

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

IN THE MATTER OF)	
T D. S)	OAH No. 13-1862-CSS
)	
_____)	CSSD No. 001133652

DECISION AND ORDER

I. Introduction

This case is T D. S's appeal of an order modifying his ongoing child support obligation for his child, J. L M. C is J's mother. The Child Support Services Division (Division) issued this order, increasing Mr. S's ongoing monthly obligation for the support of their child, J, from \$50 to \$705, effective November 1, 2013.

On January 21, 2014 and February 6, 2014, hearings were held to consider Mr. S's appeal.¹ Mr. S did not participate in the second hearing. Ms. C did not participate in either hearing. Russell L. Crisp, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on February 6, 2014.

The administrative law judge concludes that Mr. S's modified ongoing child support order should be set at \$394.34 effective November 1, 2013.

Mr. S appealed the Division's order that increased ongoing child support to \$705 per month. That order was based on the Division's estimate of Mr. S's estimated 2013 annual income. The Division was not aware that the parents were sharing custody, so the calculation assumed that Ms. C had primary custody of J.

After the first hearing, the Division provided new calculations using updated income information for both parents as well as the custody arrangement. The evidence showed these annual income estimates are probably the best estimate of the parent's current income and earning capacity. The Division's latest calculation includes this estimate of Ms. C's annual income in a shared custody calculation because Mr. S testified that he and Ms. C have been sharing custody of J equally and shared custody calculations are based on both parents' income. This calculation should be used to set Mr. S's ongoing child support obligation. This calculation results in a monthly ongoing child support amount of \$394.34 because Mr. S's estimated annual

¹ The hearing was held under Alaska Statute 25.27.190.

income is higher than Ms. C's. Ms. C has withdrawn from the Division's collection services, so the Division will not be collecting ongoing child support at this time.

II. Facts

This case is an appeal of the Division's order increasing Mr. S's ongoing child support obligation through the modification process.² Mr. S's child support for his child, J was set in 2005 at \$50 per month for the one child.³

Ms. C filed a request for modification on October 11, 2013.⁴ The Division issued notice of the petition for modification on October 17, 2013.⁵

The Division issued a Modified Administrative Child and Medical Support Order on December 2, 2013.⁶ The Division set Mr. S's modified ongoing child support from a primary calculation using his estimated annual income. This estimate used reported 2013 earnings and a PFD.⁷ The calculations result in a monthly support amount of \$705 per month.⁸ This was more than a 15% change.

Mr. S requested a formal hearing. Mr. S was concerned that the Division had overestimated Mr. S's income because he was not eligible for a 2012 PFD as the result of a felony conviction.⁹ Ms. C has withdrawn from the Division's collection services when the appeal was filed.¹⁰

Mr. S explained at the hearing that J was currently living with Ms. C and himself an equal number of overnights and that they planned to continue this arrangement. The parents had worked out this equal shared custody arrangement. Mr. S explained Ms. C earned about \$10 per hour.¹¹

After the first hearing, an order was issued rescheduling the hearing to a time requested

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

³ Exhibit 1.

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ Recording of First Hearing & Exhibit 4, page 8.

⁸ Exhibit 4, page 8.

⁹ Mr. S's request for a formal hearing is found at Exhibit 6.

¹⁰ Exhibit 5.

¹¹ Recording of First Hearing.

by Mr. S. The Division had provided new shared custody calculations and using Ms. C and Mr. S's updated income information. The Division was able to find four quarters of reported earnings for Ms. C. The Division used this information and updated income information for Mr. S in the shared custody calculations filed after the first hearing.¹²

The purpose of the second hearing was to give the parents an opportunity to ask questions about or object to these shared custody calculations that the Division sent to the parents after the first hearing. Neither parent was available at their phone number of record at the time of the second hearing.¹³

Based on the evidence in the record, I find that it is more likely than not that the Division's latest shared custody calculation uses the best estimate of Mr. S's and Ms. C's current income and correctly applies those estimates and the parents' shared custody arrangement. These calculations result in a monthly child support amount of \$394.34 for Mr. S because his income is higher.¹⁴

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. S, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁵ Although he did not participate in the second hearing, the Division admitted before the hearing that the modified order was incorrect. The evidence in the record shows that the Division slightly under-estimated Mr. S's 2013 earnings.

The Division was also unaware of the shared custody arrangement between the parents when it modified Mr. S's order. Both the Division and Mr. S agreed at the hearing that ongoing modified child support should be set based on a shared custody calculation.

The hearing was rescheduled to give the Division time to research Ms. C's income and file shared custody calculations. This gave Ms. C and Mr. S an opportunity to review those calculations and go back on the record to ask questions or make objections. The parents did not participate in this rescheduled hearing.

¹² Recording of Hearings.

¹³ Exhibits 8 & 9.

¹⁴ Recording of Hearing & Exhibits 9 & 10.

¹⁵ Alaska Regulation 15 AAC 05.030(h).

When calculating child support, a parent is entitled to a reduction on the monthly obligation if the parent is exercising shared custody. Shared custody exists when a child resides with a parent at least 30, but no more than 70, percent of the overnights.¹⁶ Under the shared custody formula, the annual amount each parent would pay to the other parent if that parent had sole custody is calculated. That support amount is then multiplied for each parent by the percentage of time the other parent will have physical custody of the child. The parent with the larger amount under this calculation is the obligor parent. The annual award from the obligor parent to the other parent is equal to the difference between the two figures multiplied by 1.5.¹⁷

Mr. S and Ms. C did appear at the second hearing object to Mr. S's child support being modified to \$394.34 per month. As discussed at the first hearing, this amount will not be collected as ongoing child support while Ms. C is not receiving the Division's enforcement service at her request. This amount will be the monthly amount that the Division seeks to collect if Ms. C requests the Division's services or an application for public assistance for J is filed.¹⁸

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.¹⁹ 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.²⁰

The evidence in the record shows that a material change of circumstances has occurred since Mr. S's ongoing child support was set at \$50 per month, and there has also been a change in the parents' custody arrangement requiring that ongoing child support be based on a shared custody calculation. 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 November 1, 2013, because the petition was issued in October

¹⁶ Alaska Civil Rule 90.3(f).

¹⁷ Alaska Civil Rule 90.3(f).

¹⁸ Recording of Hearing.

¹⁹ Alaska Civil Rule 90.3(h)(1).

²⁰ Alaska Civil Rule 90.3, Commentary X.

of 2013.

IV. Conclusion

Mr. S's ongoing child support should be modified based on the Division's latest shared custody calculations. Modified ongoing child support should be set at \$394.34 per month, effective November 1, 2013. The child support amount in this order was calculated using the shared custody formula in Civil Rule 90.3(b).

V. Child Support Order

Mr. S's modified ongoing child support for J is set in the monthly amount of \$394.34, effective November 1, 2013.

All other provisions of the Division's Modified Child Support and Medical Support Order issued on December 2, 2013 remain in effect.

DATED this 20th day of February 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 11th day of March, 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.]