

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

In the Matter of	)	
	)	
W C. S	)	OAH No. 14-0324-CSS
<hr style="width:35%; margin-left:0"/>	)	CSSD No. 001138472

**CORRECTED DECISION AND ORDER<sup>1</sup>**

**I. Introduction**

This case is the appeal of the modification of W C. S's existing child support order for his child, M. The Child Support Services Division (Division) initiated this order because A L. J, M's mother, the custodial parent, requested a modification. The modification order increased Mr. S's ongoing child support obligation, setting it at \$513 per month based on his 2013 estimated income.

Mr. S 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 April 2, 2014. Mr. S and Ms. J both participated. James W. Pendergraft, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on April 2, 2014.

At the hearing, Mr. S was concerned about how he would be able to pay the increased child support and still provide adequately for his wife and the four other children who live with him. Having reviewed the record in this case, and after due deliberation, I conclude that the Division's modification order should be adjusted to \$267 per month, based on the new calculations that the Division submitted after the hearing. These new calculations use updated information on Mr. S's current income and provide the appropriate deductions for supporting his older children in his home. There is no clear and convincing evidence in the record that manifest injustice would result if the support award is set in accordance with these calculations.

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<sup>1</sup> A proposed Decision and Order in the Matter of W C. S was issued and distributed to the parties. The Division timely filed a proposal for action before the decision was adopted. The Division explained that there was a typographical error in the proposed order, that is, the petition date should be December 1, 2013 and the effective date of the modification should be January 1, 2014 in both the discussion and order sections. Therefore, this corrected decision is issued in place of the original and is adopted as the final decision in this matter. This corrected decision is issued under the authority of 2 AAC 64.350(a), and will be adopted as the final decision.

## **II. Facts**

This case is a modification action.<sup>2</sup> Mr. S's ongoing child support for his children, M, was previously set in 2009 at \$124 per month.<sup>3</sup>

The Division initiated a modification action because Ms. J filed a request for modification in of 2013.<sup>4</sup> The Division issued notice of the petition for modification on December 13, 2013.<sup>5</sup> The Division issued a Modified Administrative Child and Medical Support Order on January 14, 2014.<sup>6</sup> The Division's order set Mr. S's ongoing child support obligation at \$513 per month, effective January 1, 2014.<sup>7</sup> This order was calculated using Mr. S's 2013 reported earnings plus a PFD. This calculation did not give Mr. S a deduction for supporting older children in his home.<sup>8</sup>

Mr. S requested a formal hearing. In his request for a formal hearing, Mr. S explained his concerns about the modification.<sup>9</sup> At the hearing, Mr. S was concerned that having to pay any additional child support will have an adverse impact on his household's finances and the minor children living with him. Two of these children are younger than M and two are older. Mr. S's wife does not work at this time. Mr. S was also concerned that child support had been calculated based on Ms. J having primary custody of M, when it was his understanding that M was actually living in the custody of a third party, M's grandfather.<sup>10</sup>

Mr. S has four minor children who are living in his household with him and his wife, the children's mother. Mr. S works as plumber in a remote Alaska village. Mr. S explained that during the last two calendar years the village he lives in was building a new school. Mr. S worked on that construction project, but the project was completed last year and there are now no large projects that he will be able to work on. Mr. S believes that his earnings in 2014 will probably be about \$25,000, based on his ability to find jobs since the school construction project

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<sup>2</sup> Alaska Civil Rule 90.3(h) governs modification actions.

<sup>3</sup> Exhibit 1 & the Division's Pre-Hearing Brief, page 1.

<sup>4</sup> Exhibit 2.

<sup>5</sup> Exhibit 3.

<sup>6</sup> Exhibit 4.

<sup>7</sup> Exhibit 4, page 3.

<sup>8</sup> Exhibit 4, page 8.

<sup>9</sup> Mr. S's appeal is found at Exhibit 5.

