

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

In the Matter of:)	
)	OAH No. 14-0575-CSS
E R. X)	CSSD No. 001047299
_____)	

DECISION AND ORDER

I. Introduction

E R. X appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 21, 2014. The obligee child is E, 16. The custodian is T F. O.

The hearing was held on May 6, 2014. Mr. X appeared by telephone. Ms. O could not be reached, nor did she return a voicemail message left just before the hearing, so she did not participate. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, the Modified Administrative Child Support and Medical Support Order dated February 21, 2014 is affirmed. Mr. X's child support obligation for E is modified to \$261 per month, effective January 1, 2014. Mr. X did not provide the documents he agreed to provide regarding his medical condition and ability to work, nor did he provide his complete federal income tax return.

II. Facts

A. Procedural History

Mr. X's child support obligation for E was set at \$50 per month for two children in 2001.¹ On December 4, 2013, Ms. O requested a modification review.² On December 9, 2013, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. X did not provide income information.⁴ On February 21, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. X's child support to

¹ Exh. 2. The older child has since emancipated and E is the one child remaining on Mr. X's order.

² CSSD's Pre-hearing Brief at pg. 1.

³ Exh. 3.

⁴ Pre-Hearing Brief at pg. 1.

\$261 per month, effective January 1, 2014.⁵ On February 28, 2014, CSSD issued a correction to the modification order regarding a typographical error.⁶ Mr. X appealed on March 27, 2014, and submitted two pages of his 2013 federal income tax return.⁷

B. Material Facts

Mr. X testified that he cannot afford the child support modification because he is minimally employed due to medical issues. He said he was in a motorcycle accident three years ago and had to have back surgery in which his two vertebrae, L-5 and S-1, were removed. Mr. X said that he has to have another surgery to put two 6” rods into his spine. He is able to work at temporary jobs occasionally, but essentially he and his family are surviving on welfare and living with his mother-in-law in Florida. Mr. X and his wife, H, have two children, 4 years of age and 5 months of age. H cannot work because she would not be able to earn as much as the cost of child care they would have to pay for their children if she did work. Mr. X added that he suffers from ADD and ADHD, including other issues.

Mr. X filed two pages of an unsigned tax return with this appeal.⁸ The only income reflected on the return is business income from a Schedule C in the amount of \$9,705.⁹ Mr. X’s occupation was listed as “Restoration,” which he described as “mechanical restoration” of equipment. His total tax obligation for 2013 was \$1,371.¹⁰ He stated he occasionally gives H’s mother help with household expenses, and their regular bills are \$100-\$120 for fuel, \$400 for food; and \$7,500 for medical bills.

At the end of his testimony, Mr. X was asked to provide medical documentation of his condition and his ability to work. He testified that he did not yet have a primary care doctor, but he had an appointment to see a doctor in about two weeks. Otherwise, he has to go to the emergency room for medical care. Mr. X was also asked to provide his complete 2013 tax return, and he agreed to submit all of the documentation by June 6, 2014. However, as of this date, no additional evidence has been received from Mr. X.

⁵ Exh. 4.
⁶ Exh. 5.
⁷ Exh. 6.
⁸ Exh. 6 at pgs. 2-3.
⁹ Exh. 6 at pg. 2.
¹⁰ Exh. 6 at pg. 3.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹¹ 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. X’s child support has been \$50 per month since 2001.

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 December 9, 2013, so any modification of Mr. X’s child support obligation for E would be effective as of January 1, 2014.¹³

In a child support matter, the person who files the appeal has the burden of proof.¹⁴ Mr. X filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated February 21, 2014 is incorrect.¹⁵

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.” The obligor parent has the burden of proving his or her earning capacity.¹⁶ An obligor who claims he or she cannot work or pay child support because of a disability or similar impairment, must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.¹⁷

In its modification review, CSSD prepared a child support calculation for Mr. X based on the minimum wage of \$7.93 per hour in Florida, where he currently resides.¹⁸ This hourly amount was multiplied by 2,080 hours, the number of hours a full-time employee would work during the year. The resulting annual income, \$16,494.40, yields a child support amount of \$261 per month.¹⁹ CSSD adopted this figure in its modification order.

Mr. X testified that he can work only minimally due to medical problems arising from a motorcycle accident and surgery, and that he has another surgery coming up. However, he failed

¹¹ AS 25.27.190(e).

¹² 15 AAC 125.321(d).

¹³ See Exh. 3.

¹⁴ 15 AAC 05.030(h).

¹⁵ 2 AAC 64.290(e).

¹⁶ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁷ *Id.* at 1371.

¹⁸ Exh. 4 at pg. 7.

¹⁹ Exh. 4 at pg. 3.

to submit any of the medical documents he agreed to provide during the hearing. He also failed to submit the complete 2013 tax return that he agreed to provide. In the absence of these documents, there is insufficient evidence to overcome CSSD's determination. Mr. X has not met his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order is incorrect, and the agency's order should be affirmed.

IV. Conclusion

Mr. X did not provide the income information requested of him after the hearing. Thus, he has not met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated February 21, 2014 is incorrect. The order should be affirmed, without variance under Civil Rule 90.3(c).

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order dated February 21, 2014 is affirmed;
- Mr. X's child support obligation for E is modified to \$261 per month, effective January 1, 2014.

DATED this 4th day of August, 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 22nd day of August, 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.]