

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

IN THE MATTER OF:)
)
J. A. H.)
)
) OAH No. 07-0680-CSS
) CSSD Case No. 001134427
_____)

CORRECTED¹ DECISION AND ORDER

I. Introduction

This case concerns the obligation of J. A. H. for the support of A. J. H. (DOB 00/00/03). The custodian of record is J. K. H.

The Child Support Services Division issued an administrative child support order dated May 6, 2005, in the amount of \$160 per month.² On May 10, 2007, Ms. H. requested modification of the support order.³ On November 6, 2007, the division issued a modified support order in the amount of \$719 per month, effective June 1, 2007.

Mr. H. appealed and the case was referred to the Office of Administrative Hearings. Administrative Law Judge Andrew Hemenway conducted a telephonic hearing on December 31, 2007.⁴ Mr. H. participated and was represented by his attorney, Phyliss Shepherd. Ms. H.'s telephone number of record was called and was found not to be in service; she did not participate. Andrew Rawls represented the division.

Based on the preponderance of the evidence in the record and the testimony at the hearing, modified child support order will be set at \$743 per month, effective October 1, 2007.

II. Facts

J. H. is a member of the United States Army. Since 2006, his pay grade has been E-6. His annual income for child support purposes at that pay grade is \$49,731.36, and his adjusted annual income is \$44,587.44.⁵

¹ *Sua sponte*, the administrative law judge has corrected typographical errors in the proposed decision, by omitting the word "did" on page 2, line 15 (second occurrence), and correcting the date in paragraph 1 of the child support order from "20007" to "2007."

² Exhibit 4, pp. 1, 5.

³ Exhibit 1.

⁴ See AS 25.27.190, 15 AAC 05.030, 15 AAC 125.118(f).

⁵ Exhibit 6.

Mr. H. deployed to Iraq in 2006.⁶ While he was there, the petition for modification was served on his wife in May, 2007. His wife contacted the division and was informed that if she provided a copy of his orders, “nothing would be done” until Mr. H. returned. Mr. H. first learned of the petition when he returned from Iraq in September, 2007.

II. Discussion

The annual child support payment for one child in the absence of shared custody is 20% of the adjusted annual income.⁷ When the child support obligation changes by an amount greater than 15% of the existing order, a material change of circumstances is presumed and the existing order may be modified.⁸

The division initially modified Mr. H.’s support order based on income for an E-5. After Mr. H. submitted military pay statements the division recalculated his support order based on an E-6 pay grade. At the hearing in the case, Mr. H. did not dispute the division’s initial calculation, and he confirmed that his current pay grade is E-6.

Mr. H. asked that the effective date of the modified order be moved forward to either the first day of the month after his return, or to the first day of the month following the decision on appeal. The division did not object to a delayed effective date.

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 case, because Mr. H. was deployed to Iraq he did not receive actual notice of the petition to modify until his return to the United States. Furthermore, the modification will result in nearly quadrupling Mr. H.’ support obligation, and in light of his pre-existing financial obligations immediate imposition of the increase amount prior to his return to his subsequent family would cause undue financial hardship. For these reasons, there is good cause to advance the effective date of the modification order to October 1, 2007, the first day of the month after he returned to the United States. Because Mr. H.’s income has been attached at the higher level for

⁶ Exhibit 3, p. 6-7.

⁷ Civil Rule 90.3(a)(2)(A); 15 AAC 125.010, -.070(a).

⁸ Civil Rule 90.3(h)(1).

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).

some months, the delayed effective date will result in a credit to his account and a reduction of his monthly cash outflow until such time as he can make the necessary adjustments to accommodate the increase in ongoing support.

IV. Conclusion

There has been a material change of circumstances and the prior support order should be modified to reflect Mr. H.'s current circumstances.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated November 6, 2007, is AMENDED as follows; in all other respects, the Modified Administrative Child Support and Medical Support Order dated November 6, 2007, is AFFIRMED:

1. The administrative child support order in the amount of \$160 per month shall remain in effect through September 30, 2007.
2. Modified ongoing child support is set at the amount of \$743 per month, effective October 1, 2007.

DATED: January 24, 2008.

Signed _____

Andrew M. Hemenway
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 AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 24th day of January, 2008.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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