

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

IN THE MATTER OF)
E X) OAH No. 15-0212-CSS
_____) CSSD No. 001131471

DECISION AND ORDER

I. Introduction

This case is M D. O's appeal of the modification of E X's existing child support order for their child, B. The Alaska Child Support Services Division (Division) issued this order because Mr. X requested a modification.

The modification order decreased Mr. X's existing \$245 per month ongoing child support obligation, setting ongoing child support at \$77 per month for the B based on his estimated income.

Ms. O 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 March 17, 2015. Mr. X participated. Ms. O also participated. Joseph West, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

In her request for a hearing, Ms. O argued the \$77 per month is not enough child support. Ms. O is currently in jail, and her mother is caring for B.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification order of \$77 per month should be affirmed. The calculations the Division used in setting modified ongoing child support in this case are correct, and those calculations use the best estimate of Mr. X's current income.

II. Facts

This case is a modification action.¹ Mr. X's ongoing child support for his child, B, was previously set in June of 2014 at \$245 per month based on full-time minimum wage earnings.²

The Division initiated a modification action because Mr. X filed a request for modification in November of 2014. The Division issued notice of the petition for modification

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

² Exhibit 1.

on November 28, 2014.³

The Division obtained Mr. X's earnings as reported by his employers.⁴ The Division issued a Modified Administrative Child and Medical Support Order on January 30, 2015.⁵ The Division's order set Mr. X's ongoing child support obligation at \$77 per month, effective December 1, 2014.⁶

This monthly amount was calculated based on an estimate of Mr. X's annual income, which totaled only \$8,580.⁷ Mr. X does not qualify for a PFD because he lives in Nevada. The Division used Nevada minimum hourly wage for part-time, 1040 hours per year, employment. Mr. X's 2014 reported earnings are \$7,253.85, which is somewhat less than the amount that the Division used to calculate his modified support obligation.⁸ Mr. X's child support obligation for his older children reduces his obligation for B.⁹

At the hearing, Mr. X explained that asked for the modification because he was having difficulty paying the old ongoing child support amount. Mr. X is working part-time on-call for a car auction business. He is paid minimum wage and works about four days per week. Mr. X has other older children he is paying child support for. He is on probation, but was able to get his commercial driver's license. He hopes to get better paying work with this license after he completes probation in July.¹⁰

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.¹¹ These new calculations use the best estimate of Mr. X's current annual income. As noted above, these calculations result in a monthly child support obligation for Mr. X for B of \$77.¹²

III. Discussion

In a child support hearing, a person who files the appeal, in this case Ms. O, has the

³ Exhibit 2.
⁴ Exhibit 5.
⁵ Exhibit 3.
⁶ Exhibit 6 page 1.
⁷ Exhibit 6 page 3.
⁸ Exhibit 1 page 6.
⁹ Exhibit 6 page 3.
¹⁰ Recording of Hearing.
¹¹ Recording of Hearing & Exhibits 5 & 6.

burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹³ Ms. O did not challenge the Division's estimate of Mr. X's annual earnings annual earnings. The evidence in the record shows Division latest calculations use the best estimate of what he is likely to earn in 2015. The Division's estimate is based on minimum wage in his current part-time job. Mr. X's ongoing child support should be based on this estimate of his current income.¹⁴

Ms. O is understandably concerned about the decrease in Mr. X's ongoing monthly child support for B. This decrease is due to the decrease in Mr. X's estimated annual income since his ongoing monthly child support was last set at \$245 per month. B is not the only child Mr. X has a duty to support. Under Alaska law, B is entitled to receive only 20% of Mr. X's adjusted gross income with a reduction to pay his child support order for his older children.¹⁵

Ongoing child support should be calculated based on Mr. X's current annual income unless good cause exists to raise child support above or reduce it below the amounts 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."¹⁶

Ms. O did not show that it would be unjust to require Mr. X to pay \$77 per month in ongoing child support.¹⁷ As discussed at the hearing, Ms. O may be able to obtain a modification of that will increase Mr. X's child support order for B after he completes his probation in July if he gets higher paying work.

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.¹⁸ The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter

¹² Recording of Hearing & Exhibits 5 & 6.

¹³ Alaska Regulation 15 AAC 05.030(h).

¹⁴ Alaska Civil Rule 90.3, Commentary III.E.

¹⁵ Alaska Civil Rule 90.3 Commentary III.D.

¹⁶ Alaska Civil Rule 90.3(c).

¹⁷ Alaska Civil Rule 90.3 Commentary VI.B.4.

¹⁸ Alaska Civil Rule 90.3(h)(1).

the outstanding support order by 15 percent.¹⁹ Monthly child support of \$77 would be more than a 15 percent increase from the current order of \$245 per month.

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 December 1, 2014, because the petition was issued in November of 2014.

IV. Conclusion

Ongoing child support should be decreased due to the decrease in Mr. X's estimated earnings that has occurred since the ongoing monthly support amount was set in 2014. Mr. X's modified child support order should be affirmed. There is not clear and convincing evidence that manifest injustice would result if the support award is set in accordance with the calculations used in that order. This child support amount 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 January 30, 2015 is affirmed. Under that order, Mr. X's modified ongoing child support for B is set in the monthly amount of \$77, effective December 1, 2014.

DATED this 18th day of March, 2015.

By: Signed
Mark T. Handley
Administrative Law Judge

¹⁹ 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 6th 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.]