

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

IN THE MATTER OF)	OAH No. 07-0729-CSS
U. A.)	CSSD No. 001104984
)	
_____)	

CHILD SUPPORT DECISION AND ORDER

I. Introduction

On January 24, 2008, a formal hearing was held to consider the child support obligation of U. A. (Obligor) for the support of his child, B., (Obligee).¹ Mr. A. participated. The custodial parent, D. A. E., also participated. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on February 1, 2008.

This case is Mr. A.'s appeal of the Division's modification of his child support order for B. Having reviewed the record in this case and after due deliberation, I concluded that Mr. A.'s modified ongoing child support should be set at \$328 per month effective July 1, 2007.

II. Facts

A. History

Mr. A.'s monthly child support obligation was \$276 per month. The Division reviewed this child support order. The Division issued a Notice of Petition for Modification on June 28, 2007.²

Mr. A. did not provide his income information as ordered.³ The Division issued a Modification of Administrative Support Order on November 30, 2007.⁴ The Division

¹ The hearing was held under Alaska Statute 25.27.190.

² Division's Pre Hearing Brief, Ex. 1 & 2.

³ Division's Pre Hearing Brief.

⁴ Division's Pre Hearing Brief & Ex 2.

determined that Mr. A.' ongoing monthly child support should be increased to \$430 per month.⁵ The Division based its calculation of Mr. A.'s ongoing monthly child support on an estimate of his earnings from information reported by his employer, but this estimate included a quarter of unusually high earnings.⁶ Mr. A. requested a formal hearing.⁷

After the hearing, the Division provided new calculations giving Mr. A. based on an estimate of his projected income using one of Mr. A. 2007 quarters that was not the harvest season. These calculations result in a monthly ongoing child support of \$328 for B.⁸

B. Findings

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations at Exhibit 10 are correct. I also find that it is more likely than not that the income that the Division used in Exhibit 10, to calculate Mr. A.' modified child support is the best estimate of his present income.⁹ I also find that the record does not contain clear and convincing evidence that manifest injustice will occur if Mr. A.' modified child support is set at this monthly amount.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. A., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁰ Mr. A. met his burden in showing that he was entitled to an adjustment to his ongoing child support based on a more accurate estimate of his ongoing income that did not include the unusual spike in earnings he received in 2007 during the harvest.¹¹ Mr. A. did not meet his burden to show that his modified ongoing child support should be further adjusted downward.¹²

⁵ Ex. 2.

⁶ Ex. 4.

⁷ Ex. 5.

⁸ Ex. 4, page 6.

⁹ Recording of Hearing.

¹⁰ Alaska Regulation 15 AAC 05.030(h).

¹¹ Recording of Hearing.

¹² Recording of Hearing.

At the hearing, Mr. A. explained that he has worked full-time for an apple producer year-round for the past five years. Usually he earns about \$11 per hour, but sometimes he is paid a piece-work rate, especially when he works in the orchard trimming the trees or harvesting apples. Mr. A.'s earning history shows that in some years his earnings are fairly consistent every quarter, but in some years he makes almost twice as much during the quarter that includes the harvest season. In 2007, Mr. A. earned significantly more than his normal quarterly earnings during the harvest. Mr. A. explained that during the harvest, he is paid by the number of bins of apples that he fills each day. Because the apple production in the orchard he worked in was unusually high, he was able to fill more bins, because he had to do less moving around and climbing to fill each bin. The difference between Mr. A.'s projected income, based on its original estimate, and his income in its latest calculations, is primarily due to a large increase in earnings that was the result of the unusual harvest season of 2007.¹³

Mr. A. is understandably concerned that he is unlikely to earn as much in 2008 as he received last year, Mr. A.'s ongoing income is likely to be less than his income in 2007, given his earnings history and his explanation about the unusual harvest. Although it is possible that Mr. A.'s ongoing income will be equal to or greater than his 2007 income, it is more likely that Mr. A.'s earnings will be closer to the estimate that the Division used in its latest calculations which projected a quarter of 2007 earnings that did not include the harvest season of 2007.¹⁴

Ongoing child support should be calculated based on the best estimate of A.'s future income unless good cause exists to raise child support above or reduce it below the amounts calculated using the income formula in Civil Rule 90.3(a). To establish good cause, the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."¹⁵

At the hearing, Mr. A. explained why having to pay his modified ongoing child support in the amount originally calculated by the Division had been difficult. Mr. A. provided detailed

¹³ Recording of Hearing.

¹⁴ Recording of Hearing.

¹⁵ Alaska Civil Rule 90.3(c).

information about his household's finances. Ms. E. also provided information about the finances of B.'s household.¹⁶

This case does not present unusual circumstances of the type contemplated by Civil Rule 90.3(c). There is not clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3(a) using the latest, more accurate estimate of Mr. A.' ongoing income is not lowered. Mr. A.' financial circumstances are strained, but it will not work an injustice to require him to pay B. child support based on the appropriate share of his income.¹⁷

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.¹⁸ 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.¹⁹ Monthly child support of \$328 would be more than a 15 percent increase from the current order of \$276 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 2007.²⁰

IV. Conclusion

The Division's Modification of Administrative Support Order issued on November 30, 2007 should be adjusted. Mr. A.'s modified ongoing child support obligation for B. will be \$328 per month, effective July 1, 2007.

V. Child Support Order

The Division's Modified Administrative Child and Medical Support Order issued on November 30, 2007, is amended as follows, all other provisions of that order remain in effect:

¹⁶ Recording of Hearing.

¹⁷ Recording of Hearing.

¹⁸ Alaska Civil Rule 90.3(h)(1).

¹⁹ Alaska Civil Rule 90.3, Commentary X.

²⁰ Alaska Regulation 15 AAC 125.321.

1. Mr. A. modified ongoing child support obligation for B. is set at \$328 per month, effective July 1, 2007.
2. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for B.

DATED this 2nd day of April, 2008.

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

DATED this 22nd day of April, 2007.

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

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