

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

| | | |
|------------------|---|---------------------|
| IN THE MATTER OF |) | |
| |) | |
| L J. J |) | OAH No. 08-0240-CSS |
| _____ |) | CSSD No. 001033876 |

CHILD SUPPORT DECISION AND ORDER

I. Introduction

On June 10, 2008, a formal hearing was held to consider the child support obligation of L J. J (Obligor) for the support of his children, F and E, (Obligees).¹ Mr. J participated. The custodial parent, Q A. S, did not participate. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on July 9, 2008.

This case is Mr. J's appeal of the Division's modification of his child support order for F and E. Having reviewed the record in this case and after due deliberation, I concluded that Mr. J's modified ongoing child support should be set at \$741 per month effective April 1, 2008.

II. Facts

A. History

Mr. J's monthly child support obligation was \$594 per month. The Division reviewed this child support order. The Division issued a Notice of Petition for Modification on March 1, 2008.²

Mr. J provided his income information as ordered.³ The Division issued a Modified Administrative Child Support and Medical Support Order on April 25, 2008.⁴ The Division determined that Mr. J's ongoing monthly child support should be increased to \$787 per month.⁵ The Division based its calculation of Mr. J's ongoing monthly child support on information reported by his employer, but did not include a deduction for contributing to a retirement account.⁶ Mr. J requested a formal hearing.⁷

After the hearing, the Division provided new calculations based on an estimate of J's

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 & Ex. 3.

⁴ Division's Pre Hearing Brief & Ex 4.

⁵ Ex. 4.

⁶ Ex. 5.

⁷ Ex. 6.

projected income using Mr. J's 2007 income. This calculation includes a deduction for Mr. J contributing 5% of his income to a retirement account. These calculations result in a monthly ongoing child support of \$741 for F and E.⁸

At the hearing, Mr. J was concerned that he had not been receiving credit for providing health insurance coverage for F and E.⁹ Mr. J provided some documentation prior to the hearing indicating that F and E had been added to his insurance as of "12/1/08."¹⁰ The record was held open after the hearing so that Mr. J could provide additional documentation of these costs from his employer.¹¹ Mr. J did provide some documentation from 2007, but that documentation indicated that only other children, apparently his older children of a different relationship, O and N, were covered as dependents under his policy at that time.¹² The Division provided a letter dated June 21, 2008 from Ms. S in which she asserted that she had attempted to file a claim with Mr. J's insurer in 2005 and was informed that F's and E's coverage had been cancelled.¹³

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. J's modified child support is the best estimate of his present income.¹⁴ I also find that the record does not contain clear and convincing evidence that manifest injustice will occur if Mr. J's modified child support is set at this monthly amount.¹⁵

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. J, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁶ Mr. J 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 includes a deduction for Mr. J

⁸ Ex. 10.

⁹ Recording of Hearing.

¹⁰ This date appears to be a typographical error on the document. *See* Ex. A. Certificate of Group Health Plan Coverage, dated "6/3/2008."

¹¹ Recording of Hearing.

¹² Ex. 8.

¹³ Ex. 11.

¹⁴ Recording of Hearing.

¹⁵ Recording of Hearing.

¹⁶ Alaska Regulation 15 AAC 05.030(h).

contributing 5% of his income to a retirement account.¹⁷ Mr. J did not meet his burden to show that his modified ongoing child support should be further adjusted downward.¹⁸

Ongoing child support should be calculated based on the best estimate of J'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."¹⁹

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. J's ongoing income is not lowered. Mr. J's financial circumstances are strained, but it will not work an injustice to require him to pay F and E child support based on the appropriate share of his income.²⁰ Mr. J has less than a year to pay ongoing child support under this order, as both children are seventeen and are seniors in High School.²¹

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.²² 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.²³ Monthly child support of \$741 would be more than a 15 percent increase from the current order of \$594 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 April 1, 2008, because the petition was served in March of 2008.²⁴

As discussed at the hearing and in the Division's Post-Hearing Brief and Submission to Record, the Division will give Mr. J the appropriate credit for his out-of-pocket expenses for providing health insurance coverage for the children once he gets the necessary documentation to

¹⁷ Recording of Hearing.

¹⁸ Recording of Hearing.

¹⁹ Alaska Civil Rule 90.3(c).

²⁰ Recording of Hearing.

²¹ Recording of Hearing.

²² Alaska Civil Rule 90.3(h)(1).

²³ Alaska Civil Rule 90.3, Commentary X.

²⁴ Alaska Regulation 15 AAC 125.321.

his Division caseworker.²⁵ The Division will adjust the debit or credit when the documentation provided by Mr. J clearly shows that these out-of-pocket expenses have been incurred.²⁶

Under the regulation that governs claims for these adjustments, Mr. J may request that the Division conduct an administrative review of his claim, but an administrative appeal is not available from an administrative review decision on such an adjustment. These administrative review decisions are final for the purpose of appeal to the superior court.²⁷ This means that disputes about medical credit adjustments cannot be resolved in Mr. J's appeal of his modification. While an attempt was made to assist Mr. J to provide the needed documentation to establish what credits he was entitled to, these issues can only be resolved by dealing with directly with the Division or in court.

IV. Conclusion

The Division's Modification of Administrative Support Order issued on April 25, 2008 should be adjusted. Mr. J's modified ongoing child support obligation for F and E will be \$741 per month, effective April 1, 2008. Mr. J needs to continue to work with his employer, his insurer, and his Division caseworker to receive credits for providing health insurance coverage.

V. Child Support Order

The Division's Modified Administrative Child and Medical Support Order issued on April 25, 2008, is amended as follows, all other provisions of that order remain in effect:

1. Mr. J modified ongoing child support obligation for F and E is set at \$741 per month, effective April 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 F and E.

DATED this 30th day of September, 2008.

By: Signed _____
Mark T. Handley
Administrative Law Judge

²⁵ 15 AAC 125.326 allows the Division to make adjustments to child support orders for medical insurance credits without going through the normal modification process.

²⁶ Tape of Hearing & Division's Supplement to Pre Hearing Brief, page 1.

²⁷ 15 AAC 125.432(g) does not allow an appeal to the Office of Administrative Hearings in a medical insurance coverage adjustments claims.

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 21st day of October, 2008.

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

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