

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

In the Matter of:)

B N, JR.)

OAH No. 12-0337-CSS

CSSD No. 001106949

**DECISION AND ORDER GRANTING
MOTION FOR SUMMARY ADJUDICATION**

I. Introduction

On September 6, 2012, CSSD filed a Motion for Summary Adjudication in this child support case. A hearing was convened on September 12, 2012. Mr. N participated by telephone; the custodial parent, L J. X, appeared in person. Erinn Brian, Child Support Specialist, represented CSSD. The child in this case is E, 14.

Based on the record as a whole and after due deliberation, the Motion for Summary Adjudication is granted. CSSD's August 2, 2012 Decision on Request for Modification Review that denied modification of Mr. N's child support order is affirmed.

II. Facts

Mr. N's child support obligation for E was set at \$50 per month for one child in April 2007.¹ On June 8, 2012, Mr. N filed a petition for modification.² On June 18, 2012, CSSD sent the parties a notice of the request for modification,³ and Mr. N submitted income information.⁴ CSSD reviewed the information and denied Mr. N's request on the basis that he did not provide evidence of a "substantial change in circumstances."⁵ He filed an appeal on August 17, 2012, asserting that he is incarcerated.⁶ Mr. N also wants his arrears to be lowered to reflect his current incarceration.

III. Discussion

CSSD's Motion for Summary Adjudication argues that CSSD should be granted summary adjudication because there are no material issues of fact necessitating a hearing, and

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.
⁶ Exh. 6.

the agency is entitled to judgment as a matter of law. The motion asserts that Mr. N's child support has been set at the minimum amount pursuant to Civil Rule 90.3, based on his incarceration, and it cannot be lowered.

At the hearing, Mr. N testified that he became incarcerated in July 2012 and his anticipated release is in November 2013. He said he recently took a physical and has been cleared for work, so he is waiting for a position to open up in the prison kitchen.

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.⁷ It is a means of resolving an appeal without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts. If undisputed material facts establish that one side or the other must prevail, the evidentiary hearing is not required.⁸

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁹ If the newly calculated child support amount is more than 15% higher or lower than the previous support amount, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified.

Civil Rule 90.3(a)(1) provides that a parent's child support amount is to be calculated based on his or her "total income from all sources." If the parent is incarcerated and does not have any income, the child support must be set no lower than \$50 per month. This is the minimum amount allowed under Alaska law, and it may not be reduced below that figure.¹⁰

The \$50 per month minimum order has been upheld by the Alaska Supreme Court, which stated that a non-custodial parent may lack the present ability to pay an ongoing child support amount, and may even be indigent due to incarceration, but those facts will not excuse the child support obligation.¹¹ Mr. N is incarcerated and does not have the ability to seek work outside of the prison. He is planning to work in the kitchen at his facility, but he will be making only a token amount, typically about 35¢ per hour. As a result of Mr. N's lack of sufficient earned income, CSSD correctly determined that his child support should be set at \$50 per month. Since this is the amount set in his case in 2007, it cannot be modified.

⁷ See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

⁸ See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 Davis & Pierce, *Administrative Law Treatise* § 9.5 at 54 (3d ed. 1994).

⁹ AS 25.27.190(e).

¹⁰ Civil Rule 90.3(c)(1)(B).

¹¹ *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

As to Mr. N's arrears, they also cannot be disturbed. A modification is effective beginning the first of the month after CSSD serves the parties with notice that a modification has been requested.¹² In this case, CSSD issued the notice of modification on June 18, 2012, so even if Mr. N's child support were able to be modified, the effective date of the modification would be July 1, 2012.¹³ There is no provision in the law that would allow the administrative law judge to disturb the arrears that accrued in Mr. N's case prior to the modification date.

IV. Conclusion

There are no material facts in dispute that can be resolved at a formal hearing, so CSSD is entitled to summary judgment as a matter of law. Mr. N is incarcerated and does not have any earned income. As a result, his child support order should remain at \$50 per month, the minimum amount allowed under Civil Rule 90.3. Because there are no material issues of fact, CSSD's Motion for Summary Adjudication should be granted.

V. Order

- Summary Adjudication is GRANTED; the Decision on Request for Modification Review issued on August 2, 2012 is affirmed;
- Mr. N's child support shall remain at \$50 per month;
- All other provisions of the last support order issued, the Modified Administrative Child Support and Medical Support Order dated April 26, 2007, remain in full force and effect.

DATED this 8th day of November, 2012.

Signed

Kay L. Howard
Administrative Law Judge

¹² 15 AAC 125.321(d).

¹³ Exh. 3.

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 26th day of November, 2012.

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

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