

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

IN THE MATTER OF)	OAH No. 08-0422-CSS
J. R. H.)	CSSD No. 001045331
)	
_____)	

CHILD SUPPORT DECISION AND ORDER

I. Introduction

On September 3, 2008, a formal hearing was held to consider the child support obligation of J. R. H. (Obligor) for the support of his children, M. and K., (Obligees).¹ Mr. H. participated. The custodial parent, M. R. T. II, also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed on September 12, 2008.

This case is Mr. H.'s appeal of the Division's modification of his child support order for M. and K. Having reviewed the record in this case and after due deliberation, I concluded that Mr. H.'s modified ongoing child support should be set at \$794 per month effective October 1, 2008.

II. Facts

A. History

Mr. H.'s monthly child support obligation was \$50 per month. The Division reviewed this child support order at Ms. T.'s request. The Division issued a Notice of Petition for Modification on April 11, 2008.²

Mr. H. did not provide his income information as ordered.³ The Division issued a

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.

Modification of Administrative Support Order on July 22, 2008.⁴

The Division determined that Mr. H.'s ongoing monthly child support should be increased to \$913 per month.⁵ The Division based its calculation of Mr. H.'s ongoing monthly child support on an estimate of his projected earnings from information reported by his former employer.⁶ Mr. H. requested a formal hearing.⁷

After the hearing, as requested, the Division filed new calculations based on Mr. H.'s 2007 income.⁸

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 8 are correct. I find that it is more likely than not that the income that the Division used in Exhibit 8, to calculate Mr. H.'s ongoing modified child support is the best estimate of his present earning capacity.⁹ I also find that there is good cause to move the effective date of the modification forward to October 1, 2008.¹⁰

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. H., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹¹ Mr. H. met his burden in showing that he was entitled to lower child support than the Division originally calculated even though his child support should be modified upward.

Mr. H. explained that although he had made more money in 2007 and the very beginning of 2008, when he was earning about \$48,000 per year, than he was when his support obligation was established, when his income was below the poverty level, he has not been employed since

⁴ Division's Pre Hearing Brief & Ex 4.

⁵ Ex. 4.

⁶ Ex. 4, page 6.

⁷ Ex. 8.

⁸ Recording of Hearing, Ex. 6 & 7.

⁹ Recording of Hearing.

¹⁰ Recording of Hearing-Testimony of Mr. H..

¹¹ Alaska Regulation 15 AAC 05.030(h).

January of 2008.¹² Mr. H. explained that he was laid off in January and has been taking advantage of a retraining program to finance his return to full-time enrollment in college. Mr. H. is now looking for full-time work and plans to go to school part-time.¹³ Mr. H. indicated that there is likelihood that he will find employment by October 2008 and should be able to earn about the income he earned in 2007.¹⁴ The Division's new calculations, based on Mr. H.'s 2007 income, result in a monthly ongoing child support of \$794 per month.¹⁵

Mr. H. was very young, living in a rural Alaskan community when his current order was established. Since then he has moved to Oregon and become a skilled worker in the semiconductor industry.¹⁶

The Division and Mr. H. did not object to the proposal that ongoing child support be based on Mr. H.'s 2007 income, but with the effective date for modified ongoing child support be moved forward to the beginning of October 2008.

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.¹⁷ 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.¹⁸ Monthly child support of \$794 is more than a 15 percent increase from the current order of \$50 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 May 1, 2008, because the petition was served in April of 2008.¹⁹ There is good cause to move the effective date forward to the date that Mr. H. is likely to return to work. Mr. H.'s

¹² Recording of Hearing-Testimony of Mr. H..

¹³ Recording of Hearing-Testimony of Mr. H..

¹⁴ Recording of Hearing-Testimony of Mr. H..

¹⁵ Ex. 8.

¹⁶ Recording of Hearing-Testimony of Mr. H..

¹⁷ Alaska Civil Rule 90.3(h)(1).

¹⁸ Alaska Civil Rule 90.3, Commentary X.

¹⁹ Alaska Regulation 15 AAC 125.321.

ongoing child support should be increased due to the increase in his earning capacity since the monthly support amount was established at the minimum. It would, however, be unfair to increase ongoing child support beginning in May of 2008 to cover a period of unemployment and retraining, when Mr. H. had no earnings.

IV. Child Support Order

The Division's Modification of Administrative Support Order on July 22, 2008 is amended as follows, but all other provisions of that order remain in effect:

1. Mr. H.'s modified ongoing child support obligation for M. and K. is set at \$794 per month effective October 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 M. and K..

DATED this 29th day of September, 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 22nd day of October, 2008.

By: Signed
Mark T. Handley
Administrative Law Judge

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