

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

IN THE MATTER OF:	)	
	)	
R. G. G.	)	
	)	OAH No. 09-0374-CSS
_____	)	CSSD Case No. 001152380

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of R. G. G. for the support of N. G. (DOB 00/00/2003). The custodian of record is B. G.

The Child Support Services Division issued an administrative child support order dated July 31, 2008, in the amount of \$243 per month. On October 22, 2008, Mr. G. requested modification of the support order. Mr. G. did not respond to the division's request for income information, and on April 7, 2009, the division denied modification review.

Mr. G. filed an appeal on July 8, 2009, and the division filed a motion to dismiss the appeal as untimely. The assigned administrative law judge conducted a hearing on August 4, 2009. Mr. G. participated and Erinn Brian represented the division. Ms. G.'s telephone number of record was contacted and found not in service; she did not participate in the hearing.

The motion to dismiss is denied, and the request for modification is granted. Mr. G.'s modified ongoing support obligation is set at \$50 per month, effective June 1, 2009.

**II. Facts**

R. G. G. is a general contractor. He is married to B. G., with whom he has one child, N. Mr. G. has two older children who live in California and are subject to a support order in that state.

The G.s temporarily separated in the summer of 2008, at which time Mr. G. was self-employed. The couple reunited and the support order was suspended. The couple permanently separated in the fall of 2008, and Mr. G. filed this request for modification.

While the request for modification was pending, Mr. G. was jailed for a couple of weeks in January and again in April, 2009. On May 24, Mr. G. was jailed on felony charges. He has remained in custody since that time. He is scheduled for sentencing in September and anticipates a sentence in excess of one year to serve. Mr. G. is currently in a halfway house and is unable to work. His ability to work in the future depends on the conditions of his confinement and on his ultimate sentence.

## **II. Discussion**

### **A. The Motion to Dismiss is Denied**

A person who files an appeal within 30 days of the date of an order on administrative review is entitled to an administrative hearing.<sup>1</sup> The division will grant an untimely request for an administrative hearing when the hearing officer determines that strict adherence to the filing deadlines and other requirements would work an injustice.<sup>2</sup>

Factors that may be considered in determining whether to grant an untimely request for an administrative hearing in a child support proceeding include: (1) the reasons for the delay; (2) the extent of the delay; (3) the degree of prejudice to the other parties; (4) the strength and nature of the asserted grounds for the appeal; (5) whether the agency's determination was previously contested; and (6) any other relevant circumstances.<sup>3</sup>

In this case, the delay in filing an appeal occurred because at the time the support order was issued, Mr. G. did not have access to his mailbox; he spent time in jail in April, and his wife had possession of the mailbox key after they permanently separated. The appeal was filed within 30 days of the date it was due, and there is no prejudice to any party as a result of the delay. Mr. G. has filed a subsequent request for modification, and dismissal of this appeal would cause unnecessary additional administrative work. At the hearing on the motion to dismiss, Mr. G. provided testimony that supports the request for modification. Under the circumstances, strict adherence to the filing deadline would work an injustice.

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<sup>1</sup> 15 AAC 125.118(f); 15 AAC 05.010(b)(6).

<sup>2</sup> 15 AAC 05.030(k).

<sup>3</sup> See, e.g., In Re A.B.H., OAH No. 07-0655-CSS, at 2 (December 6, 2007); In Re L.(M.)A., OAH No. 06-0610-CSS at 3 (October 30, 2006).

B. Modification Review May Be Waived

A party has a right to a formal hearing when, after conducting a modification review,<sup>4</sup> the division issues a written decision granting or denying modification.<sup>5</sup> But not every request for modification review leads to a decision to grant or deny modification. The division has discretion to decline to proceed with modification review when the party requesting review fails to submit evidence that there has been a change of 15% or more in the amount of the support obligation.<sup>6</sup>

Ordinarily, the issue on appeal from the denial of modification review is limited to whether the agency properly exercised its discretion not to complete a modification review.<sup>7</sup> However, the party who requested modification review may waive the procedures set out in the division's regulations and agree to a hearing on the merits of the request on appeal.<sup>8</sup> In this case, Mr. G. has requested review and the division did not object to consideration of the merits on appeal. Ms. G. did not appear or contest the request for modification, and will have the opportunity, should she object to either the procedure or the outcome, to file a proposal for action requesting a remand for modification review, or a supplemental hearing.

C. The Support Order is Modified

The annual child support payment for one child in the absence of shared custody is 20% of the adjusted annual income.<sup>9</sup> When the child support obligation changes by an amount greater than 15% of the existing order, a material change of circumstances is presumed and the existing order may be modified.<sup>10</sup>

The division denied modification review because income information was not provided. At the hearing, Mr. G.'s testimony established that he is presently unable to work, and that his ability to work in the future depends on decisions outside of his control by the Department of Corrections and the sentencing judge. In view of his current circumstances and length of the likely term of imprisonment, his unemployment is not temporary and a minimum order is appropriate.

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<sup>4</sup> 15 AAC 125.321(a).

<sup>5</sup> 15 AAC 125.321(c).

<sup>6</sup> 15 AAC 125.316(e).

<sup>7</sup> See, e.g., In Re D.H., OAH No. 06-0670 (November 14, 2006).

<sup>8</sup> See, e.g., In Re R.C.S., OAH No. 07-0102-CSS at 4 (May 1, 2007).

<sup>9</sup> Civil Rule 90.3(a)(2)(A); 15 AAC 125.010, -.070(a).

Generally a modification order is effective on the first day of the month after service of the petition for modification.<sup>11</sup> However, the effective date may be advanced upon a showing of good cause.<sup>12</sup> In this case, Mr. G. was temporarily unable to work during brief periods of imprisonment in January and April, but his circumstances did not materially change for the long term until he was jailed in May pending sentencing. Therefore, there is good cause to advance the effective date of the modification order to June 1, 2009, the first day of the month after he was jailed pending sentencing.

#### **IV. Conclusion**

A material change of circumstances is presumed and the existing support order may be modified. The division should review the order after sentencing proceedings have been completed.

#### **CHILD SUPPORT ORDER**

The Administrative Child Support and Medical Support Order dated July 31, 2008, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated April 22, 2008, is **AFFIRMED**:

1. Modified ongoing child support is set at \$50 per month, effective June 1, 2009.

DATED: August 7, 2009.

*Signed*  
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Andrew M. Hemenway  
Administrative Law Judge

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<sup>10</sup> Civil Rule 90.3(h)(1).

<sup>11</sup> 15 AAC 125.321(d).

<sup>12</sup> State, Child Support Enforcement Division v. Dillon, 977 P.2d 118 (Alaska 1999); Boone v. Boone, 960 P.2d 1579 (Alaska 1998).

## 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 2nd day of September, 2009.

By: Signed  
Signature  
Andrew M. Hemenway  
Name  
Administrative Law Judge  
Title

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