

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

IN THE MATTER OF)	OAH No. 07-0681-CSS
E. M. K.)	CSSD No. 001104954
)	
_____)	

CHILD SUPPORT DECISION AND ORDER

I. Introduction

On December 18, 2006, a formal hearing was held to consider the child support obligation of E. M. K. (Obligor) for the support of his child, E. (Obligee).¹ Mr. K. appeared telephonically. The Custodian, M. R., also participated. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

This case is Mr. K.'s appeal of the Division's denial of his request for downward modification of his child support order for E. Having reviewed the record in this case and after due deliberation, I concluded the Division's Notice of Denial of Modification Review issued on October 24, 2007, should be affirmed and Mr. K.'s ongoing child support obligation should remain at \$582 per month.

II. Facts

A. History

Mr. K.'s present monthly child support obligation for E. is \$582 per month.² The Division reviewed this child support order at Mr. K.'s request.³ The Division issued a Notice of Petition for Modification in June of 2007.⁴

¹ The hearing was held under Alaska Statute 25.27.190.

² Division's Pre Hearing Brief.

³ Division's Pre Hearing Brief & Ex. 6.

⁴ Ex. 2.

Mr. K. provided his income information as ordered. The Division issued a Notice of Denial of Modification Review on October 24, 2007. The Division determined that based on his current income Mr. K.'s ongoing monthly child support would be \$499 per month, which is less than a 15% change from the monthly amount under his current order.⁵ The Division based this calculation of Mr. K.'s ongoing monthly child support on his 2006 income, as reflected on his and his wife's tax return. This calculation included income from a dividend payment from stock shares of M. L. & H., Inc.⁶

Mr. K. requested a formal hearing, explaining that this stock belonged to his wife, and that she received the stock as part of her employee benefits from that company.

Prior to the hearing, the Division provided new calculations removing the reported dividend income from these stock shares from Mr. K.'s income. These calculations result in a monthly ongoing child support of \$473 for E.⁷ This amount is more than a 15% decrease from the amount in Mr. K.'s current order.⁸

At the hearing, Mr. K. testified that the Division had improperly included dividend income that was paid to his wife due to her ownership of stock in a company she had worked for.⁹ Mr. K. provided documentation that supported this testimony.¹⁰ Mr. K. indicated that he agreed with the Division's latest calculations and wanted his ongoing child support for E. reduced to \$473, based on his current income.

At the hearing, Ms. R. asserted that the reduction in ongoing child support that would result from modifying Mr. K.'s ongoing child support obligation to \$473 per month would cause a significant hardship for E. Ms. R. explained why any reduction of child support would make it

⁵ Recording of Hearing.

⁶ Division's Pre Hearing Brief & Recording of Hearing.

⁷ Ex. 4, page 1.

⁸ Recording of Hearing.

⁹ Recording of Hearing.

¹⁰ Ex. 3, page 4.

even more difficult to make ends meet. Ms. R. provided information about her household's financial situation and asked that child support remain as it is in order to prevent financial hardship.¹¹

Ms. R. is a single mother who supports E. and another child on disability payments and child support. Ms. R. lives alone with her two children. Her other biological child, her son, lives with her and E. Both children are in high school. Ms. R. is disabled. She receives about \$799 per month in Social Security disability benefits. Although Mr. K. has always consistently paid his child support obligation, Ms. R. does not receive reliable payments of child support for her other child. Ms. R.' household finances are under stress. She owes over \$100,000 thousand dollars in uncovered medical bills for herself and her son. Ms. R.' disability income and child support are enough to make her ineligible to receive public assistance. Ms. R. has to pay \$252 per month for insurance coverage to supplement her Medicare coverage.¹²

Mr. K. is 60 years-old and has recently retired from the U.S. F. S. with 30-years of service. His own income is over \$30,000 per year. He lives with his wife, who also has an income. His wife is currently working but also hopes to retire soon. Although he is trying to pay off the mortgage on his home before his wife retires, Mr. K. admitted that he and his wife will be able to support themselves without suffering a significant hardship if Mr. K.'s ongoing child support for E. is not reduced.¹³

B. Findings

Based on the evidence in the record, I conclude that it is more likely than not that the Division's latest calculations at Ex. 4 are correct. I find that it is more likely than not that the income that the Division used to calculate Mr. K.'s modified child support is the best estimate of his present income.¹⁴ I also find that Mr. K.'s child, E., will suffer a significant hardship if Mr. K.'s ongoing child support obligation is reduced.¹⁵

¹¹ Recording of Hearing.

¹² Recording of Hearing.

¹³ Recording of Hearing.

¹⁴ Ex. 3, page 4, Ex. 4 & Recording of Hearing.

¹⁵ Ex. 5 & Recording of Hearing.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. K., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁶ 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.¹⁷ 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.¹⁸ Monthly child support of \$473 would be more than a 15 percent decrease from the current order of \$582 per month.

The question of the custodial parent's ability to adequately provide for the child financially is an issue that should be addressed once the noncustodial parent has proven grounds for reducing ongoing child support.¹⁹ If a non-custodial parent, such as Mr. K., is potentially entitled to a reduction in child support because of a decrease in income, prior to granting a modification, it is necessary to consider whether the custodial parent, in this case Ms. R., will be able to provide for the child, in this case E., if the support obligation is reduced.²⁰

Mr. K. has demonstrated a change in circumstances. The evidence in the record shows, however, that a downward modification of Mr. K.'s ongoing child support would not be appropriate at this time. Despite Mr. K.'s faithful payments of monthly support for E., Ms. R. barely has the resources to adequately provide for her, even without any reduction in the monthly amount.

IV. Conclusion

Mr. K.'s ongoing child support should not be modified even though his monthly child support based on his current income would result in more than a 15% decrease from the amount of his current order.

¹⁶ Alaska Regulation 15 AAC 05.030(h).

¹⁷ Alaska Civil Rule 90.3(h)(1).

¹⁸ Alaska Civil Rule 90.3, Commentary X.

¹⁹ *Maloney v. Maloney*, 969 P.2d 1148, 1152 (Alaska 1998).

²⁰ *Maloney v. Maloney* 969 P.2d 1148, 1152 (Alaska 1998).

V. Child Support Order

1. The Division’s Notice of Denial of Modification Review issued on October 24, 2007 is AFFIRMED.
2. The Petition for Modification of Administrative Support Order is DENIED.
3. Mr. K.’s modified ongoing child support amount will remain at \$582 per month.
4. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for E.

DATED this 27th day of December, 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 AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 17th day of January, 2008.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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