

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

In the Matter of:)	
)	OAH No. 14-0529-CSS
S W. R)	CSSD No. 001184739
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DECISION AND ORDER

I. Introduction

S W. R filed an appeal of a Modified Administrative Child Support and Medical Support Order the Child Support Services Division (CSSD) issued on March 20, 2014. The obligee child is B, 4 years of age. The custodial parent is Z L. R.

The formal hearing was held on April 24, 2014. Mr. R’s mother and power of attorney, Y X, appeared by telephone on his behalf. Ms. R could not be reached and thus did not participate. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after careful consideration, CSSD’s Modified Administrative Child Support and Medical Support Order is affirmed. Mr. R did not meet his burden of proof. His unemployment does not appear to be anything other than a temporary circumstance. His child support should remain at \$326 per month.

II. Facts

A. Procedural History

Mr. R’s child support obligation for B was set at \$326 per month in December 2012.¹ In December 2013, Mr. R requested a modification review and CSSD notified Ms. R.² Mr. R provided financial information.³ On March 20, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified his child support order by adding a visitation credit, but did not modify the ongoing child support.⁴ He appealed on April 1, 2014, asserting he had been unemployed since September 2013.⁵

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

B. Material Facts

Mr. R and Ms. R are the parents of B, who is 4 years old. B lives full-time with her mother.

Mr. R was in the military for 8 years and his mother testified that he is disabled, but there is nothing in the record that documents his status as a disabled veteran. Mr. R is in the No Name and attends weekend drills once a month, for which he received a total of \$4,393 in 2013.⁶ In terms of his primary job, Mr. R is currently unemployed. He previously worked for No Name, Inc. doing no name installations. He earned \$24,177.40 from No Name in 2013.⁷ He received a total of \$28,570.42 from both employers in 2013.⁸

Mr. R was laid off from No Name in September 2013, which his mother claimed was because he has medical problems due to his military service. Apparently, exposure to the cold weather working for No Name caused him to be sick and miss work frequently, so he was laid off.

Mr. R has been looking for work in his area of expertise – communications and electronics – but he has only had one call from a potential employer. Ms. X stated she told Mr. R he was going to have to take any job he could get.

III. Discussion

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 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. R’s child support was set at \$326 per month in September 2012. Thus, a calculation at least \$48.90 more or less than \$326 would be sufficient to warrant modification in this case.¹⁰

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.¹¹ In this case, the notice was issued on December 26, 2013, so a modification would be effective as of January 1, 2014.¹² In a child

⁶ Exh. 8.

⁷ *Id.*

⁸ *Id.*

⁹ AS 25.27.190(e).

¹⁰ \$326 x 15% = \$48.90

¹¹ 15 AAC 125.321(d).

¹² Exh. 3.

support matter, the person who files the appeal has the burden of proving that CSSD's order was issued in error.¹³ Mr. R filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.¹⁴ That order did not modify Mr. R's ongoing child support – it merely added a long-term visitation credit in the event he has overnight visitation with B for more than 27 consecutive days.

A. Total Income from all Sources

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," minus mandatory deductions such as taxes and Social Security. Mr. R received a total of \$28,570.42 in 2013. A child support calculation based on his total 2013 income would be \$411 per month. If just his No Name earnings were used, the calculation would be \$82 per month. Given that he is now unemployed, it is not reasonable to use either income figure to modify Mr. R's child support amount. Alaska law directs the tribunal to make a determination of the parent's support obligation based on "the income which will be earned when the support is to be paid."¹⁵ For this modification, that time period is after January 2014. The problem is that Mr. R has not proven what his 2014 income likely will be. True, he has been receiving unemployment benefits, but those funds are by their nature temporary, and do not actually represent Mr. R's income.

Without more information, it is more likely than not that Mr. R's unemployment status is a temporary circumstance. He may lack the ability to pay the total child support amount every month and thus he may incur some additional arrears, but there is no evidence that Mr. R is permanently unemployed. The Alaska Supreme Court has stated that unemployment is generally considered to be a temporary circumstance that should not result in the reduction of an obligor parent's child support.¹⁶ Prior decisions from the Office of Administrative Hearings follow this approach,¹⁷ and there is no reason not to follow that same approach in this case. Mr. R's child support should not be modified until he has secured employment and is earning a consistent income figure.

¹³ 15 AAC 05.030(h).

¹⁴ 2 AAC 64.290(e).

¹⁵ Civil Rule 90.3, Commentary III.E.

¹⁶ *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

¹⁷ *See In The Matter Of M.J.V.*, OAH Case No. 09-0181-CSS.

IV. Conclusion

Mr. R did not meet his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated March 20, 2014 is incorrect. Mr. R appears to be temporarily unemployed, so his child support should not be reduced. His is currently unemployed and his annual income cannot be determined from his earnings at this time. The modification order adjusting only the visitation credit should be affirmed.¹⁸

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order dated March 20, 2014 is AFFIRMED;
- Mr. R’s child support for B shall remain at \$326 per month.

DATED this 13th day of May, 2014.

Signed

 Kay L. Howard
 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 2nd day of June, 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.]

¹⁸ Mr. R’ appeal did not address the visitation credit.