

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

IN THE MATTER OF)	OAH No. 08-0001-CSS
G. H. O.)	CSSD No. 001136804
)	
_____)	

DECISION AND ORDER

I. Introduction

A formal hearing was held to consider the child support obligation of G. H. O. (Obligor) for the support of his child, J. (Obligee).¹ The Custodian, D. M. P., participated. Mr. O. appeared and was represented by his attorney, Linn J. Plous. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on February 15, 2008.

This case is Mr. O.'s appeal of the Division's order modifying his child support obligation. I conclude that the Division's Modification order should be overturned, and Mr. O.'s ongoing child support should remain at \$544 per month.

II. Facts

This case is a modification action.² Mr. O.'s existing child support for his child, J., was previously set at \$544 per month.³ The Division initiated the modification process because Ms. P. had requested a modification of the order.

The Division issued Notice of the Petition for Modification on September 28, 2007.⁴ The Division made a request for financial information.⁵ Mr. O. did not timely respond.⁶ The Division issued a Modified Administrative Child and Medical Support order on November 28,

¹ The hearing was held under Alaska Statute 25.27.170.

² Alaska Civil Rule 90.3(h).

³ The Division's Pre Hearing Brief.

⁴ Ex. 3.

⁵ Ex. 3.

2007.⁷ This order set Mr. O.'s modified ongoing child support at \$715 per month based on statistical wage data for Alaskan carpenters.⁸ Mr. O. requested a formal hearing.

Mr. O. and Ms. P. will exercise shared custody of J., beginning in 2009.⁹ At the formal hearing and briefing, Mr. O. argued that ongoing child support should be based on a shared custody calculation.

Based on the evidence in the record, I conclude that it is more likely than not that the parties do not yet exercise shared custody. Mr. O. has regular visitation, but Ms. P. exercises primary custody of J. Under the parties' court custody order, J. will not begin a schedule that would result in her spending at least 30% of the overnights per year with Mr. O. until 2009.¹⁰ Once Mr. O. begins to exercise shared custody under the court order, he may file a request for a modification of his child support order with CSSD.

Ms. P. suspects that Mr. O. is under-reporting his income because of the lifestyle she has observed that he lives and the purchases he has made.¹¹ Mr. O. works in construction primarily in the dry-walling business.¹² On his 2006 federal income tax Profit or Loss From Business statement for his business, Mr. O. reported \$35,756 in Gross Receipts or Sales.¹³ His reported net profit for 2006 for the business was only \$4,838.¹⁴ On his personal income tax return for 2006, Mr. O. claimed only \$4,936 in adjusted gross income for the year.¹⁵ On his Child Support

⁶ The Division's Pre Hearing Brief.

⁷ Ex. 4.

⁸ Ex. 4.

⁹ Ex. 5, pages 27-29.

¹⁰ Ex. 5, pages 27-29.

¹¹ Recording of Hearing.

¹² Recording of Hearing.

¹³ See Mr. O.'s tax records at Ex. 5, page 10.

¹⁴ Mr. O.'s tax records at Ex. 5, page 8.

¹⁵ Ex. 5, page 8.

Guidelines Affidavit for tax year 2006, however, Mr. O. claimed \$25, 245 in net income.¹⁶ On his Child Support Guidelines Affidavit for tax year 2007, dated December 3, 2007, Mr. O. asserted that his net income for that year was \$17, 260.¹⁷

At the hearing, Mr. O. explained that he bids jobs at twice the cost of his materials. Mr. O. admitted that he tried to get about \$20 per hour for his work.¹⁸ Mr. O. admitted that his annual expenses are approximately \$39,168 per year at the hearing. Mr. O. was not a credible witness. Mr. O.'s answers to questions regarding how much he earned and how many hours he worked were vague and evasive.

Based on the evidence in the record, I find that it is more likely than not that Mr. O. is under-reporting his income, and has not yet provided income information that is accurate enough to determine his annual income for the purpose of calculating his child support. The income information that Mr. O. has provided, however, indicates that his actual adjusted annual income for the purposes of calculating support may be closer to the amount used to calculate his present child support rather than the income the Division has used in its latest calculations.¹⁹

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. O., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.²⁰ The Division has the authority to estimate wages when the obligor parent does provide accurate and timely income information²¹

¹⁶ Ex. 5, page 17.

¹⁷ Ex. 5, page 18.

¹⁸ Recording of Hearing.

¹⁹ The Division used only \$55,164 in adjusted annual income to calculate Mr. O.'s child support in its Modified Administrative Child and Medical Support order. Full-time work at \$20 per hour would result in annual earnings closer to \$40,000. It is not clear however, that Mr. O. will be able to work the equivalent of full-time.

²⁰ Alaska Regulation 15 AAC 05.030(h).

²¹ Alaska Regulation 15 AAC 125.316.

Civil Rule 90.3 allows a child support amount to be modified if a material change of circumstances has occurred.²² A change in custody would generally be a change of circumstance that would justify a modification.²³

Child support is calculated using the shared custody formula when a child resides with a parent at least 30, but no more than 70 percent of the overnights.²⁴ Under the shared custody formula, the annual amount each parent would pay to the other parent if that parent had sole custody is calculated. That support amount is then multiplied for each parent by the percentage of time the other parent will have physical custody of the children. The parent with the larger amount under this calculation is the obligor parent. The annual award from the obligor parent to the other parent is equal to the difference between the two figures multiplied by 1.5.²⁵ Because the court order currently provides for J. spending less than 30 % the nights with Mr. O., it will not be appropriate to modify child support in this case, based on shared custody, until custody actually changes to shared custody under the court order in 2009.

Mr. O. is the appealing party in this case, and he has failed to provide accurate income information. At the hearing, the Division explained that Mr. O.'s current order had also been set based on average earnings for an Alaskan carpenter. Less than three years later, because of the petition and Mr. O.'s failure to timely provide accurate income information, CSSD calculated modified child support on average earnings for an Alaskan carpenter. The problem with this approach is that the local construction industry has already completed the boom cycle that led to the increase reflected in the upward modification. Mr. O. is faced with a potential decrease in income, due to the current downturn in the local economy. Mr. O. provided documentation of this downturn in his post hearing brief.

The record in this case indicates that Mr. O. is under-reporting his income, but the current order is as likely to be too low as it is to be too high. His child support will need to be modified in a few months due to the scheduled custody change. Under these circumstances, it is not

²² Alaska Civil Rule 90.3(h)(1).

²³ 15 AAC 125.340(c).

²⁴ Alaska Civil Rule 90.3(f).

²⁵ Alaska Civil Rule 90.3(h).

appropriate to modify the child support at this time. Rather, the parties should request a modification in December of this year, to be effective January 2009. At that time, hopefully, CSSD will receive more cooperation from Mr. O. and will be to accurately establish both parties' income and set modified ongoing child support based on the court ordered shared custody schedule.

CHILD SUPPORT ORDER

1. The Petition for Modification of Administrative Support Order is DENIED.
2. The Division's Modified Administrative Child and Medical Support order on November 28, 2007 is OVERTURNED.
3. Mr. O.'s ongoing child support shall remain at \$544 per month.

DATED this 6th day of June, 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 25th day of June, 2008.

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

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