

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

IN THE MATTER OF)	OAH No. 14-0066-CSS
M T. B)	CSSD No. 001152083
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is Mr. M T. B's appeal of the modification order adding his child, J, to his existing child support order for his other child, C. The Child Support Service Division (Division) issued this order because there was an application for the Division's services filed for J.

The modification order added arrears for J's support because the application for the Division's services filed in June of 2011, but there were periods after that date when the family was intact, and no child support was charged. The Division modified Mr. B ongoing child support obligation by setting it at a higher monthly amount for the two children based on his 2012 estimated income.

Mr. B 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, which was held on January 30, 2014. Mr. B and the custodial parent, A E. X, both participated. Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

At the hearing, Mr. B did not assert that the Division had incorrectly estimated his 2012 income or his income for other years when arrears were added. Mr. B was primarily concerned not being charge child support for months when he was living with the children and uncertainty about his ability to earn as much as he had in recent years. Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification order, which is the subject of this appeal, should be upheld. Mr. B did not provide evidence that showed that he would probably earn a lower annual income than the amount used to calculate his child support obligation in the Division's modified ongoing child support order.

II. Facts

This case is an add-a-child modification action.¹ Mr. B's ongoing child support for his child, C was previously set in 2008 at \$50 per month, which is the minimum monthly amount allowed under Alaska Law. The annual income for to calculate Mr. B's monthly child support for this order was only \$3,269.85.² Ms. X requested the Division's services to collect child support for J in June of 2011.³

The Division initiated a modification action to add J, who was born in June of 2009.⁴ Mr. B's paternity of J, the new child added to the order, is not in dispute.⁵ Mr. B was established to be J's father in an administrative paternity order that was based on an admission of paternity.⁶

The Division issued notice of the petition for modification on September 26, 2013.⁷ The Division issued a Modified Administrative Child and Medical Support Order on December 26, 2013.⁸

The Division's modified order set Mr. B's ongoing child support obligation at \$457 per month, for the two children, effective October 1, 2010.⁹ Additional arrears totaling \$1,490 for J were added to the prior ongoing monthly amount of \$50 for C. The arrears are for the months between the request for services and the effective date of the add-a child modification.¹⁰

The Division calculated Mr. B's modified ongoing child support using Mr. B's estimated income information provided by Mr. B and from his employers.¹¹

Mr. B requested a formal hearing. In his request for a formal hearing, Mr. B expressed his concern about being charged child support for months when he was living with the children.¹² At the hearing, Mr. B explained that in recent years he has worked both in construction and as

¹ Alaska Civil Rule 90.3(h) governs modification actions.
² Exhibit 1, page 7 & the Division's Pre-Hearing Brief, page 1.
³ Exhibit 16, page 8 & Recording of Hearing.
⁴ Recording of Hearing & Exhibit 2.
⁵ Recording of Hearing & Exhibits 3-5.
⁶ Exhibits 2-5.
⁷ Exhibit 10.
⁸ Exhibit 16.
⁹ The Division's Pre-Hearing Brief, page 1 & Exhibit 16, page 6.
¹⁰ Exhibit 16, page 8.
¹¹ Exhibit 16, page 8 & Exhibit 18.
¹² Mr. B's appeal is found at Exhibit 17.

a deckhand in the fishing business, but because he lives in a rural village his employment is seasonal and intermittent. Mr. B's annual earnings for the past four years have equaled or exceeded the annual earnings that the Division used to calculate his modified ongoing child support. These annual earnings were all more than \$12,000, which is a significant increase from \$3,269.85 the annual income used to calculate his original \$50 per month child support obligation.¹³ Mr. B admitted that there was no reason that he would not be able to work at the jobs he had in the past if he gets hired. Mr. B also expressed his frustration with the circumstances surrounding his separation from Ms. X and the children.¹⁴

Based on the evidence in the record, I find that Mr. B did not show that it was more likely than not that the Division's calculations used to set his arrears for J or modified ongoing child support or the income used in those calculations were incorrect.¹⁵

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. B, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁶ Mr. B did not show that the Division's modification order was incorrect. Mr. B has understandable concerns about his ability to find employment, but his income for the past four years shows that the Division's estimate of his annual income that was used in his modified ongoing child support probably will not exceed his future annual earnings.

At the hearing, Mr. B's concerns about being charged for months that he was living with the children were addressed by going over the Division's Summary of Monthly Support Obligation form at exhibit 16, page 7. On this form the Division had set out the months Mr. B is being charged ongoing child support and arrears for under the modified order. The parents agreed that the Division had correctly removed charges for all of the months in which Mr. B was living with the children.

This form also shows the arrears totaling \$1,490, that the Division is charging for J for the months between the request for services and the effective date of the add-a child modification

¹³ Exhibit 16, page 7 & Exhibit 18, page 1.

¹⁴ Recording of Hearing.

¹⁵ Recording of Hearing & Exhibits 16 & 18.

¹⁶ Alaska Regulation 15 AAC 05.030(h).

Adding these additional arrears for J follows the procedure for setting ongoing child support and arrears when adding a new child to an existing child support order, as set out in Alaska Regulation 15 AAC 125.340(e).

Alaska 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.¹⁷ 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%.¹⁸ In this case there is more than 15% change in the support amount as well as the addition of a child. These changes justify the Division’s modification.

IV. Conclusion

I conclude that the Division correctly modified Mr. B’s ongoing child support and added J to his child support 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 on December 26, 2013, is affirmed.

DATED this 31st day of January, 2014.

By: Signed _____
Mark T. Handley
Administrative Law Judge

¹⁷ Alaska Civil Rule 90.3(h)(1).

¹⁸ Alaska Civil Rule 90.3, Commentary X.

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 19th day of February, 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.]