr. Q’ appeal.¹ Mr. Q participated in the hearing. The custodial parent, F K, also participated. Russell L. Crisp, 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. Q’ modified ongoing child support order should be affirmed. Modified ongoing child support should be set at \$1,100 per month effective October 1, 2013, based on the Division’s estimate of Mr. Q’ 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 that increased ongoing child support was correct. Mr. Q did not show that his employer’s threat of decreased overtime hours and lay-offs, based on the results of that his pending union vote, would probably result in his earning less income than the Division used to calculate his modified ongoing monthly child support for N. Even though there is a very real threat to Mr. Q’ future earning capacity, the Division’s calculation used the best estimate of Mr. Q’ current earnings. If Mr. Q suffers a decrease in his earning capacity through cutbacks, he should request another modification.

II. Facts

This case is an appeal of the Division’s order increasing Mr. Q’ ongoing child support

obligation through the modification process.² Mr. Q' child support for his child, N, was set in 2006 at \$719 per month.³

Ms. K filed a request for modification at the Division's prompting in September of 2013.⁴ The Division issued notice of the petition for modification on September 16, 2013.⁵

Mr. Q provided income information at the Division's request.⁶ The Division issued a Modified Administrative Child and Medical Support Order on December 2, 2013.⁷ The Division set Mr. Q' modified ongoing child support based on calculations using his estimated annual income based on a November 2013 paystub provided by Mr. Q. This calculation resulted in a monthly support amount of \$1,100 per month for one child.⁸ This amount is more than a 15 percent increase from his current monthly amount of \$719.

Mr. Q requested a formal hearing, providing more income information.⁹ At the hearing, Mr. Q did not dispute the Division's estimate of his 2013 annual income or its calculation. Mr. Q was primarily concerned that he would not earn as much in 2014 and future years as he had in 2013 because his union was advising against a yes vote on the new union contract and his employer, No Name, was threatening to move production on its new aircraft out of the No Name area if the contract is voted down. If this threat were carried out it would likely mean less overtime and possible lay-offs for members of Mr. Q' union.¹⁰

The Division's modification order was based on an estimate of Mr. Q' 2013 income and includes deductions for union dues and retirement.¹¹ Based on the evidence in the record, I find that it is more likely than not the Division's calculation at Exhibit 6, page 7, and the income

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 1.
⁴ Exhibit 3.
⁵ Exhibit 4.
⁶ Exhibit 5.
⁷ Exhibit 6.
⁸ Exhibit 6, page 7.
⁹ Mr. Q' request for a formal hearing is found at Exhibit 7.
¹⁰ Recording of Hearing – Testimony of Mr. Q.
¹¹ Exhibit 6, page 7.
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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. Q, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹³ Mr. Q 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. Q's child support based on its estimate of his projected 2013 income using paystubs provided by Mr. Q. Mr. Q did not dispute that the estimate used in the Division's modification calculation was accurate.

Ongoing child support should be calculated based using the best estimate of Mr. Q'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. 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. Q does not have other children to support and he earns a good income.

Mr. Q is understandably concerned that his ongoing child support will be set too high if he does not earn as much in 2014 and future years due to cut-backs by his employer related to the current labor disputes. At this time, however, the best estimate of his current income for the purpose of calculating his ongoing child support is his estimated 2013 adjusted gross income. As discussed at the hearing, if this estimate is more than he is able to earn due to future cut-backs by his employer, Mr. Q's remedy will be to request another modification.

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

¹² Recording of Hearing & Exhibits 6 & 7.

¹³ Alaska Regulation 15 AAC 05.030(h).

¹⁴ See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

¹⁵ Alaska Civil Rule 90.3(h)(1).

¹⁶ Alaska Civil Rule 90.3, Commentary X.

The evidence in the record shows that a material change of circumstances has occurred since Mr. Q' ongoing child support was set at \$719 per month. The modified ongoing amount calculated at \$1,100 per month for one child is more than a 15 percent change from the outstanding order of \$719 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 October 1, 2013, because the petition was issued in September of 2013.

IV. Conclusion

Mr. Q' ongoing child support should be modified based on the Division's calculations. Modified ongoing child support should be set at \$1,100 per month for one child effective October 1, 2013, based on the Division's estimate of Mr. Q' 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 December 2, 2013 is affirmed.

DATED this 2nd day of January, 2014.

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.]