

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

In the Matter of)	
)	
X N)	OAH No. 16-1393-CSS
<hr style="width:45%; margin-left:0"/>)	Agency No. 0011463994

DECISION AND ORDER

I. Introduction

X N appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division increasing Mr. N’s child support obligation for his child Z from \$397 to \$582 a month. Mr. N appealed, challenging the annual income figure used by the division to calculate his child support, and maintaining that he was entitled to a deduction for an older child living in his home. The division recalculated his annual income based on actual figures from 2016, and determined that he was entitled to the deduction for an older child in the home. The division determined that the inclusion of the older child in Mr. N’s home constituted a material change of circumstances justifying the modification of Mr. N’s child support obligation.

Based on the division’s revised calculations, Mr. N’s child support obligation should be increased from \$397 a month to \$426 a month, effective September 1, 2016.

II. Facts

In August, 2012, the division issued a modified administrative child support and medical support order setting Mr. N’s child support obligation for his child Z at \$397 a month. In September, 2016, the custodial parent, Ms. N C, requested another modification.¹ The division notified Mr. N of the request for modification, and Mr. N sent detailed income information including his 2015 W-2 and tax return and paystubs for his job at No Name for the pay periods ending May 1 through September 4, 2016.²

¹ Exhibit 2.
² Exhibit 3; Pre-hearing Brief at 1.

The division took the information on Mr. N's paystubs and extrapolated to estimate his annual wages at \$40,551.³ As in the 2012 order, the division did not give Mr. N a deduction for prior children in the home.⁴

Mr. N appealed, arguing that his gross annual income was approximately \$30,000. He provided copies of more recent paystubs. Mr. N's last paystub from 2016 from No Name, for the pay period ending November 13, 2016, showed year-to-date gross earnings of \$33,235.⁵ Mr. N also received unemployment insurance benefits of \$4,128 in 2016.⁶

Mr. N also argued that he was entitled to a deduction for a prior child living in his home.⁷ He supplied an affidavit with the name and birth date of the prior child.⁸ At the hearing, he testified under oath that the child lives in his home year round and attends public school.

A telephonic hearing was held on December 22, 2016. Mr. N did not appear. N C, the custodial parent, participated. Child Support Specialist Brandi Estes represented the division. On January 23, 2017 a status conference was held. Mr. N explained that he was out of the country at the time of the hearing, and did not return to No Name City until January 17, 2017. On this showing of good cause, the record was reopened and the hearing continued on January 23, 2017. The record closed on January 23, 2017.

III. Discussion

Following the December 2016 hearing in this matter, the division supplied new calculations of Mr. N's child support obligation based on his actual earnings in 2016 as shown on his last No Name paystub, his unemployment insurance benefits as reported by the Alaska Department of Labor and Workforce Development, and a 2016 permanent fund dividend.⁹ Annual gross income in the new calculations totaled \$38,385. When the hearing reconvened, Mr. N did not contest the division's revised annual income figure. The evidence supports the division's revised annual income figure, and that figure accurately reflects Mr. N's total income for purposes of Civil Rule 90.3.

Following Mr. N's testimony at the January 23, 2017 hearing about the prior child, the division determined that Mr. N should receive a deduction for a prior child in the

³ Report of F at hearing.

⁴ Exhibit 1 at 7; Exhibit 5 at 9.

⁵ Exhibit 6 at 2; testimony of N.

⁶ Exhibit 11 at 2 (note that \$4,128 is the total of the weekly disbursements shown in the first table).

⁷ Exhibit 6 at 1.

⁸ Exhibit 6 at 18.

⁹ Exhibit 10 at 1; Exhibit 11 at 2; Exhibit 6 at 2.

home.¹⁰ The record supports the deduction for a prior child in the home. Counting \$38,385 in total gross income and allowing a deduction for a prior child in the home, Mr. N's monthly child support payment for one child under the division's calculations equals \$426.

The only remaining question is whether a material change of circumstances warrants the modification. Although the difference between Mr. N's child support obligation under the 2012 order and the division's latest calculations would be less than 15 percent, the division may grant a modification if there are "other circumstances that justify a modification of the support obligation."¹¹ Here, the division argued that evidence of an older child in Mr. N's home warranting a deduction constitutes a material change in circumstances, and it is within the division's discretion to grant the modification on this basis. The division's argument is well-taken, and the modification should be granted.

IV. Conclusion

Mr. N's ongoing child support obligation should be set at \$426 a month based on the division's latest calculations including a deduction for a prior child in his home. A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of September 1, 2016.¹² The child support amount in this order was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Mr. N's child support obligation for Z is \$426 a month, effective September 1, 2016 and ongoing.
2. All other provisions of the division's Modified Child Support and Medical Support Order issued on November 7, 2016 remain in effect.

Dated: January 25, 2017.

Signed

Kathryn L. Kurtz
Administrative Law Judge

¹⁰ F at hearing.

¹¹ 15 AAC 125.321(b)(2)(B).

¹² 15 AAC 321(d). In this case, the notice was issued on August 26, 2016.

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 9th day of February, 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.]