

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

IN THE MATTER OF:)

J. E. F.)

) OAH No. 10-0091-CSS

) CSSD No. 001059451

DECISION AND ORDER

I. Introduction

The obligor, J. E. F., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in her case on January 13, 2010. The Obligee child is A., who is currently fifteen years of age.

The hearing was held on March 18, 2010. Ms. F. participated by telephone; the custodian, Y. H. C., A.’s grandmother, appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on March 23, 2010.

Based on the record and after due deliberation, CSSD’s Notice of Denial of Modification Review is affirmed. Ms. F. remains liable for child support in the amount of \$244 per month.

II. Facts

A. Background

Ms. F.’s child support obligation for A. was set at \$244 per month in October 2004.¹ She requested a modification review on April 1, 2009.² On April 10, 2009, CSSD notified all parties that a modification review had been requested.³ Ms. F. did not provide financial information.⁴ On January 13, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that Ms. F. did not document her income.⁵ She appealed on February 16, 2010, asserting primarily that her only income is unemployment benefits, which had ended, and that CSSD has

¹ Exh. 2.

² Exh. 3.

³ Exh. 4.

⁴ Pre-Hearing Brief at pg. 1.

⁵ Exh. 5.

access to that information because the agency has been garnishing her unemployment benefits.⁶ Before the hearing, CSSD filed an affidavit of the earnings and unemployment benefits reported for Ms. F. to the Alaska Department of Labor and Workforce Development from 2006 forward.⁷

B. Material Facts

Ms. F. is currently unemployed and living in Arizona. She was a certified nursing assistant at one time and has worked in hospitals and other medical care facilities. Her last documented employment was during the second quarter of 2008. Ms. F. testified she worked in an assisted living facility from September 2008 through January 2009, where she earned \$10 per hour, but she left that employment because of sexual harassment issues. Ms. F. stated she has looked for work every day at restaurants and hospitals but that there is no work in Arizona at this time. The obligor has a 10 year-old daughter in the home who receives a Social Security death benefit due to the death of her father; it is their sole support at this time.

The obligee, A., lives with her grandparents, R. and Y. C. Ms. F. claims her parental rights were terminated when A. was a baby and that she did not know she would have an obligation to support A. However, court documents filed by CSSD after the hearing indicate the C.s were appointed A.'s guardians on October 25, 1995; they did not adopt her.⁸

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁹ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources."

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁰ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. If the person who requests a modification

⁶ Exh. 6.

⁷ Exh. 7.

⁸ Exh. 8.

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁰ AS 25.27.190(e).

review does not provide evidence sufficient to review the underlying child support order, CSSD may decline the review.¹¹

In this case, CSSD denied Ms. F.'s request for a modification review because she did not document her income. For her part, Ms. F. did not submit any income information because she is currently unemployed and is at the end of her unemployment benefits; thus, she did not believe she had any information to provide to the agency. At this juncture, however, the crucial issue is not whether Ms. F. had any information to supply to CSSD, but whether she has shown "good cause and material change in circumstances" sufficient to modify her underlying child support obligation. Alaska law generally considers unemployment to be a temporary circumstance that should not result in the reduction of an obligor parent's child support order.¹²

Ms. F. is currently unemployed. She testified she looks for work every day in hospitals, restaurants and at the unemployment office, but her answers to CSSD's questions were essentially vague and unpersuasive. Even in the current economic climate, Ms. F.'s testimony that there is "no work" in Arizona is not convincing. She did not prove by a preponderance of the evidence that she cannot find employment or that there is no work available to her. Thus, Ms. F.'s unemployment is a temporary circumstance that will improve when she finds another job. She may lack the current ability to pay the total child support amount every month while she is unemployed, but Ms. F. should be able to start paying off the arrears once she starts working again.

IV. Conclusion

Ms. F. did not meet her burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was issued in error. Ms. F. did not show "good cause and material change in circumstances" sufficient to modify her underlying child support obligation. As a result, Ms. F. remains liable for child support in the amount of \$244 per month, pursuant to the Amended Administrative Child Support and Medical Support Order CSSD issued on October 8, 2004.

¹¹ 15 AAC 125.316(e).

¹² *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

Child Support Order

- CSSD's January 13, 2010, Notice of Denial of Modification Review is affirmed;
- The Amended Administrative Child Support and Medical Support Order that CSSD issued on October 8, 2004, remains in full force and effect.

DATED this 13th day of April, 2010.

By: Signed _____
Kay L. Howard
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 30th day of April, 2010.

By: Signed _____
Signature
Kay L. Howard _____
Name
Administrative Law Judge _____
Title

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