

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

IN THE MATTER OF)	OAH No. 09-0574-CSS
S. S. M.)	CSSD No. 001133332
_____)	

DECISION AND ORDER

I. Introduction

On November 12, 2009, a hearing was held to consider the appeal of S. S. M., the obligor in this case. R. M. R., the custodian of record in this case, did not participate.¹ Mr. M. participated. The Child Support Services Division (Division) was represented by Erinn Brian, Child Support Services Specialist.

This case is Mr. M.'s appeal of the Division's Denial of Modification of Administrative Support Order, which denied Mr. M.'s request for a downward modification of his ongoing child support order for his child, G. This order was issued on September 23, 2009.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be upheld. Mr. M.'s ongoing child support obligation for G. should remain at \$366 per month.

II. Facts

This case is a modification action.² The Division had originally denied Mr. M.'s request for modification review because the Division did not believe that Mr. M. had provided the income information that was needed to complete its review. The Division later discovered that Mr. M. had attempted to timely provide this information. The case was remanded back to the Division to conduct a modification review of the child support order and consider the information provided by Mr. M. After that review, the Division issued the Denial of Modification of Administrative Support Order because it determined that there would not be a

¹ Ms. R. did not appear or provide a phone number as directed by the notice sent to her at her addresses of record for the hearing. The ALJ was unable to contact her at either of her phone numbers of record for hearing. Ms. R. contacted the Office of Administrative Hearings after the hearing to check on the status of the case.

15% change in Mr. M.'s ongoing child support amount based on Mr. M.'s 2009 income.

Mr. M. requested a formal hearing. In his request for a formal hearing, Mr. M. raised the issue of the difference in the ongoing amount and the amount that was being withheld from his pay. At the hearing, Mr. M. asked why his ongoing child support was nearly the same even though his wage when the child support was established was nearly double his current hourly wage. At the hearing, Mr. M. also asked about how his ongoing child support obligation would change if G. starts living with him.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. M., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.³

At the hearing, Mr. M. did not contest the income the Division used in its calculations or the calculations themselves.⁴ 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.⁵ 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.⁶ Monthly child support of \$319 would not be a 15 percent increase from the current order of \$366 per month. Mr. M. failed to meet his burden of proof to show that the Division's order was incorrect.⁷

At the hearing, Mr. M. was primarily concerned about how the Division's calculations were made and how the modification process works. As discussed at the hearing, ongoing child support is based on annual income. Mr. M. or Ms. R. can request a modification through their Division caseworker at any time they believe that there has been a material change in circumstance, such as a change in Mr. M.'s annual income that would result in at least a 15% change in his ongoing child support amount, or a change from primary to shared custody.⁸

Mr. M. was also concerned about what would happen if he has primary custody of G.

² Alaska Civil Rule 90.3(h) governs modification actions.

³ Alaska Regulation 15 AAC 05.030(h).

⁴ Recording of Hearing.

⁵ Alaska Civil Rule 90.3(h)(1).

⁶ Alaska Civil Rule 90.3, Commentary X.

⁷ Recording of Hearing & Alaska Regulation 15 AAC 125.316(e).

⁸ Recording of Hearing.

Mr. M. indicated that G. is currently staying with him and may continue to do so. Also as discussed at the hearing, a change in primary custody is not part of the modification process. Rather, the parties should simply notify their Division caseworker of this change. Mr. M.'s child support order will remain in effect, however, the Division will not collect ongoing child support from Mr. M. for periods that G. is living with him. The Division may establish an additional child support order for G. with Ms. R. as the obligor if G. receives public assistance during these periods or if Mr. M. requests the Division's services.⁹

IV. Conclusion

I conclude that the Division correctly denied Mr. M.'s request for a downward modification of his ongoing child support.

V. Child Support Order

The Division's Notice of Denial of Modification Review issued on September 23, 2009, is affirmed.

DATED this 13th day of November, 2009.

By: Signed
Mark T. Handley
Administrative Law Judge

⁹ Recording of Hearing.

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 3rd day of December, 2009.

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

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