

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

IN THE MATTER OF)	OAH No. 06-0869-CSS
D. E. H.)	CSSD No. 001060448
)	
_____)	

CHILD SUPPORT DECISION AND ORDER

I. Introduction

On October 11, 2006, a formal hearing was held to consider the child support obligation of D. E. H. (Obligor) for the support of his child, C. (Obligee).¹ Mr. H. appeared. The Custodian, S. R. H., also participated. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on January 12, 2007.

This case is Mr. H.'s appeal of the Division's modification of his child support order for C.. Having reviewed the record in this case and after due deliberation, I concluded the Division's Modification of Administrative Support Order issued on December 7, 2006, should be adjusted and Mr. H.'s modified ongoing child support should be set at \$630 per month effective March 1, 2007.

II. Facts

A. History

Mr. H.'s monthly child support obligation was \$392 per month. The Division reviewed this child support order at Ms. H.'s request. The Division issued a Notice of Petition for Modification on August 8, 2006.

Mr. H. did not provide his income information as ordered. The Division issued a Modification of Administrative Support Order on December 7, 2006. The Division determined that Mr. H.'s ongoing monthly child support should be increased to \$684 per month. The Division based its calculation of Mr. H.'s ongoing monthly child support on his 2006 earnings,

¹ The hearing was held under Alaska Statute 25.27.190.

as reported by his employers, but did not give Mr. H. credit for paying child support for his older child.² Mr. H. requested a formal hearing.

Prior to the Hearing, the division provided new calculations giving Mr. H. a \$272 monthly deduction from his income for his ongoing child support obligation for his older child. These calculations result in a monthly ongoing child support of \$630 for C..³

B. Findings

Based on the evidence in the record, I conclude that it is more likely than not that the Division's calculations at Ex. 6 are correct. I also conclude that it is more likely than not that the income that the Division used to calculate Mr. H.'s modified child support is the best estimate of his present income.⁴

I find this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. H. did not present clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3(a) is not reduced.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. H., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁵

At the hearing, Mr. H. explained that the Division had failed to provide him with a deduction for his payments of child support for his older child L.. Mr. H. provided a Georgia court order showing an ongoing obligation of \$272 per month for L..⁶ The Division gave Mr. H. a credit for this obligation when it calculated his ongoing child support at \$630 per month.⁷

Ongoing child support should be calculated based on Mr. H.'s estimated future 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

² Ex. 4, page 1.

³ Ex. 6, page 1.

⁴ Recording of Hearing.

⁵ Alaska Regulation 15 AAC 05.030(h).

⁶ Ex. A.

⁷ Ex. 6.

by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”⁸

At the hearing, Mr. H. asserted that having to pay \$630 per month in ongoing child support would cause a hardship. Mr. H. does not think he will be able to pay \$630 per month and still make ends meet. Mr. H. provided detailed information about his household’s financial situation and asked that his child support be reduced to prevent financial hardship.⁹

Mr. H. lives with his wife and four children. The oldest two children are his stepchildren. The two of his biological children who he lives with are younger than C.. Mr. H.’s wife is disabled. She receives about \$1,365 per month in disability benefits. She does not receive reliable payments of child support for Mr. H.’s stepchildren. Mr. H.’s household finances are under stress. He owes several thousand dollars in consumer debt. However, Mr. H.’s household expenses indicate that they could realize some significant savings if made some adjustments to their lifestyle. For example, Mr. H. and his wife have two fairly large late model cars, for which they owe a total of about \$29,000. The monthly loan payments on these vehicles is over \$1,272 per month, \$100 per month for maintenance and \$200 for fuel for these vehicles. This means that Mr. H.’s household pays about \$1,532 per month in personal transportation expenses. Their cable TV, internet and home phone charges are \$230 per month. They spend \$30 per month on alcohol and tobacco, and \$65 per month for their cell phones.¹⁰

Ms. H. is a single mother who supports C. and another child on her earnings of about \$17,000 per year plus PFDs and some intermittent support for her other child.

Mr. H.’s duty to pay the correct percentage of his income toward the ongoing support of his biological child, C., takes precedence over his debts and other financial obligations, including his obligation to support his stepchildren and his younger children.¹¹ Under Alaska Civil Rule 90.3(a) & (c), Mr. H. has an obligation to pay 20% of his adjusted gross income in child support to C.. Mr. H. did not show that it would be unjust to require him to pay \$630 per month in

⁸ Alaska Civil Rule 90.3(c).

⁹ Recording of Hearing.

¹⁰ Recording of Hearing.

¹¹ Alaska Civil Rule 90.3 Commentary VI.B.2.

ongoing child support. Mr. H. did not show that he and his wife will be unable to support themselves and their children if Mr. H.'s ongoing child support for C. is increased by \$238 per month.¹²

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.¹³ 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.¹⁴ Monthly child support of \$630 would be more than a 15 percent increase from the current order of \$392 per month.

Effective Date

A support order cannot be modified retroactively.¹⁵ The effective date of a modification cannot predate the service of the petition for modification, even when a delay in processing a modification request occurred.¹⁶ Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. This modification should be effective September 1, 2006, because the petition was served in August of 2006.¹⁷

While a modification cannot be effective before the petition is served, it can be moved forward if there is good cause to do so.¹⁸ Any civil action in which a soldier or sailor is involved may be stayed during the period of that person's military service.¹⁹ Mr. H. has been preparing for active duty deployment to a war zone.²⁰ It will take him and his wife a few months to begin to make the necessary adjustments to their household expenses in order to avoid this upward

¹² Recording of Hearing.

¹³ Alaska Civil Rule 90.3(h)(1).

¹⁴ Alaska Civil Rule 90.3, Commentary X.

¹⁵ Alaska Civil Rule 90.3(h)(2).

¹⁶ *State, Dept. of Revenue, Child Support Enforcement Div. v. Schofield*, 993 P2d 405, (Alaska 1999).

¹⁷ Alaska Regulation 15 AAC 125.321.

¹⁸ *Alaska Dept. of Revenue, CSED v. Kevin Lyn Dillon* 977 P 2d 118, (Alaska 1999).

¹⁹ Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. § 521.

²⁰ Recording of Hearing.

modification creating a hardship on the children in his household. This is good cause to move the effective date of the modification forward to March 1, 2007.

IV. Conclusion

I conclude that Mr. H.'s ongoing child support should be modified to \$630 based on his current income in accordance with the Division's latest calculations which give him a deduction for paying child support for his oldest child, but the effective date of the modification should be moved forward.

V. Child Support Order

1. The Division's Modified Administrative Child and Medical Support Order issued on December 7, 2006 is overturned.
2. The Petition for Modification of Administrative Support Order is GRANTED.
3. Mr. H.'s modified ongoing child support amount is set at \$630 per month, effective March 1, 2007.
4. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for C..

DATED this 2nd day of July, 2007.

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

DATED this 19th day of July, 2007.

By: Signed
Terry L. Thurbon for
Mark T. Handley
Administrative Law Judge

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