

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

IN THE MATTER OF )  
 )  
 T T. M )  
\_\_\_\_\_ )

OAH No. 15-0115-CSS  
CSSD No. 001173350

**DECISION AND ORDER**

**I. Introduction**

This case is the custodial parent, D R. B's appeal of the Child Support Services Division's (Division's) modification of T T. M's child support order for his child, N. This order does not add child support for Mr. M's other child, who also lives in Ms. B's household, to this order for N, but the Division is currently in the process of modifying this order again to add Mr. M's other child.

On March 3, 2015, a formal hearing was held to consider Ms. B's appeal.<sup>1</sup> Mr. M did not participate in the hearing. Ms. B participated. James W. Pendergraft, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on March 13, 2015.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be adjusted. Mr. M's modified ongoing child support should be set in accordance with the Division's latest calculations at \$553 per month effective February 1, 2015. The effective date is moved forward to the month following Mr. M's release from jail and the start of his current job. The ongoing monthly amount is based on Mr. M's estimated annual income from that job, his Alaska Native corporation shareholder dividends, and a PFD.

**II. Facts**

Mr. M's child support for his child, N, was previously last set in 2013 at \$236 per month for one child. This monthly amount was calculated using minimum wage data to estimate income for Mr. M.<sup>2</sup> The Division initiated an action to modify this order at Mr. M's request when he was in jail.<sup>3</sup>

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.190.

<sup>2</sup> Exhibit 1, page 6.

<sup>3</sup> Recording of Hearing.

The Division issued notice of the petition for modification on December 14, 2014.<sup>4</sup> The Division issued a Modified Administrative Child and Medical Support Order on January 7, 2015.<sup>5</sup> The Division's order set Mr. M's ongoing child support obligation at \$50 per month, effective January 1, 2015. This order was set at the minimum because Mr. M was incarcerated when he requested the modification.<sup>6</sup>

Ms. B requested a formal hearing, explaining that Mr. M would no longer be incarcerated by the end of the month, and already had a job lined-up to start when he was released.<sup>7</sup>

At the hearing, the Division and Ms. B's confirmed that Mr. M had been released from jail on January 21, 2015. Ms. B explained that historically Mr. M spends time in and out of jail. In the past few years Mr. M spent an average of about five months per year in jail for domestic violence convictions. Ms. B thinks that Mr. M will stay employed and out of jail now because she plans to get a protective order. Ms. B explained that Mr. M had told her that he planned to work for his brother-in-law when he was released. Ms. B's best guess is that Mr. M probably earns about \$16 per hour based on what he is doing and local wages, but she did not know what he is paid. Ms. B believes that Mr. M work under the table last year.<sup>8</sup>

Mr. M did not participate in the hearing. He did not appear or provide a number to reach him for the hearing.

After the hearing, as requested, the Division provided new calculations based on annual earnings of \$16 per hour, a PFD and dividends from 100 ASRC Alaska Native corporation shares. These calculations result in a monthly ongoing child support obligation of \$553 for one child.<sup>9</sup>

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 \$553 for one child use the best estimate of Mr. M income, and are correctly calculated.<sup>10</sup>

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<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 5.

<sup>6</sup> Exhibit 5 page 6.

<sup>7</sup> Ms. B's appeal is found at Exhibit 6.

<sup>8</sup> Recording of Hearing.

<sup>9</sup> Exhibit 9.

<sup>10</sup> Recording of Hearing & Exhibits 7 & 9.

### **III. Discussion**

This case is Ms. B's appeal of a modification of his existing child support order for N, which has been in effect since 2013.

Ongoing child support should be calculated based using the best estimate of Mr. M'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.<sup>11</sup>

The minimum order in the Division's order is not correct because the income information used in this calculation was based on his incarceration, but at the time of the hearing Mr. M had been released. Ms. B showed that this estimate of his income for his modified ongoing child support was incorrect because incarceration no longer prevents him from working.

Mr. M's estimated income, based on the evidence in the record regarding his current employment, a PFD and his ASRC dividends, results in an ongoing child support obligation of \$553 per month. This amount will probably increase when the Division completes the process of adding a second child to the order.

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>12</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>13</sup> A monthly child support amount of \$553 is more than a 15 percent change from the current order of \$236 per month.

The addition of a second child to the order will also be a material change of circumstances that will justify another modification.

Child support cannot be reduced by a modification for periods prior to the date that the petition was served on the parties.<sup>14</sup> 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 January 1, 2015, because the petition was issued in December of 2014. However, because Mr. M was in jail for most of the

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<sup>11</sup> See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

<sup>12</sup> Alaska Civil Rule 90.3(h)(1).

<sup>13</sup> Alaska Civil Rule 90.3, Commentary X.

<sup>14</sup> Alaska Civil Rule 90.3(h)(1).

month of January 2015, there is good cause to move the effective date of the modification increasing his support obligation forward to February 1, 2015.

#### **IV. Conclusion**

The Division's order should be adjusted. Ms. B met her burden of proof to show that the minimum order was incorrect. Mr. M modified ongoing child support should be set at \$553 per month for one child, effective February 1, 2015. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

#### **V. Child Support Order**

1. Ms. M's ongoing child support for N is set at the monthly amount of \$553, for that one child, effective February 1, 2015.
2. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for N.
3. All other provisions of the Division's Modified Administrative Child Support and Medical Support Order issued on January 7, 2015 remain in effect.

DATED this 19<sup>th</sup> day of March, 2015.

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 13<sup>th</sup> day of April, 2015.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication.]