<sup>10</sup> Recording of Hearing-Testimony of Mr. S.

ended and his annual income before the project started.<sup>11</sup>

Mr. S also explained that he has a wife and four children in his household who are all dependent on his earnings for support. Mr. S receives household receives food stamps, energy assistance and housing assistance. Mr. S's estimated 2013 taxable gross income was \$37,534.60.<sup>12</sup>

After the hearing the Division provided new calculations, as requested, based on Mr. S's estimate of his current annual earning capacity, \$25,000, plus a PFD.<sup>13</sup> These calculations also give Mr. S deductions for supporting the two of his minor children that are older than M.<sup>14</sup>

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations are correct and are based on the correct income information. These calculations set Mr. S's monthly child support obligation for M at \$267.<sup>15</sup> I also find that Mr. S did not provide clear and convincing evidence that manifest injustice would result if the support award is set at this monthly amount.<sup>16</sup>

M's mother, Ms. J, is a single parent living with the one child. M and Ms. J live in a separate household that is near Ms. J's father's home. They spend time every day in his home. M spends many nights at her grandfather's house, but spends most nights with Ms. J. Ms. J did not object to setting ongoing child support in the range of \$267 per month based on the updated calculations the Division was asked to work on.<sup>17</sup>

### **III. Discussion**

In a child support hearing, a person who files the appeal has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>18</sup> The evidence provided by the Division and Mr. S did show that the Division's order was incorrect. The Division filed new calculations based on his current earnings.

Mr. S did not meet his burden of proof to show that the Division was not correct in its

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<sup>11</sup> Recording of Hearing-Testimony of Mr. S.

<sup>12</sup> Exhibit 4, page 8.

<sup>13</sup> Recording of Hearing & Exhibit 10.

<sup>14</sup> Exhibit 10.

<sup>15</sup> Recording of Hearing & Exhibit 10.

<sup>16</sup> Recording of Hearing & Exhibits 6 & 7.

<sup>17</sup> Recording of Hearing-Testimony of Ms. J and her father.

<sup>18</sup> Alaska Regulation 15 AAC 05.030(h).

determination that Ms. J has primary custody of M. The testimony of Ms. J and her father, both of whom had first knowledge of the custody situation, indicates that M spends most nights with her mother in their home. Mr. S's testimony was based on what he had heard, living in another village 40 miles from Ms's home. Mr. S's ongoing modified child support should therefore be based on a primary rather than a third party custody calculation.<sup>19</sup>

Ongoing child support should be calculated based on Mr. S's income unless good cause exists to raise child support above or reduce it below the amount calculated using the income formula in Civil Rule 90.3(a). To establish good cause, the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>20</sup>

Mr. S did not show that it would be unjust to require him to pay \$267 per month in ongoing child support. The adjustments made to Mr. S's modified ongoing child support that result from using the updated income information and giving him deductions for supporting his older children in his household result in a significant reduction from the monthly amount in the order that he appealed.

Mr. S did not show that he and his wife will be unable to support themselves and Mr. S's other children if his ongoing child support for M is increased to \$267 per month. Mr. S has another adult in his household who can help care for the children that are living with him.<sup>21</sup> The Division's latest calculations result in an increase that is only \$143 per month over the existing order for \$124 per month. This is less than Mr. S reported that he spends on cigarettes.

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.<sup>22</sup> 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.<sup>23</sup> Monthly child support of \$267 would be more than a 15 percent increase from the current order of \$124 per month.

Generally, a new monthly child support amount in a modification action should be

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<sup>19</sup> See Alaska Civil Rule 90.3(i).

<sup>20</sup> Alaska Civil Rule 90.3(c).

<sup>21</sup> Recording of Hearing.

<sup>22</sup> Alaska Civil Rule 90.3(h)(1).

<sup>23</sup> Alaska Civil Rule 90.3, Commentary X.

effective the month after the parties are served with the petition. Following this general rule, the modification would be effective January 1, 2014, because the petition was issued in December of 2013.

**IV. Conclusion**

Ongoing child support should be increased due to the increase in Mr. S's earnings and earning capacity that has occurred since the ongoing monthly support amount was set in 2009. Mr. S's modified child support should be adjusted based on the new calculations that the Division submitted after the hearing. There is no clear and convincing evidence that manifest injustice would result if the support award is set in accordance with these calculations. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

**V. Child Support Order**

1. Mr. S's modified ongoing child support for M, in the monthly amount of \$267, is effective January 1, 2014.
2. The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for M.
3. All other provisions of the Division's Modified Administrative Child Support and Medical Support Order issued on January 14, 2014 remain in effect.

DATED this 22<sup>nd</sup> day of April, 2014.

By: Singed  
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 22<sup>nd</sup> day of April, 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.]