

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

IN THE MATTER OF)	OAH No. 14-0074-CSS
K Z)	CSSD No. 001150780
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is K Z's appeal of the modification order for his child, S. The Child Support Service Division (Division) issued this order on December 11, 2013.

The Division modified Mr. Z ongoing child support obligation by setting it at \$408, a higher monthly amount based on his 2013 estimated income.

Mr. Z 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 February 3, 2014. Mr. Z and the custodial parent, B H, both participated. Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on February 7, 2014.

At the hearing, Mr. Z was concerned because 2013 was an unusual year in that he was able to do construction work in his village that was not likely to become available again for several years. At the hearing it was discovered that the Division's calculation did not give Mr. Z a deduction for supporting his older children in his home, or include his income from his Alaska Native corporation stock dividends. Mr. Z admitted that his income was higher than the Division had estimated as his 2013 income because of these dividends. The parties did not object to Mr. Z's modified support being based on new calculations based on his 2013 income through December and then returning to the pre-modification amount of \$50. 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 adjusted. Mr. Z modified ongoing child support order for September through December of 2013 should be set at \$293 per month based on the Division's latest calculations, which include his income from his Alaska Native corporation stock dividends and give him the appropriate deduction for supporting his older children in his

home, and that his 2014 and ongoing modified child support order effective January of 2014 should be set at \$50 per month, the minimum, based on his current estimated annual income.

II. Facts

This case is a modification action.¹ Mr. Z's ongoing child support for his child, S was previously set in 2008 at \$50 per month, which is the minimum monthly amount allowed under Alaska Law. The annual income used to calculate Mr. Z's monthly child support for this order was only \$1,969.² The Division initiated a modification action in 2013.

The Division issued notice of the petition for modification on August 19, 2013.³ The Division issued a Modified Administrative Child and Medical Support Order on December 26, 2013.⁴

The Division's modified order set Mr. Z's ongoing child support obligation at \$408 per month, for S, effective September 1, 2013.⁵

The Division calculated Mr. Z's modified ongoing child support using Mr. Z's 2013 earnings information provided by Mr. Z' employers.⁶

Mr. Z requested a formal hearing.⁷ At the formal hearing, Mr. Z expressed his concern about being charged ongoing child support based on his unusually high 2013 earnings. At the hearing, Mr. Z explained that in 2013 he has worked in construction on a project that finished that year and he is now unemployed without many prospects for cash earnings in the village he lives in. Mr. Z's annual earnings for several years except 2013 would result in a minimum child support order. Mr. Z lives in a rural village where employment opportunities are very limited. The parties agreed that it would be appropriate to set Mr. Z modified ongoing child support based on his 2013 income only for the months in 2013 after the effective date of the modification, and then to reduce the ongoing monthly amount to the minimum because of his current lack of earnings and earning capacity. For the 2013 calculation, the Division used Mr. Z reported

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

² Exhibit 1, page 8 & the Division's Pre-Hearing Brief, page 1.

³ Exhibit 2.

⁴ Exhibit 3.

⁵ The Division's Pre-Hearing Brief, page 1 & Exhibit 3.

⁶ Exhibit 3, page 6 & Exhibit 5.

⁷ Mr. Z' appeal is found at Exhibit 4.

earnings plus his dividends and a PFD. These calculations were submitted after the hearing. The calculations result in a monthly obligation of \$293.⁸

Based on the evidence in the record, I find that Mr. Z showed that it was more likely than not that the Division's calculations used to set modified ongoing child support or the income used in those calculations were should be adjusted. I also find that the Division's latest calculations for 2013 and the parties' agreement that ongoing child support beginning in 2014 should be set at the minimum are based on the best estimates of Mr. Z' annual income and earning capacity.⁹

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. Z, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁰ Mr. Z did show that the Division's modification order was incorrect. Mr. Z has understandable concerns about his ability to find future employment, and the calculations did not include his native dividends or give him a deduction for supporting his older children. The Division's latest calculations for 2013 make adjustments for both of these.

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.¹¹ 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%.¹² In this case there is more than 15% change in the support amount for 2013, but the existing \$50 order is correct for 2014 and ongoing. These facts justify a modification only for the months of 2013 that follow the date that the notice of the petition was issued.

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 September 1, 2013, because the petition was issued in August of

⁸ Recording of Hearing & Exhibit 6.
⁹ Recording of Hearing & Exhibits 5 & 6.
¹⁰ Alaska Regulation 15 AAC 05.030(h).
¹¹ Alaska Civil Rule 90.3(h)(1).
¹² Alaska Civil Rule 90.3, Commentary X.

2013, then the reduction back to \$50 should begin on January 1, 2014 because it is based on his estimated annual income for that year, which represents another 15% change.

IV. Conclusion

I conclude that Mr. Z modified ongoing child support order for September through December of 2013 should be set at \$293 per month based on the Division's latest calculations, which include his income from his Alaska Native corporation stock dividends and give him the appropriate deduction for supporting his older children in his home, and that his 2014 and ongoing modified child support order effective January of 2014 should be set at \$50 per month, the minimum, based on his estimated annual income. The child support amount in this order was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

Mr. Z' modified ongoing child support for S is set in the monthly amount of \$293, effective September 1, 2013, and \$50 per month effective January 1, 2014.

All other provisions of the Division's Modified Child Support and Medical Support Order issued on August 19, 2013, remain in effect.

DATED this 19th 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.]