

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

In the Matter of :)	
)	OAH No. 13-1362-CSS
N A. N)	CSSD No. 001166864
_____)	

DECISION AND ORDER

I. Introduction

The obligor, N A. N, appealed a Decision on Request for Modification Review that the Child Support Services Division (CSSD) issued in her case on December 13, 2012. The response denied her request for modification review of the child support amount established in November 2010. The obligee child is T, 15. The custodian of record in this case is E B. N.

The hearing was held on October 29, 2013 and November 6, 2013. Both parties appeared by telephone, although Mr. N chose not to participate in the second hearing. Russell Crisp, Child Support Specialist, represented CSSD. Final record closure occurred on December 23, 2013, when Ms. N filed copies of medical records that she had redacted. The hearings were recorded.

Based on the evidence and after careful consideration, CSSD's Decision on Request for Modification Review is affirmed. Ms. N has not shown a material change in circumstances sufficient to modify her child support order, which shall remain at \$255 per month for one child.

II. Facts

A. Procedural Background

Ms. N's child support obligation for three children was set at \$420 per month in November 2010.¹ The two oldest children have both emancipated, leaving Ms. N obligated to pay support for T, the youngest, based on the one-child amount of \$255 per month from the 2010 order.

On November 8, 2012, Ms. N initiated a modification review.² On November 14, 2012, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Ms. N did not provide income information, so CSSD denied her request by issuing a Decision on Request for Modification Review on December 13, 2012.⁴ On July 3, 2013, Ms. N sent a letter to CSSD to

¹ Exh. 1 at pg. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.

complain about the agency's method of communicating with her. She stated that she lives in a remote location in No Name and never receives mail from the U.S. Postal Service, so she needed CSSD's contact with her to be via email. CSSD initially denied her request but later began sending its correspondence by email.⁵

Ms. N requested another modification via email on August 13, 2013, so on August 20, 2013, CSSD issued another Notice of Petition for Modification of Administrative Support Order.⁶ Ms. N provided additional income information and filed an appeal before CSSD issued a decision on her most recent request for modification.⁷ At the hearing, the parties agreed that because of the difficulties Ms. N had communicating with CSSD, her appeal would apply to the Decision on Request for Modification Review CSSD issued on December 13, 2012.

B. Material Facts

Ms. N lives with her boyfriend, U, in a remote location in No Name, where U is employed as the caretaker of a personal residence. They have been at this location for approximately 20 months. Ms. N gets back and forth to the Anchorage area by hitching a ride on a boat to No Name, then, because she does not have a vehicle, by getting a ride to or hitchhiking into Anchorage. She does not have any income other than her PFD, so U gives her money to purchase their food and supplies at Costco. U also pays her other incidental expenses, such as her cell phone bill.

When Ms. N's child support was established in 2010, she was working at the No Name as a caretaker. She was not required to do hard physical labor, just report the weather and keep the lodge tidy. She testified that she had to be flown out of No Name because of massive headaches she was having. Ms. N was seen at the Providence Family Medical Center for the headaches.⁸ She was treated with medication, but her medical records do not indicate the cause was ever determined.

Ms. N was seen again in September 2013, this time at the No Name Health Center (NNHC). She complained of stress, carpal tunnel syndrome, chronic pain, and persistent insomnia.⁹ She noted that her headaches had improved somewhat, but they were not a primary

⁵ Exhs. 5-6.

⁶ Exh. 7.

⁷ Exhs. 8-9.

⁸ Ms. N's documents, received on November 13, 2013, marked by the OAH as Exh. A at pg. 2.

⁹ Ms. N's documents, received on December 23, 2013, marked by the OAH as Exh. B at pg. 14.

focus of her appointment.¹⁰ She had follow up appointments on October 17th,¹¹ October 28th,¹² and November 6th.¹³ The physician's assistant (PA) Ms. N saw at three of her four visits to the NNHC concluded Ms. N likely has lumbago, not fibromyalgia, and that she may need surgery in the future for carpal tunnel syndrome.¹⁴ The PA also indicated that Ms. N's muscle spasms may be related to stress, or possibly depression,¹⁵ and prescribed an antidepressant during Ms. N's final visit.¹⁶ However, the PA specifically noted that Ms. N has "no physical disability."¹⁷

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁸ 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. Ms. N's child support for T has been \$255 per month since June 2012, when the parties' next older child emancipated and T became the last remaining minor. Thus, to warrant modification, the child support calculation would have to change by at least \$38.25 in order to meet the required 15% change.¹⁹

In this case, CSSD declined to perform a modification review because Ms. N did not timely submit income information. However, at the hearing, the parties agreed, given Ms. N's inability to receive postal service mail on a regular basis, that the appeal should address the substance of the modification denial dated December 13, 2012. Thus, any modification ordered here would be effective December 1, 2012, pursuant to 15 AAC 125.321(d).

Civil Rule 90.3 is the court rule that directs how child support obligations are to be calculated in Alaska. According to Civil Rule 90.3(a)(1), an obligor's child support amount is to be calculated based on his or her "total income from all sources."

The obligor parent has the burden of proving his or her earning capacity.²⁰ An obligor who claims he or she cannot work or pay child support because of a disability or similar

¹⁰ Exh. B at pg. 15.

¹¹ Exh. B at pgs. 11-13.

¹² Exh. B at pgs. 8-10. Ms. N had a stress test for shortness of breath at her October 28th appointment.

¹³ Exh. B at pgs. 5-7.

¹⁴ Exh. B at pg. 7.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ AS 25.27.190(e).

¹⁹ \$255 x 15% = \$38.25.

²⁰ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

impairment, must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.²¹

Ms. N submitted two sets of medical records from two different time periods during which she sought treatment for then-existing medical problems. However, Ms. N has not been able to prove that any of her medical issues prevent her from working. Her headaches, while somewhat serious in 2010, have abated slightly and Ms. N's appointments at the NNHC referred to her headaches only in passing. Also, it does not appear that Ms. N has fibromyalgia, as she feared. In fact, other than carpal tunnel syndrome, Ms. N's medical records do not indicate any condition more serious than depression, for which she was prescribed medication by her care provider at NNHC.

Thus, Ms. N has not shown that she cannot work or pay child support because of a disability or similar impairment. As a result, her child support obligation should remain unchanged.

IV. Conclusion

Ms. N did not meet her burden of proving by a preponderance of the evidence that CSSD's Decision on Request for Modification Review was incorrect. Ms. N did not prove that she cannot work because of a medical condition, so there has not been a "material change in circumstances" sufficient to modify her child support order from the current amount of \$255 per month. CSSD's order denying modification should be affirmed.

V. Child Support Order

- CSSD's Decision on Request for Modification Review is affirmed – Ms. N's child support for T remains at \$255 per month;
- All other provisions of the prior order – the Administrative Child Support and Medical Support Order CSSD issued on November 16, 2010 – remain in full force and effect.

DATED this 15th day of January, 2014.

Signed _____
Kay L. Howard
Administrative Law Judge

²¹ *Id.* at 1371.

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 3rd day of February, 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.]