

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

IN THE MATTER OF:)	
)	
E J. S)	
)	OAH No. 07-0357-CSS
_____)	CSSD No. 001063562

DECISION AND ORDER

I. Introduction

This case concerns the obligation of E S for the support of T O (DOB 00/00/92). The custodian of record is M O.

The Child Support Services Division issued an administrative child support order dated February 20, 1998, in the amount of \$180 per month. On March 1, 2007, the division initiated a modification review. On May 7, 2007, the division issued a modified support order in the amount of \$523 per month, effective April 1, 2007.

Mr. S appealed and requested a formal hearing. The administrative law judge conducted a telephonic hearing on July 9, 2007. Both Mr. S and Ms. O participated; David Peltier represented the division.

Mr. S argues that his presumptive support obligation should be reduced in light of his financial circumstances. Based on the preponderance of the evidence in the record and the testimony at the hearing, the modified child support order is set at \$523 per month, effective September 1, 2007.

II. Facts

E S works full time at No Name Chrysler and may reasonably be expected to have total annual income of \$38,464 in 2007. Mr. S's household includes his partner, U J, and their son E. Ms. J is disabled and receives monthly social security disability payments of \$558 per month; E receives \$26 per month in children's insurance benefits. The total household income in 2007 is reasonably expected to be about \$3,789 per month. The after-tax income will be approximately \$3,289 per month.¹

¹ In 2006, Mr. S paid federal income tax of \$2,449 on total income of \$44,026, about \$200 per month. Exhibit 6, p. 7. The standard deduction for social security taxes, at his projected 2007 income, is \$245.21 per month. Exhibit 3. The monthly expense for federal income and social security tax in 2007 may reasonably be anticipated as the sum of these two monthly amounts, or no more than \$500 per month.

The reasonable and necessary household expenses total about \$2,628, including \$650 per month for a mobile home and lot, \$450 per month for food, \$200 per month for transportation, \$330 per month for utilities, \$738 for auto and health insurance, and \$260 per month for Mr. S's work tools.²

Mr. S believes he can afford to pay around \$400 per month in child support. Prior to the modification order, he was paying \$483.26 per month in child support plus arrears.³

II. Discussion

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,⁴ that is, total income after allowable deductions.⁵

Mr. S does not argue that the division attributed more income to him than it should have, or that it failed to account for the deductions to which he is entitled. Thus, Mr. S's presumptive support obligation, based on his earnings during the first quarter of 2007, is \$523 per month, as shown on Exhibit 3.

The support obligation may be decreased if the standard amount as calculated under 15 AAC 125.070 would result in a manifest injustice.⁶ The obligor must provide clear and convincing evidence of manifest injustice.⁷ In determining whether manifest injustice exists, all of the relevant circumstances should be considered.⁸

In this case, Mr. S's monthly household take-home income of approximately \$3,289 per month is sufficient to cover his reasonable and necessary total monthly household expenses, plus the presumptive child support obligation of \$523. Although the amount of his support obligation has been increased from \$180 per month to \$523 per month, the total amount he will be paying on a monthly basis, including arrears, has actually increased by less than \$40, from \$483.26 to \$523. While both amounts are somewhat in excess of the \$400 per month figure that Mr. S indicated he could afford,

² These figures reflect Mr. S's figures, except for food. The amount claimed by Mr. S for a family of three appears excessive, in the absence of any supporting documentation.

³ Ex. 6, page 1.

⁴ 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

⁵ 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

⁶ 15 AAC 125.075(a)(2).

⁷ 15 AAC 125.075(a); *see* Civil Rule 90.3(c)(1).

⁸ *See* 15 AAC 125.080.

Mr. S did not demonstrate by clear and convincing evidence that the standard amount is manifestly unjust.

Generally a modification order is effective on the first day of the month after service of the petition for modification.⁹ However, the effective date may be advanced upon a showing of good cause.¹⁰ In this particular case, in order to provide for the complete repayment of arrears on the prior order before an increase in the underlying support obligation goes into effect, there is good cause to move the effective date of the new order forward to the first month after the prior arrears have been fully paid off. Mr. S's arrears after his March 8, 2007, payment totaled \$1,551.39.¹¹ At his prior withholding rate, that amount would have been fully paid off after five additional payments, extending through August 2007. Accordingly, the effective date of the modified support obligation will be moved forward to September 1, 2007.

IV. Conclusion

The amount of the support obligation has changed by greater than 15%. When the support obligation changes by more than 15%, a material change of circumstances is presumed and the existing support order may be modified.¹²

CHILD SUPPORT ORDER

1. Mr. S's modified child support order is set at the rate of \$523 per month effective September 1, 2007.

DATED: August 7, 2007

Signed

Andrew M. Hemenway
Administrative Law Judge

⁹ 15 AAC 125.321(d).

¹⁰ State, Child Support Enforcement Division v. Dillon, 977 P.2d 118 (Alaska 1999); Boone v. Boone, 960 P.2d 1579 (Alaska 1998).

¹¹ Exhibit 6.

¹² 15 AAC 125.321(b)(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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 31st day of August, 2007.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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