

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

In the Matter of:)	
)	OAH No. 13-1017-CSS
K D. J)	CSSD No. 001106129
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)	

DECISION AND ORDER

I. Introduction

The obligor, K D. J, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on June 6, 2013. The obligee children are E, 12, and C, 11. The custodian is D K. K.

The hearing was held on October 1, 2013. Both parties appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, CSSD’s Modified Administrative Child Support and Medical Support Order setting Mr. J’s child support at \$50 per month is affirmed.

II. Facts

Mr. J’s child support obligation for E and C was set at \$1,183 per month in January 2013.¹ That order was based on Mr. J’s actual income in 2012.²

Mr. J was incarcerated on February 5, 2013.³ On or about February 22, 2013, he requested a modification review.⁴ On March 18, 2013, CSSD sent him a Request for Proof of Change in Circumstances.⁵ On April 2, 2013, Mr. J sent CSSD a statement of his prisoner cash account at the Anchorage Jail, apparently hoping it would establish his change in income to the agency’s satisfaction.⁶ It appears that CSSD did not receive Mr. J’s letter before sending him a Response to Request for Modification Review on April 3, 2013. The Response denied his modification petition because he had not provided sufficient proof that “there has been a 15% or

¹ Exh. 1.
² Exh. 1 at pg. 6.
³ Exh. 4 at pg. 1.
⁴ Exh. 2.
⁵ Exh. A at pg. 3.
⁶ Exh. 4.

greater change in income.”⁷

After receiving Mr. J’s letter with the copy of his prisoner cash account, CSSD evidently reversed its earlier denial of modification, because on April 15, 2013, CSSD issued a Notice of Petition for Modification of Administrative Support Order. The notice informed Mr. J that “[w]e have begun to review your child support order because one of the parties requested the review.”⁸ On May 1, 2013, Mr. J submitted a Child Support Guidelines Affidavit that stated he was incarcerated and did not have access to any of his paperwork.⁹

On June 6, 2013, CSSD granted Mr. J’s petition and issued a Modified Administrative Child and Medical Support Order that set his child support at \$50 per month, effective May 1, 2013.¹⁰ Mr. J sent a letter to CSSD on June 24, 2013 that raised several objections to his child support and that requested “Administrative Reviews” of CSSD’s actions that have “produced these errors. . . .”¹¹ On July 8, 2013, Mr. J followed up his letter to the agency by filing an appeal of the modification order.¹² His appeal asserted the effective date of the modification was incorrect, and also that the January 2013 modification was incorrect.¹³

III. Discussion

As the person who filed the appeal in this case, Mr. J has the burden of proving by a preponderance of the evidence that the agency’s Modified Administrative Child Support and Medical Support Order dated June 6, 2013 is incorrect.¹⁴

A. Modification Overview

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁵ If the newly calculated child support amount is at least 15% higher or lower than the previous order, Civil Rule 90.3(h)¹⁶ assumes “material change in

⁷ Exh. A at pg. 4.

⁸ Exh. 5.

⁹ Exh. 6.

¹⁰ Exh. 7.

¹¹ Exh. 8.

¹² Exh. 9.

¹³ Mr. J claims that his arrears from late 2012 are incorrect because he paid child support directly to Ms. K for several months. At the hearing, Ms. K confirmed his testimony, stating she had received three months of direct payments of \$800 each. However, since the payments were made prior to this modification, this decision cannot credit Mr. J with those payments. The parties should address this issue directly with CSSD.

¹⁴ 15 AAC 05.030(h).

¹⁵ AS 25.27.190(e).

¹⁶ Civil Rule 90.3 contains the guidelines for calculating child support in Alaska. The rule applies to all proceedings in which support is to be determined, whether in court or before CSSD, the administrative agency.

circumstances” exists and the order may be modified.¹⁷ In CSSD cases, the effective date of a modification is the first of the month after CSSD issues a Notice of Petition for Modification of Administrative Support Order.¹⁸ Retroactive modifications (prior to that effective date) are not permitted.¹⁹

Mr. J’s support was set at \$1,183 per month in January 2013.²⁰ There is no dispute that Mr. J’s incarceration on February 5, 2013 created “good cause and material change in circumstances” such that his child support should be modified to \$50 per month. Rather, the issue in this appeal is whether the May 1, 2013 effective date of the modification is correct. Mr. J claims that it should be earlier, either April 1, 2013, or March 1, 2013.

B. CSSD Modification Procedures

Pursuant to CSSD’s regulation 15 AAC 125.316, sections (a) and (b), CSSD is authorized to initiate a review of a child support order in response to a request from a party to the order, or on its own initiative, based on several factors not relevant here. The agency’s regulations state that when a review under either section (a) or (b) is initiated:

the agency will send a notice of petition for modification and a request or an order for production of financial and medical information . . . by first class mail or electronic means to each parent subject to the support order^[21]

The notice of petition for modification alerts the non-requesting party that a review of the order has been requested and it also identifies the effective date of the modification – according to 15 AAC 125.321(d), a modification is effective beginning the month after the parties are served with notice that a modification has been requested.²²

CSSD’s current practice is to combine the notice of petition for modification and the order for the parties to provide their income information.²³ The notice gives the parties 30 days to submit financial information and supporting documentation.²⁴ After CSSD receives the required information, the agency will review the support order to determine if a modification is

¹⁷ CSSD’s April 3, 2013 Response to Request for Modification Review that CSSD issued incorrectly states the law on this issue – it is the *support amount*, not the obligor’s income, that must have changed by 15%.

¹⁸ 15 AAC 125.321(d). This document is also informally referred to as a notice of petition for modification.

¹⁹ Civil Rule 90.3(h)(2).

²⁰ Exh. 1.

²¹ 15 AAC 125.316(c).

