

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

In the matter of: )

E G. X )

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OAH No. 14-0988-CSS

CSSD Case No. 001104662

**DECISION AND ORDER**

**I. Introduction**

The obligor, E G. X, appealed an Amended Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on May 29, 2014. This order added the child D to an existing order and increased Mr. X's monthly support obligation to \$220 per month for two children as of February, 2014. The custodian of record is M H. T. The obligee children are D and N. The obligor participated by telephone. Ms. T could not be contacted by phone or mail.<sup>1</sup> Russell Crisp, Child Support Specialist, represented CSSD.

Mr. X is liable for support in the amount of \$220 per month for two children effective February, 2014 and ongoing. Mr. X is also liable for arrears for D only for the months of December 2013, and January 2014, in the amount of \$114. CSSD's May 29, 2014 Amended Modified Administrative Child Support and Medical Support Order is Affirmed.

**II. Facts**

This is a State initiated establishment and modification action to add Mr. X's son, D, to an existing support order for his daughter, N. The existing order set Mr. X's child support obligation at \$50 per month for one child, N.<sup>2</sup> On December 5, 2013, CSSD was notified that D and N were living with relatives and receiving public assistance.<sup>3</sup> In January CSSD gave notice of its intention to establish support for D and modify N's order by adding D.<sup>4</sup>

On May 29, 2014 CSSD issued its Amended Modified Administrative Child Support and Medical Support Order. It based the amount of support owing using Mr. X's Social Security Disability Income (SSDI) and Permanent Fund Dividend as income. For 2013, CSSD annualized a monthly SSDI payment of \$740 per month and for 2014, it annualized a monthly SSDI payment of \$762 per month.<sup>5</sup> Using these amounts, CSSD calculated total arrears owing

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<sup>1</sup> Service is effective if mailed to the latest address provided to the department. 15 AAC 05.010(c).

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 4 at 7.

for D for the months of December 2013 and January 2014 at \$114, and effective February 2014 and ongoing, Mr. X monthly support obligation is \$220 for two children.<sup>6</sup>

To date, the only evidence submitted by Mr. X is his uncorroborated testimony that he was taking custody of D, that he was no longer receiving SSDI, and that he could not work due to medical issues.

The first telephonic hearing in this matter took place on July 9, 2014. At that time it was agreed that the hearing would be continued so Mr. X could have an opportunity to obtain records in support of his challenge to CSSD's May 29, 2014 Modified Administrative Child Support and Medical Support. The hearing was continued to August 7, 2014. D's guardians provided court orders granting their petition for long term guardianship.

Without further submission from Mr. X, the August 7, 2014 hearing commenced. Mr. X stated that he had been in the hospital and was unable to gather the necessary paperwork. When the parties were providing their respective positions on granting a second continuance, Mr. X hung up before he could explain why he believed the division's Modified Administrative Child Support and Medical Support Order is in error.

While hanging up could be considered an abandonment of the appeal, if Mr. X was hospitalized, then it was appropriate to keep the record open for a short period of time to provide him with a final opportunity to submit evidence in support of his position(s). An Order Keeping Record Open for Limited Period of Time (dated August 7, 2014) was issued. That order provided Mr. X with additional guidance regarding the type of evidence he may want to consider and additional time to submit corroborating evidence. The record closed August 22, 2014 without further submission or participation from Mr. X.

### **III. Discussion**

Although difficult to ascertain with certainty, it appears that Mr. X is arguing that 1) his income is overstated because he no longer receives Social Security Disability Insurance (SSDI) or any other form of public assistance except some Medicaid; 2) his medical condition precludes him from working; and 3) in the alternative, if CSSD correctly calculated his income from all sources, he would like a hardship variance.

The amount of child support received by a child is based on the parent's ability to pay.<sup>7</sup> As the obligor, Mr. X has the burden of proving his earning capacity.<sup>8</sup> Also, because he filed the

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<sup>6</sup> Exhibit 7.

appeal, Mr. X has the burden of proving that CSSD's order is incorrect.<sup>9</sup> This means Mr. X must prove by a preponderance of the evidence his income for purposes of child support, and that if CSSD used this figure, the amount of support owing would be different from the amount order in the Amended Modified Administrative Child Support and Medical Support Order dated May 29, 2014.<sup>10</sup>

Using the record developed to date, Mr. X's claims will be examined. As to his SSDI benefits, if Mr. X's benefits had terminated as he claims, then it is reasonable to expect that there should be a notice from the agency terminating the benefit. Similarly, if he is no longer receiving SSDI, there should be some record of what he was receiving and why the payments stopped. Mr. X provided no additional evidence to corroborate his claim.

If Mr. X is claiming he cannot work or pay child support because of a disability or similar impairment, he was instructed to provide sufficient proof of the medical condition such as testimony or other evidence from a physician.<sup>11</sup> This he has not done.

Finally, if Mr. X is claiming that unless the amount of child support ordered was varied he would incur a hardship, he must establish good cause by clear and convincing evidence that it would be manifestly unjust if the amount of support ordered was not varied.<sup>12</sup> "Good cause" may be found if there are unusual circumstances which require a variation in the amount of support ordered to avoid manifest injustice.<sup>13</sup> Manifest injustice, in turn, requires a finding that a reasonable person would be convinced that the award is either unjustly large or unjustly small.<sup>14</sup> As with the other arguments, evidence in support of a hardship variance is scant or nonexistent.

The first telephonic hearing in this matter took place on July 9, 2014. The second hearing took place August 7, 2014. Mr. X hung up during the proceeding. While hanging up could be considered an abandonment of the appeal, if Mr. X was hospitalized, then it is appropriate to keep the record open for a short period of time to provide him with a final opportunity to submit evidence in support of his position appeal. Without further participation from Mr. X, the record closed August 22, 2014.

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<sup>7</sup> Commentary Civil Rule 90.3 I B.

<sup>8</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

<sup>9</sup> 15 AAC 05.030(h).

<sup>10</sup> 2 AAC 64.290(e).

<sup>11</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1371 (Alaska 1991).

<sup>12</sup> Alaska Rule Civil Procedure 90.3(c)(1).

<sup>13</sup> Alaska Rule Civil Procedure 90.3(c)(1); 15 AAC 125.075.

<sup>14</sup> 15 AAC 125.080.

**IV. Conclusion**

Mr. X was provided ample opportunity to submit evidence in support of his appeal. The limited evidence submitted is insufficient to meet Mr. X’s burdens of proof. He has failed to establish by a preponderance of the evidence that CSSD’s May 29, 2014 order was issued in error. He has failed to establish by clear and convincing evidence that there is good cause to vary the child support ordered. The CSSD’s May 29, 2014 Amended Modified Administrative Child Support and Medical Support Order should be affirmed.

**V. Order**

CSSD’s May 29, 2014 Amended Modified Administrative Child Support and Medical Support Order is AFFIRMED.

DATED this 10<sup>th</sup> day of September, 2014.

By: Signed  
Rebecca L. Pauli  
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 23<sup>rd</sup> day of October, 2014.

By: Signed  
Signature  
Angela M. Rodell  
Name  
Commissioner  
Title

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