

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

IN THE MATTER OF)	
)	
N J. Q)	OAH No. 14-1508-CSS
_____))	CSSD No. 001182813

DECISION AND ORDER

I. Introduction

This case is N J. Q’s appeal of the Child Support Services Division’s (Division’s) modification of his child support order for his child, B. This order also added child support for A to the existing order for B.

On September 25, 2014, a formal hearing was held to consider Mr. Q’s appeal.¹ Mr. Q participated in the hearing. The custodial parent, U M. C, did not participate. Robert Lewis, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on September 30, 2014.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be adjusted by setting Mr. Q’s modified ongoing child support at \$107 from May through July 2014, and then \$50 per month effective August 1, 2014 for the two children. There are no additional arrears for the added child, A, because the monthly child support amount for a two-child order based on Mr. Q’s actual income during the period between A’s birth and the effective date of the modification is less than the monthly amount of the existing order for B.

II. Facts

Mr. Q’s child support for his child, B, was previously last set in 2012 at \$258 per month for one child.² The Division received a request to modify this order and add A from the Central Council of No Name and No Name Indian Tribes. The Division initiated a modification.³ Mr. Q’s paternity of A, the new child added to the order, is not in dispute. Mr. Q is named as A’s father on his birth certificate.⁴

¹ The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.
² Exhibit 2 & Division’s Pre-Hearing Brief, page 1.
³ Exhibits 3 & 4.
⁴ Exhibit 3, page 5.

The Division issued notice of the petition for modification on April 14, 2014.⁵ The Division issued a Modified Administrative Child and Medical Support Order on August 4, 2014.⁶

The Division's order set Mr. Q's ongoing child support obligation at \$481 per month, effective May 1, 2014. This monthly amount was calculated using 2013 reported earnings for Mr. Q.⁷ Additional arrears for A totaling \$1,244 were also established going back to May of 2013.⁸

Mr. Q requested a formal hearing, explaining that he could not afford the increase in child support because he is incarcerated.⁹

Prior to the hearing, the Division recalculated Mr. Q's child support order using updated income information.¹⁰ The Division also provided Mr. Q's earnings for the past several years, as reported by his employers.¹¹

At the hearing, Mr. Q explained that he is in jail, facing felony charges, as well as a petition to revoke probation and impose over two years of a suspended sentence that he received for a prior felony conviction. Mr. Q has been in jail since August 2, 2014.¹²

Ms. C did not participate in the hearing. She did not appear or provide a number to reach her for the hearing. Her phone number of record had been assigned to someone else.¹³

At the hearing, the Division agreed that Mr. Q's ongoing child support should be set at the minimum of \$50 for both children based on his incarceration and inability to earn any income for the foreseeable future. The Division agreed that modified child support for the two children should be based on Mr. Q's estimated actual income prior to his incarceration. The Division asked that the record be held open so that new calculations for the added arrears could be completed.

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations showing that his modified ongoing child support should be set at

⁵ Exhibit 4.
⁶ Exhibit 5.
⁷ Exhibit 5, page 7.
⁸ Exhibit 5, page 8.
⁹ Mr. Q's appeal is found at Exhibit 6.
¹⁰ Exhibit 8 & 9.
¹¹ Exhibit 7.
¹² Recording of Hearing- Testimony of Mr. Q.

\$107, and then \$50 per month, for the two children use the best estimate of his income and are correctly calculated.¹⁴

III. Discussion

This case is Mr. Q's appeal of a modification of his existing child support order for B, which has been in effect since 2012. Ongoing child support should be calculated based using the best estimate of Mr. Q's annual 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 need to prevent an injustice.¹⁵ The new amounts calculated by the Division are correct. Mr. Q did not dispute the income information used in this calculation. He was concerned that his ongoing child support should be reduced because of his long-term incarceration.

Additional arrear for an added child should be added for periods of public assistance that pre-date the issuance of the petition for modification. These arrears are calculated using the noncustodial parent's annual income during the relevant time frames. The difference between a calculation for an order for the number of children covered by the order, including the added child and the existing order, is added as arrears for the new child. In this case, there are no additional arrears for the added child, A, because \$107, the monthly child support amount for a two-child order based on Mr. Q's actual income during the period between A's birth and the effective date of the modification, is less than \$258, the amount of the existing one-child order for B.¹⁶

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 percent.¹⁸ A monthly child support amount of \$107 or \$50 would be more than a 15 percent change from the current order of \$258 per month. The addition

¹³ Recording of Hearing.

¹⁴ Recording of Hearing & Exhibits 7-12.

¹⁵ See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

¹⁶ The correct procedure for setting ongoing child support and arrears when adding a new child to an existing child support order is set out in Alaska Regulation 15 AAC 125.340(e).

¹⁷ Alaska Civil Rule 90.3(h)(1).

¹⁸ Alaska Civil Rule 90.3, Commentary X.

of a second child to the order is also a material change of circumstances that would justify a modification.

Child support cannot be reduced by a modification for periods prior to the date that the petition was served on the parties.¹⁹ 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 would be effective May 1, 2014, because the petition was issued in April of 2014.

The amount of \$107 should be set as the modified ongoing amount for the three months after the effective date of the modification, but before Mr. Q was incarcerated. This amount was calculated based on a three-year average of his annual income prior to going to jail.

Beginning in August of 2014, the month that he went to jail, Mr. Q's ongoing child support obligation should be reduced to \$50 per month based on his inability to earn significant income due to his incarceration.²⁰ The law requires that child support be set at no less than \$50 per month.²¹

IV. Conclusion

Mr. Q's modified ongoing child support should be set at \$107 for the months of May, June and July 2014, and then reduced to \$50 per month for the two children based on the Division's latest calculation at exhibits 11 and 12. I conclude that A was correctly added to Mr. Q's order for B. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Mr. Q's paternity of A is established, and he was correctly added to the child support order for B.
2. Mr. Q's modified ongoing child support for A and B is set in the monthly amount of \$107 for two children, effective May 1, 2014.
3. Mr. Q's modified ongoing child support for A and B is set in the monthly amount of \$50 for two children, effective August 1, 2014.

¹⁹ Alaska Civil Rule 90.3(h)(1).

²⁰ *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998) & *Douglas v. State, Department of Revenue* 880 P.2d 113 (Alaska 1994).

4. Mr. Q liable for additional child support arrears for A in the amount of \$0 per month for the months of May 2013 through April 2014.

All other provisions of the Division's Modified Child Support and Medical Support Order issued on August 4, 2014 remain in effect.

DATED this 1st day of October, 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 27th day of October, 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.]

²¹ *Wright v. Gregorio*, 855 P.2d 772 (Alaska 1993) & Alaska Civil Rule 90.3(c)(1)(B).