

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

In the Matter of:)
)
K.D.) OAH No. 18-0326-CSS
) Agency No. 001165261
_____)

DECISION AND ORDER

I. Introduction

K.D. appeals a Modified Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on March 17, 2018. The modified order set K.D.'s ongoing child support obligation for his daughter, Child A, at \$569 per month, based on primary custody.

Based upon the record and after careful consideration, the Modified Administrative Child and Medical Support Order is vacated. The calculations underlying the Modified Administrative Child and Medical Support Order did not include a deduction for K.D.'s 16-year-old son who lives with him. When this deduction is factored in to the calculations, the new child support obligation would not be 15 percent greater than the outstanding support order, so the presumption of material change does not apply. Accordingly, K.D.'s child support obligation shall remain at \$398 a month.

II. Facts

K.D. and B.F. are the parents of Child A. K.D.'s child support obligation for Child A was set at \$398 a month in 2012, using the primary custody formula.¹ In December 2017, K.D.'s hourly wage rate decreased to \$19 an hour.² K.D. asked the division to review his child support obligation. The division recalculated K.D.'s support obligation and issued a Modified Administrative Child Support and Medical Support order on March 17, 2018, increasing K.D.'s child support obligation to \$569 a month. K.D. appealed.³

The division recalculated K.D.'s child support based on full-time employment at \$19 an hour, with a permanent fund dividend, for a child support obligation of \$569 for one child. However, the

¹ Exhibit 1 at 1.

² Exhibit 4 at 2 - 10. Although K.D.'s hourly wage decreased in December 2017 compared to his hourly wage earlier in the year, his total annual gross income of \$40,620 based on full-time employment at \$19 an hour was slightly higher than the \$38,762 annual gross income figure used by the division to calculate the 2012 order. Exhibit 3 at 8; Exhibit 1 at 10.

³ Exhibit 4.

division's new calculations did not give K.D. the deduction for a prior child in the home reflected in the 2012 calculations.⁴ K.D.'s son is now 16 years old, and still living with K.D..⁵

K.D. and B.F. do not currently have a formal custody order governing custody of Child A. The 2012 support order was based on B.F. having primary custody. The parties agree that K.D. and B.F.'s informal custody arrangement changed when B.F. had twins. The parties agree that Child A spent a majority of the time with K.D. from January through March 2018 following the birth of B.F.'s twins. In April 2018 and through the date of the hearing, K.D. and B.F. shared custody approximately equally.⁶ Further changes to the custody arrangement may occur, as K.D. has filed papers with the court system requesting custody of Child A.⁷ Also, K.D. and B.F. currently live in the same community, but B.F. is planning to move with her family to a different community more than 300 miles away at the end of May 2017.⁸

The hearing in this matter was held on May 2, 2018 with K.D., B.F., and division Child Support Specialist Brandi Estes participating. The record closed May 2, 2018.

III. Discussion

In a child support matter, the person who files an appeal bears the burden of proof.⁹ K.D. filed this appeal, so he must prove by a preponderance of the evidence that the March 17, 2018 Administrative Review Hearing Decision and Amended Administrative Child and Medical Support Order are incorrect.¹⁰

K.D. showed that he is still entitled to a deduction for a prior child in the home because his son is living with him. When a \$569 deduction for a prior child in the home is factored into the division's 2018 calculations, it would reduce the child support obligation for Child A to \$455.¹¹

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹² Under Civil Rule 90.3(h), a material change of circumstances "will be presumed if support as calculated under this rule is more than 15 percent greater or less than the outstanding

⁴ Exhibit 3 at 8; *compare* Exhibit 1 at 8.

⁵ Testimony of K.D.

⁶ Testimony of K.D., Testimony of B.F.

⁷ Testimony of K.D.

⁸ Testimony of B.F.

⁹ 15 AAC 05.030(h).

¹⁰ 2 AAC 64.290(e).

¹¹ The deduction and resulting child support obligation were calculated by Ms. Estes during the hearing.

¹² AS 25.27.190(e).

support order.” Here, the difference between the new amount of \$455 and \$398 a month under the existing order is less than 15 percent. Therefore, the presumption of material change does not apply in this case. The change in K.D.’s income does not warrant a change to K.D.’s child support obligation set in the 2012 order.

The short-term change in the informal custody arrangement that occurred after the birth of B.F.’s twins can be addressed through an administrative suspension of child support as discussed at the hearing.¹³ Long-term changes to the custody arrangement that may be made in the course of the court custody proceeding initiated by K.D. may be reflected in a child support order issued by the court, and it is impossible to predict based on the record of the hearing in this case what changes the court might order. Because it is not clear what the future custody arrangement will be, administrative modification of the 2012 order is not warranted at this time.

IV. Conclusion

K.D. met his burden of proving by a preponderance of the evidence that the division’s Modified Administrative Child Support and Medical Support order was incorrect. His 16-year-old son still lives with him, and K.D. is therefore entitled to a deduction for a prior child in the home which was not included in the division’s calculations. There has not yet been a “material change in circumstances” that warrants a modification of his child support obligation. As a result, K.D.’s child support obligation should remain at \$398 a month, as set in 2012. The division’s modification order should be vacated. This is not a variance under Civil Rule 90.3(c).

V. Child Support Order

- The division’s Modified Administrative Child Support and Medical Support order dated March 17, 2018 is vacated.
- K.D.’s child support obligation for Child A shall remain at \$398, as set in 2012.

DATED: May 16, 2018.

By: Signed
Kathryn L. Kurtz
Administrative Law Judge

¹³ See 15 AAC 125.870.

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

DATED this 31st day of May, 2018.

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

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]