

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

In the Matter of)	
)	
C K. H)	OAH No. 16-1256-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 001148528

DECISION AND ORDER

I. Introduction

C H appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division issued increasing Mr. H’s child support obligation for his child K from \$262 to \$314 a month. Because Mr. H failed to demonstrate that the division's modification of his monthly child support obligation was incorrect, the modification is affirmed.

II. Facts

In February, 2012, the division issued a modified administrative child support and medical support order setting Mr. H’s child support obligation for his daughter K at \$262 a month. In August, 2016, the custodial parent, Ms. F O, requested another modification.¹ The division notified Mr. H of the request for modification, but Mr. H did not provide income information.²

The division calculated Mr. H’s income based on the most recent four quarters of earnings reported to the Department of Labor, a total of \$17,859.55. In its income calculation the division also included a permanent fund dividend, and \$2,626 in Alaska Native Claims Settlement Act corporation dividends.³ The division deducted federal income tax, FICA, and unemployment insurance, for adjusted annual income of \$15,745.48. The division calculated that Mr. H had \$3,768.45 in annual income available for child support, twenty percent of his adjusted annual income. It divided that figure by 12 to arrive at the monthly obligation of \$314 for one child.⁴ The division issued a modified administrative child support and medical support order on September 28, 2016.⁵ Mr. H appealed.

¹ Exhibit 2.
² Exhibit 3; Pre-hearing Brief at 1.
³ Sledgister explanation of Exhibit 4 at 6.
⁴ Exhibit 4 at 6.
⁵ Division Exhibit 4.

A telephonic hearing was held on November 22, 2016. Mr. H did not appear and did not answer the telephone call placed to his telephone number of record. A voicemail message was left for Mr. H, but Mr. H has not subsequently contacted the Office of Administrative Hearings. F O, the custodial parent, participated. Child Support Specialist Kimberly Sledgister represented the division. The record closed on December 2, 2016.

III. Discussion

In his appeal, Mr. H argued that his child support obligation should not be increased because he has his own family to provide for, he is working fewer hours due to the winter schedule, and he is unable to afford the increase.⁶ The person appealing the division's decision, in this case Mr. H, has the burden of demonstrating that the division's decision is incorrect.⁷ Mr. H did not dispute the accuracy of the division's calculations, or supply any income information.

Mr. H argued that his child support obligation for K should not be increased because he has his own family to provide for. Rule 90.3 provides for calculation of child support as a percentage of income, specifically 20 percent of the non-custodial parent's adjusted annual income for one child.⁸ This is true even if an obligor has other children. The rule allows for deductions from income for children from prior relationships living in the home.⁹ Mr. H did not present any evidence that he has children older than K living with him in his home. There was no deduction for prior children in the calculations for the 2012 order. Civil Rule 90.3 does not provide for a deduction for younger children living in the home. Because there was no evidence in the record to support a deduction for prior children, and there is no deduction allowed for younger children, the division correctly calculated Mr. H's adjusted annual income. Even if Mr. H has a new family to provide for, the formula still requires a child support award of 20 percent of adjusted income for one child.

Mr. H argued that his work hours have decreased due to the winter schedule. The division based the current child support order on Mr. H's earnings for the past four quarters, including the third and fourth quarters of 2015, when his income was lower than in the first and second quarters of 2016. Because the division used Mr. H's actual earnings over the

⁶ Exhibit 5 at 1 - 2.

⁷ 15 AAC 05.030(h).

⁸ Civil Rule 90.3(a)(2)(A).

⁹ Civil Rule 90.3(a)(1)(D).

last year to calculate the new child support amount, seasonal variation in Mr. H's income has already been taken into account.

Finally, Mr. H argued that he cannot afford the increased child support obligation. Civil Rule 90.3 allows for deviation from the child support formula in Rule 90.3(a) "upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied." Beyond the flat assertion in his written appeal that he cannot afford the increase, Mr. H has not provided any evidence that manifest injustice will result from calculation of his child support obligation under Rule 90.3(a).

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁰ If the newly calculated child support amount is at least 15 percent higher or lower than the previous order, Civil Rule 90.3(h) assumes a "material change in circumstances" has been established and the order may be modified.¹¹ The new child support obligation of \$314 a month is more than 15 percent higher than the previous obligation of \$262 a month, so the material change in circumstances standard has been met.

Because the division correctly calculated Mr. H's child support obligation using the information it had, the new obligation is more than 15% higher than the old obligation, and Mr. H did not offer evidence to support a variance from the formula in Rule 90.3, the division's order modifying Mr. H's monthly child support obligation should be upheld.

IV. Conclusion

Because Mr. H failed to demonstrate that the division's modification of his monthly child support obligation was incorrect, the modification of his monthly child support obligation is upheld. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

The division's Modified Administrative Child Support and Medical Support Order, dated September 28, 2016, is affirmed.

Dated: December 20, 2016.

Signed
Kathryn L. Kurtz
Administrative Law Judge

¹⁰ AS 25.27.190(e).

¹¹ Civil Rule 90.3(h)(1).

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 within 30 days after the date of this decision.

DATED this 5th day of January, 2017.

By: Signed
Signature
Kathryn L. Kurtz
Name
Administrative Law Judge
Title

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