

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

IN THE MATTER OF)	OAH No. 08-0255-CSS
J. E. M.)	CSSD No. 001144449
)	
_____)	

CHILD SUPPORT DECISION

I. Introduction

On June 12, 2008, a formal hearing was held to consider the child support obligation of J. E. M. (Obligor) for the support of his child, E. (Obligee).¹ Mr. M. participated. The custodial parent, K.C., also participated. Ms. R. was assisted by attorney Sharon Arroyo, from the Child Support Enforcement Division of Puerto Rico. Ms. A. also acted as a Spanish translator for Ms. R. 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 Ms. R.'s appeal of the Division's order modifying Mr. M.'s child support order for E. to a lower monthly amount. As discussed at the hearing, the Division's Modified Administrative Child and Medical Support Order issued on April 25, 2008, should be set aside and ongoing child support should remain at \$580 per month.

II. FACTS

A. History

Mr. M.'s ongoing monthly child support obligation was set at \$580 per month in 2007. The Division reviewed this child support order at Mr. M.'s request because his income had decreased due to a reduction in his overtime.² The Division issued a Notice of Petition for

¹ The hearing was held under Alaska Statute 25.27.190.

² Recording of Hearing.

Modification on February 1, 2008.³ The Division issued a Modified Administrative Child and Medical Support Order on April 25, 2008.⁴ In this order, the Division set Mr. M.'s modified ongoing child support at \$457 per month based on his income.⁵ Ms. R. requested a formal hearing.⁶

At the hearing, Mr. M. explained that he has had a steady decrease in his annual earnings in the past few years due to a reduction in his overtime.⁷ Mr. M. now works full-time as a painter for \$15.50 per hour for his uncle's company.⁸ This is only \$0.50 per hour more than he earned when he first started working for his uncle about five years ago.⁹ Mr. M. explained that his uncle's business has expanded in that time, but his uncle has been hiring more help so that they can complete jobs on-time without having to pay his workers overtime.¹⁰

At the hearing, Ms. R. explained that she was laid-off from her telemarketing job in February of 2008.¹¹ She has been looking for work without success since then.¹² Her unemployment benefits have run out. She does not qualify for public assistance because her income from child support makes her ineligible.¹³ Since her unemployment benefits ended she has been supporting herself and her child on the child support she receives and some assistance from her father.¹⁴ Ms. R.'s mortgage is \$471.54 per month.¹⁵ Ms. R.'s household includes

³ Ex. 3.

⁴ Ex. 5.

⁵ Ex. 5.

⁶ Ex. 7.

⁷ Recording of Hearing.

⁸ Recording of Hearing.

⁹ Recording of Hearing.

¹⁰ Recording of Hearing.

¹¹ Recording of Hearing.

¹² Recording of Hearing.

¹³ Recording of Hearing.

¹⁴ Recording of Hearing.

only herself and E.¹⁶ The employment situation in Puerto Rico has been suffering from a downturn in the local economy.¹⁷

B. Findings

Based on the evidence in the record, I find that it is more likely than not that if Mr. M.'s ongoing child support were set based on his 2007 income his monthly amount would be reduced by more than 15%.¹⁸ However, such a reduction at this time would prevent Ms. R. from being able to provide for their child, E.¹⁹

III. Discussion

Because of Ms. R.'s current financial circumstances the child support order should not be modified at this time.²⁰

In a child support hearing, the person who filed the appeal, in this case, Ms. R., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.²¹ Mr. M. and the Division showed that the monthly amount set in the Division's modification order was calculated correctly based on his 2007 income; however, Ms. R. met her burden of showing that she would not be able to provide adequately for E. if Mr. M.'s ongoing child support is reduced.

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

¹⁵ Recording of Hearing & Ex. A.

¹⁶ Recording of Hearing.

¹⁷ Recording of Hearing.

¹⁸ Recording of Hearing & Ex. 5 & 7.

¹⁹ Recording of Hearing.

²⁰ Recording of Hearing.

²¹ Alaska Regulation 15 AAC 05.030(h).

²² Alaska Civil Rule 90.3(h)(1).

the outstanding support order by 15%.²³ Monthly child support of \$457 would be more than a 15% decrease from the current order of \$580 per month.

However, if a non-custodial obligor is potentially entitled to a reduction in child support, based on a 15% change, prior to granting a modification, it is necessary to consider whether the custodial parent will be able to provide for the child if the obligor's support obligation is reduced.²⁴

Even with ongoing child support maintained at its present level of \$580 per month, Ms. R. has needed additional assistance from her father in order able to provide for E. Despite her best efforts to find work, Ms. R. has been unemployed for over three months. Under these circumstances, it is not appropriate to grant a downward modification at this time.²⁵ As I discussed at the hearing, the Division may wish to review this case in six months to determine if Ms. R. has found employment, and it is appropriate to grant Mr. M. a downward modification based on his income. If the Division does not initiate a modification review on its own, Mr. M., may wish to contact his Division caseworker and request a modification.

IV. Child Support Order

1. The Division's Modified Administrative Child and Medical Support Order issued on April 25, 2008, is OVERTURNED.
2. The Petition for Modification of Administrative Support Order is DENIED.
3. Mr. M.'s modified ongoing child support amount will remain at \$580 per month.

²³ Alaska Civil Rule 90.3, Commentary X.

²⁴ See *Maloney v. Maloney* 969 P.2d 1148, 1152 (Alaska 1998).

²⁵ See *Maloney v. Maloney* 969 P.2d 1148, 1152 (Alaska 1998).

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 10th 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 AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 11th day of July, 2008.

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

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