

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

IN THE MATTER OF)	OAH No. 06-0846-CSS
J. R. S., JR.)	CSSD No. 001111259
)	
_____)	

DECISION AND ORDER

I. Introduction

On January 10, 2007, a formal hearing was held to consider the child support obligation of J. R. S., Jr. (Obligor) for the support of his children S. and D., (Obligees).¹ Mr. S. participated in the hearing. The children’s mother, K. S., did not participate. Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed on February 28, 2007.

This case is Mr. S.’s appeal of the Division’s order adding his child, S., to Mr. S.’s existing child support order for his other child, D. The order also modified Mr. S.’s ongoing child support obligation to a new monthly amount. Mr. S. is not currently being charged ongoing child support because the family is reunited. Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be affirmed.

II. Facts

This case is an “arrear only” “add-a-kid” modification action.² Mr. S.’s child support for his child, D., was previously set at \$50 per month.³ Collection on this case was suspended. The family was temporarily separated. Mr. S. was out of the home and the children received public assistance beginning in June of 2006. The family was reunited in September of 2006, and Ms. S. filed a request to withdraw from the Division’s services. The Division sought to collect child support arrears under the existing order as reimbursement for public assistance. The Division also initiated a modification action to add S.

¹ The hearing was held under Alaska Statute 25.27.170.

² Alaska Civil Rule 90.3(h) governs modification actions.

³ Recording of Hearing & the Division’s Pre-Hearing Brief, page 1.

The Division issued notice of the petition for modification on September 1, 2006.⁴ The Division issued a Modified Administrative Child and Medical Support Order on November 22, 2006.⁵ The modified order set Mr. S.'s ongoing child support obligation at \$681 per month for two children, effective September 1, 2005, based on average earnings information for a 32-year-old male from the Alaska Department of Labor.⁶

An additional \$177 monthly amount was added to the \$50 charge for earlier months to pay for the addition of S. prior to the date that Mr. S.'s ongoing child support could be modified.⁷

Mr. S. requested a formal hearing.⁸

At the hearing, Mr. S. explained he was still preparing his tax records for 2006. Mr. S. agreed to provide the Division with a copy of his 2006 tax return by February 9, 2007. The Division agreed to submit new calculations based on this tax return, by February 23, 2007. The Division filed a notice by this deadline that it had not received any information from Mr. S.. Mr. S. did not reply.

Based on the evidence in the record, I find that Mr. S. did not meet his burden of proof to show that the Division's order was incorrect.⁹

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. S., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁰

Mr. S. did not provide his income information as ordered at the hearing. At the hearing, Mr. S.'s testimony regarding his 2006 earnings was not specific enough to form the basis of any

⁴ Ex. 1.

⁵ Ex. 2.

⁶ Ex. 2.

⁷ This was the correct procedure for setting ongoing child support and arrears when adding a new child to an existing child support order, as set out in Alaska Regulation 15 AAC 125.340(e).

⁸ Ex. 3.

⁹ Recording of Hearing.

¹⁰ Alaska Regulation 15 AAC 05.030(h).

estimate of his income that would be likely to be more accurate than the income amount that the Division used to calculate his modified child support in its order.¹¹ Mr. S. is self-employed in a new business which had gross receipts far in excess of the income that the Division used in its calculations, but he may be entitled to business deductions that would reduce his 2006 income below the income that the Division used.¹²

Civil Rule 90.3 allows a child support amount to be modified if a material change of circumstances has occurred.¹³ Adding a new child to an existing child support order is a change of circumstance that requires a modification.¹⁴

IV. Conclusion

I conclude that the Division correctly modified Mr. S.'s ongoing child support and added S. to his child support order. As long as Mr. S. continues to live with his children the Division will not be collecting ongoing child support. Because Ms. S. has withdrawn from services, the Division is not currently trying to collect child support except for periods when there was public assistance paid and Mr. S. was not a member of the household.

V. Child Support Order

The Division's Modified Administrative Child and Medical Support Order issued on November 22, 2006, is affirmed.

DATED this 14th day of May 2007.

By: Signed

Mark T. Handley

Administrative Law Judge

¹¹ Recording of Hearing.

¹² Recording of Hearing.

¹³ Alaska Civil Rule 90.3(h)(1).

¹⁴ 15 AAC 125.340(c).

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 Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of June, 2007.

By: Signed _____
Mark T. Handley
Administrative Law Judge

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