

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

IN THE MATTER OF)	OAH No. 07-0700-CSS
B. D. P.)	CSSD No. 001103083
)	
_____)	

CHILD SUPPORT DECISION AND ORDER

I. Introduction

On December 27, 2007, a formal hearing was held to consider the child support obligation of B. D. P. (Obligor) for the support of his child, S., (Obligee).¹ Mr. P. participated. The custodial parent, J. K., 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 19, 2007.

This case is Mr. P.’ appeal of the Division’s modification of his child support order for S. Having reviewed the record in this case and after due deliberation, I concluded that Mr. P.’ modified ongoing child support should be set at \$516 per month effective July 1, 2007, and \$385 per month effective January 1, 2008.

II. Facts

A. History

Mr. P.’ monthly child support obligation was \$263.41 per month. The Division reviewed this child support order because this is a public assistance case. The Division issued a Notice of Petition for Modification on June 1, 2007.²

Mr. P. did not provide his income information as ordered.³ The Division issued a Modification of Administrative Support Order on November 21, 2007.⁴ The Division

¹ The hearing was held under Alaska Statute 25.27.190.

² Division’s Pre Hearing Brief & Ex. 1.

³ Division’s Pre Hearing Brief.

⁴ Division’s Pre Hearing Brief & Ex 2.

determined that Mr. P.' ongoing monthly child support should be increased to \$612 per month.⁵ The Division based its calculation of Mr. P.' ongoing monthly child support on an estimate of his projected earnings from information reported by his employer.⁶ Mr. P. requested a formal hearing.⁷

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 Exhibit 6 are correct for Mr. P.' 2007 income. I also find that it is more likely than not that the income the Division used in Exhibit 7, to calculate Mr. P.' 2008 and ongoing modified child support is the best estimate of his present income.⁸

III. Discussion

After to the hearing, the Division provided new calculations, based on updated income information from Mr. P. These calculations result in a monthly ongoing child support of \$516 per month for 2007, and \$385 per month for 2008 and ongoing.⁹

In a child support hearing, the person who filed the appeal, in this case Mr. P., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁰ Mr. P. met his burden in showing that he was entitled to lower child support that the Division originally calculated even though his child support should be modified upward.

Mr. P. explained that although he had made more money in 2007 due to asbestos removal construction work, he had changed jobs to start being a taxi driver because the work was more regular and for health reasons.¹¹ The Division and Mr. P. did not object to the proposal that modified ongoing child support be set at two different levels for 2007 and 2008 and ongoing.

⁵ Ex. 2.

⁶ Ex. 2.

⁷ Ex. 4.

⁸ Recording of Hearing, Ex. 6 & 7.

⁹ Ex. 6 & 7.

¹⁰ Alaska Regulation 15 AAC 05.030(h).

¹¹ Ex. 3.

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.¹² 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.¹³ Monthly child support of \$516 and \$385 are both more than a 15 percent increase from the current order of \$263.41 per month.

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 July 1, 2007, because the petition was served in June of 2007.¹⁴ Because there was another change of circumstances between 2007 and 2008 with Mr. P.' job change, different monthly amounts should be set. Effective July 1, 2007, the amount should be set based on his 2007 income, and effective January 1, 2008 the monthly amount should be set based on his estimated projected income in his new job as a taxi driver.

III. Child Support Order

The Division's Modification of Administrative Support Order on November 21, 2007 is amended as follows, but all other provisions of that order remain in effect:

1. Mr. P.' modified ongoing child support obligation for S. is set at \$516 per month effective July 1, 2007, and \$385 per month effective January 1, 2008.
2. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for S.

DATED this 3rd day of April, 2008.

By: Signed
Mark T. Handley
Administrative Law Judge

¹² Alaska Civil Rule 90.3(h)(1).

¹³ Alaska Civil Rule 90.3, Commentary X.

¹⁴ Alaska Regulation 15 AAC 125.321.

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 22nd day of April, 2008.

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

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