²² *See also* Civil Rule 90.3(h)(2).

²³ *See, e.g.*, Exh. 5.

²⁴ *Id.*

warranted, and then issue a written order either granting or denying the petition.²⁵ If the requesting party does not submit sufficient financial information, CSSD is not required to grant the modification review.²⁶ In that case, CSSD sends the party who filed the petition a response that states the request is denied.

When Mr. J submitted his request for modification on February 22, 2013, CSSD did not issue a Notice of Petition for Modification of Administrative Support Order. Instead, CSSD chose to first send him a Request for Proof of Change in Circumstances. The request order states in relevant part:

We are in receipt of your Request for Modification. Your current order was issued on January 10, 2013. Before we can process your request, you must provide evidence or proof that a material change of circumstances has occurred.^[27]

Mr. J's request came within about six weeks of his January modification. CSSD apparently doubted he could have experienced a change in circumstances in that period of time, so the agency required him to prove he was entitled to a modification even before issuing the notice of petition for modification.

After Mr. J provided a copy of his prisoner cash account at the Anchorage Jail, CSSD issued a notice of petition for modification on April 15, 2013, thus making the modification effective on May 1, 2013. The notice directed the parties to submit financial information and stated that “[w]e have begun to review your child support order[,]”²⁸ but it appears CSSD had already concluded Mr. J would be entitled to a modification because of his incarceration.

CSSD's position is that the agency is authorized to require the party requesting modification to prove that the newly-calculated child support amount would exceed the 15% minimum change required in Civil Rule 90.3(h). CSSD is correct on that point. Regulation 15 AAC 125.316(e) states in relevant part that in response to a modification request:

the agency may require the party that asks for the review [under 15 AAC 125.316(a)] to provide evidence that the child support award as calculated under 15 AAC 125.070 and the child support guidelines of Alaska Rule of Civil Procedure 90.3 is more than 15 percent greater or less than the support obligation that is set out in the current support order.

²⁵ 15 AAC 125.321(a).

²⁶ 15 AAC 125.316(e).

²⁷ Exh. A at pg. 3.

²⁸ Exh. 5.

However, this regulation does not authorize CSSD to require a party to prove the 15% change before the agency even sends out a notice that the modification has been requested. CSSD's modification regulations describe a process in which the *first* agency action after receiving a petition for review is to issue a "notice of petition for modification and a request or an order for production of financial and medical information. . . ." ²⁹ Then, after the parties submit their required information, or fail to do so, CSSD may issue an order granting or denying the petition.

By requiring Mr. J to prove a change in circumstances before issuing a notice of petition for modification after he filed his request, CSSD essentially reversed the usual modification process set forth in its regulations. As a result, CSSD delayed Mr. J's modification by two months. ³⁰ This represents a significant impact on him. His prior child support order was \$1,183 per month, so he became liable for an additional \$2,266 in support arrears, not including interest and other fees, for charges incurred in March and April 2013. ³¹

C. The Effective Date of Mr. J's Modification Cannot be Moved Back

All the above having been said, however, there is no provision in Alaska law that would allow the effective date of Mr. J's modification to be moved back to March or April 2013. As explained previously, Civil Rule 90.3(h)(2) and regulation 15 AAC 125.321(d) specifically provide that the effective date of a modification is the first of the month after CSSD issues a notice of petition for modification. The Alaska Supreme Court has affirmed this bright line rule in *CSED v. Dillon* ³² and in subsequent cases. The rule is designed to inform the non-requesting party that a modification has been requested. This gives him or her:

fair warning that support may change and an opportunity to . . . adjust consumption patterns in anticipation of modification, and thus minimize prejudice when relief is granted effective as of the service date. ^[33]

The court further explained that making a modification effective upon service of the notice also

²⁹ 15 AAC 125.316(c).

³⁰ CSSD received Mr. J's request on February 22, 2013. The agency routinely issues a notice of petition for modification within 5-7 days of receiving a request for modification review. *See, e.g., In the Matter of K.L.D.*, OAH No. 13-0577-CSS (Commissioner of Revenue August 2013); *In the Matter of K.C.B.*, OAH No. 13-0549-CSS (Commissioner of Revenue June 2013). Thus, it is quite likely that CSSD would have issued the notice of petition on or before February 28, 2013, making his modification effective on March 1, 2013 instead of May 1, 2013. *See* 15 AAC 125.321(a).

³¹ $(\$1,183 \times 2) - (\$50 \times 2) = \$2,366 - 100 = \$2,266.$

³² 977 P.2d 118 (Alaska 1999).

³³ 977 P.2d at 120.

protects the parties from tactical delays created by one or the other.³⁴ This is because, unlike this case, a modification typically results in an increased child support amount, so the obligor parent would desire a delay in the effective date. Here, Mr. J's modification *reduced* his child support obligation, so it was the delay in issuing the notice that adversely affected him. Unfortunately, the law does not address the situation where CSSD fails to issue a notice of petition for modification following receipt of a request. As a result, there is no relief available to Mr. J in a formal hearing at the administrative level.

IV. Conclusion

Mr. J did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). After Mr. J requested a modification review on February 22, 2013, CSSD delayed issuing a notice of petition for modification until April 15, 2013. However, Alaska law clearly requires that a modification becomes effective the first of the month after CSSD issues the notice, and there is no relief available to the parties when CSSD delays issuing the notice. CSSD's modification order should be affirmed.

V. Child Support Order

- CSSD's June 6, 2013 Modified Administrative Child Support and Medical Support Order that modified Mr. J's child support to \$50 per month is affirmed.

DATED this 9th day of January, 2014.

Signed

Kay L. Howard
Administrative Law Judge

³⁴ *Id.*

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 27th day of January, 2014.

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

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