

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

IN THE MATTER OF:)

W M. T)

OAH No. 12-0743-CSS

CSSD No. 001114386

DECISION AND ORDER

I. Introduction

The obligor, W M. T, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 18, 2012. The obligee child is D, 11. The custodian is F J. C.

The hearing was held on October 31, 2012. Mr. T participated by telephone; the custodian was reached by telephone, but did not want to participate. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, the Modified Administrative Child Support and Medical Support Order dated September 18, 2012, is affirmed. Mr. T's child support is modified to \$232 per month for one child, effective September 1, 2012.

II. Facts

A. Procedural Background

Mr. T's child support obligation for D was set at \$126 per month in 2009.¹ In July 2012, Mr. T requested a modification review and CSSD notified Ms. C on August 1, 2012.² Mr. T provided some income information,³ and on September 18, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that increased his child support to \$232 per month, effective September 1, 2012.⁴ Mr. T appealed on October 10, 2012, asserting he is homeless and unemployed.⁵ Prior to the hearing, CSSD submitted a revised child support calculation of \$277 per month, based on his 2011 income of \$18,796.26.⁶

¹ Exh. 1.
² Exhs. 2-3.
³ Exh. 4.
⁴ Exh. 6.
⁵ Exh. 7.
⁶ Exh. 9.

B. Material Facts

At the time of the hearing, Mr. T was unemployed. He had been working since June 2012 for a “No Name” office in California, but was laid off at the end of September. He had earned \$7,504.30 from June 10, 2012, through September 23, 2012.⁷

Prior to working for the No Name office, Mr. T had worked for No Name Security Services since 2008. His last full year of earnings for No Name totaled \$18,796.26.⁸

Mr. T is currently living in his car. He stated he is over \$70,000 in debt, but he did not document any of his outstanding bills. Mr. T also stated that he has to repay over \$30,000 in unemployment benefits that were incorrectly paid to him in the past. He estimated his current expenses total about \$500-\$600 per month. He had submitted a list of his expenses that included household-type bills.⁹ When asked to explain why he listed a rental expense when he actually lives in his vehicle, Mr. T stated the expenses he submitted were from his last living situation.

III. Discussion

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. Mr. T’s child support has been \$126 per month since 2009. Thus, a child support calculation of \$144.90 or more would be sufficient to warrant modification in this case.¹¹

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.¹² In this case, the notice was issued on August 1, 2012, so a modification would be effective as of September 1, 2012.¹³ In a child support matter, the person who files the appeal, in this case, Mr. T, has the burden of proving by a preponderance of the evidence that CSSD’s modification order was incorrect.¹⁴

⁷ Exh. 10 at pg. 2.

⁸ 2011 W-2, received on October 31, 2012, later marked by the administrative law judge as Exh. 11, pg. 2.

⁹ Exh. 10 at pg. 1.

¹⁰ AS 25.27.190(e).

¹¹ \$126 x 1.15 = \$144.90.

¹² 15 AAC 125.321(d).

¹³ Exh. 3.

¹⁴ 15 AAC 05.030(h); 2 AAC 64.290(e).

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "[a]djusted annual income . . . mean[ing] the parent's total income from all sources," minus mandatory deductions such as taxes and Social Security.

Mr. T claims that he is currently unemployed and living in his car, so an increase in his child support amount is unwarranted and "insane."¹⁵ He asserted that what is most important is not his past income, but his current "real-time" income, in other words, the fact that he is unemployed and living in his car.

Based on the record as a whole, Mr. T did not meet his burden of proving the modification order CSSD issued on September 18, 2012 is incorrect. There is a gap in the income information Mr. T submitted for 2012. He had apparently earned \$7,504.30 at his No Name job from June 2012 through September 23, 2012.¹⁶ The printout he submitted shows he worked every week during that time period and during most weeks, for 40 hours.¹⁷ But this information is only for the second half of the year. When asked to state his year-to-date income from No Name for the earlier portion of 2012 before he was laid off, Mr. T stated, and repeated, the figure \$18,796.26. However, an examination of the record indicates that was not his income from No Name during the first half of 2012. Rather, it is the amount that was reported on his 2011 W-2 as his No Name earnings from last year.¹⁸ Thus, there is little information in the record about Mr. T's earnings during the first half of 2012. Mr. T did submit a list of six paystubs he received from No Name for the period from May 1, 2012 through October 30, 2012, but the information from January through April was not included.¹⁹

As a result, Mr. T's actual year-to-date income through the end of September 2012 is unknown, and it is impossible to determine whether his child support should be calculated in an amount different than CSSD's modification order. Therefore, since Mr. T did not submit evidence that by a preponderance of the evidence proves the income figure in CSSD's calculation was incorrect, he cannot prevail in this appeal.

Mr. T wanted his child support to be lowered from \$126 per month because he is currently unemployed. However, it is more likely than not that Mr. T's unemployment is a

¹⁵ Exh. 7 at pg. 2.

¹⁶ Exh. 10 at pg. 2.

¹⁷ Exh. 10 at pg. 3.

¹⁸ See Exh. 11 at pg. 2.

¹⁹ See Exh. 11 at pg. 3.

temporary circumstance that will improve when he returns to work or finds another job. The obligor may lack the ability to pay the total child support amount every month while he is unemployed, but there is no evidence that Mr. T is permanently unemployed. He may incur some additional arrears while he is unemployed, but Mr. T should be able to start paying those off once he starts working again. Alaska law generally considers unemployment to be a temporary circumstance that should not result in the downward modification of an obligor parent's child support obligation.²⁰ Prior decisions from the Office of Administrative Hearings follow this approach.²¹

IV. Conclusion

Mr. T did not meet his burden of proving by a preponderance of the evidence that his modified child support amount was incorrect. He did not submit evidence sufficient to establish his actual income. As a result, the modification order CSSD issued should be affirmed.

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order dated September 18, 2012, is affirmed;
- Mr. T's child support obligation for D is modified to \$232 per month for one child, effective September 1, 2012, and ongoing;

DATED this 26th day of November, 2012.

By: Signed _____
Kay L. Howard
Administrative Law Judge

²⁰ *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

²¹ *See In The Matter Of M.J.V.*, OAH Case No. 09-0181-CSS.

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 14th day of December, 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.]