

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

IN THE MATTER OF:)	
)	OAH No. 10-0206-CSS
D. A. E.)	CSSD No. 001136505
_____)	

DECISION

I. Introduction

The Obligor, D. A. E., requested a modification of an ongoing administrative child support order. The obligee child is T. A. D., who is 6 years old. The custodial parent is A. T. D.

The Child Support Services Division (CSSD) issued a notice of denial of modification on March 16, 2010. Ms. E. requested a formal appeal of that denial. The hearing in this case was set for May 13, 2010. A notice of the appeal hearing date was sent to Ms. E. by certified mail. According to the USPS web site tracking system, that letter was returned as unclaimed on May 17, 2010.

A hearing was held on May 13, 2010. CSSD was represented by Andrew Rawls, Child Support Specialist. Mr. D. appeared by phone. Ms. E. did not appear. The administrative law judge attempted to reach her at the only phone number in the file. That number was a former employer in Anchorage, and Ms. E. was not presently working there and had not worked there for several years.

Pursuant to 15 AAC 05.030(j), the record was kept open for 10 days to give Ms. E. an opportunity to show reasonable cause for her failure to appear at the scheduled hearing. That time period has now elapsed and this decision and order is entered based on the written record.

II. Facts

A. Background

Ms. E.'s support obligation was set at \$300 per month in 2005.¹ On October 20, 2009, CSSD received Ms. E.'s Request for Modification of a Child Support Order.² A Notice of Petition for Modification of Administrative Support Order was mailed to Ms. E. and to Mr. D. on

¹ Exhibit 1, page 1.

² Exhibit 2.

October 22, 2009.³ This Notice directed both parties to submit income information for the last two years.⁴ Neither party provided the required information.

On March 16, 2010, CSSD denied the request for modification because Ms. E. had not submitted her income documentation. She appealed that decision on March 23, 2010, stating:

My ex is asking for \$300 dollars a month and I barely even make that and I already owe eleven thousand dollars. My question is, are you guys aware that I do not live in Alaska and don't make as much money as I would if I lived there??? If you think 300 dollars ain't much your wrong, just because I haven't paid anything shouldn't be the reason I was denied. My ex paid four thousand for a hair transplant. That should show he does not need the money!^[5]

B. Material Facts

Ms. E.'s current child support obligation was based on an adjusted annual income of \$18,003.74.⁶ This amount includes income of \$919.84 from a Permanent Fund Dividend. Ms. E. no longer lives in Alaska and may no longer qualify for a PFD.⁷ Removing this income, and assuming no other changes, reduces her gross income but also reduces her monthly federal income tax withholding, leaving her with an adjusted annual income of \$17,491.93.⁸ This results in a support obligation calculated at \$292.00 per month.⁹

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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."¹¹ 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 15% change has not been met, CSSD may modify the child support obligation, but it is not

³ Exhibit 3, pages 2 & 4.

⁴ Exhibit 3, pages 1 & 3.

⁵ Exhibit 5.

⁶ Exhibit 1, page 7.

⁷ Exhibit 5.

⁸ Calculations based on the CSSD Guideline Calculator available on the CSSD web page at <http://www.childsupport.alaska.gov/>.

⁹ CSSD Guideline Calculator.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ AS 25.27.190(e).

required to do so. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹²

As the person challenging CSSD's decision, Ms. E. has the burden of showing that the decision was incorrect.¹³ She has not provided CSSD or the Office of Administrative Hearings with any current income information. Assuming she is no longer eligible to receive a PFD, the resulting reduction in her support obligation would only be \$8.00 per month, which does not constitute a material change from the current support obligation of \$300 per month.

Ms. E. does say that she barely makes \$300 per month.¹⁴ She has not provided any additional evidence to support that statement. Since she was able to earn \$20,000 per year in 2005, her statement that she now makes significantly less is not sufficient to establish a lower support obligation.

Ms. E. also states that her request for a modification should not be denied simply because she hasn't been paying ongoing support.¹⁵ That is not the basis on which her request was denied. She was denied a modification because she did not provide the income documentation requested by CSSD. Without that information, CSSD is not able to modify her child support order.

Finally, Ms. E. suggests that Mr. D. does not need the money.¹⁶ The question in this case is not what Mr. D. needs, but what *T.* needs, and the extent to which Ms. E. is financially able to contribute towards his support. If Ms. E. is able to help support her son, she is required by law to do so even if it forces her to make some difficult financial choices. While there is some suggestion in the record that Ms. E. is not able to meet the current support obligation, she has not provided the information needed to prove that inability.¹⁷

IV. Conclusion

Because Ms. E. did not supply the requested financial information, CSSD's denial of Ms. E.'s request for modification should be upheld.

¹² 15 AAC 125.321(d).

¹³ 15 AAC 05.030(h).

¹⁴ Exhibit 5.

¹⁵ Exhibit 5.

¹⁶ Exhibit 5.

¹⁷ Ms. E. can request a new modification and supply the appropriate documentation with that request. Any new request would not be retroactive, however. Civil Rule 90.3(h)(2).

V. Order

- CSSD's March 16, 2010, Notice of Denial of Modification Review is affirmed;
- Ms. E.'s child support obligation remains at \$300 per month.

DATED this 24th day of May, 2010.

By: Signed
Jeffrey A. Friedman
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 June, 2010.

y: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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