

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

In the Matter of)	
)	
D J. X)	OAH No. 14-1700-CSS
_____)	Agency No. 001166236

DECISION AND ORDER

I. Introduction

The obligor, D J. X, appealed a Modified Administrative Child Support and Medical Support Order that CSSD issued in his case on August 26, 2014. That order lowered his child support for K, 5, from \$337 to \$250 per month, effective July 1, 2014. The custodian of record is S A. T.

The hearing was held on November 25, 2014. Mr. X appeared by telephone. Two calls were placed to Ms. T, and a voicemail message left for her, but as of the date of this decision, she has not contacted the OAH. Joe West, 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 dated August 26, 2014 is affirmed.

II. Procedural Facts

Mr. X's child support for K was set at \$337 per month in 2010.¹ On June 17, 2014, he requested a modification.² On June 26, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Mr. X did not submit any additional information. On August 26, 2014, CSSD issued a Modified Administrative Child and Medical Support Order that set his child support at \$250 per month, effective July 1, 2014.⁴ Mr. X appealed on September 25, 2014, stating that he had been incarcerated from May 2013 through August 17, 2014, so he could not have earned the income CSSD attributed to him.⁵ Prior to the hearing, CSSD submitted a

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.

statement of Mr. X's historical earnings from the Alaska Department of Labor and Workforce Development.⁶

III. Discussion

As the person who filed the appeal in this case, Mr. X has the burden of proving by a preponderance of the evidence that the agency's Modified Administrative Child Support and Medical Support Order is incorrect.⁷

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁸ If the newly calculated child support amount is at least 15% higher or lower than the previous order, Civil Rule 90.3(h)⁹ assumes "material change in circumstances" exists and the order may be modified.¹⁰

The only issue raised in this appeal is the effective date of Mr. X's modification. He stated during the hearing that he is asking for modification of his support obligation only while he was incarcerated, from May 2013 through August 17, 2014.¹¹ He wants his child support reduced from \$337 to \$50 per month for that period of time. He is correct that the \$50 per month figure is typical for an obligor parent who is in jail.¹² This amount has been upheld by the Alaska Supreme Court for incarcerated individuals who have a child support obligation.¹³

Unfortunately for Mr. X, the \$50 per month minimum order cannot be applied to all of the months he was incarcerated because the modification was not in effect until July 1, 2014. CSSD's regulations dictate that the effective date of a modification is the first of the month after CSSD issues a notice that a modification has been requested.¹⁴ Child support modifications are *prospective* only. Retroactive modifications (prior to the effective date) are not permitted.¹⁵

In this case, Mr. X submitted a written request for modification of his child support order on June 17, 2014.¹⁶ CSSD issued the notice of his request on June 26, 2014, so the effective date

⁶ Exh. 6.

⁷ 15 AAC 05.030(h).

⁸ AS 25.27.190(e).

⁹ 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.

¹⁰ Civil Rule 90.3(h)(1).

¹¹ Mr. X stated at least twice that he only wanted his child support reduced during his jail time. Thus, he has effectively waived any challenge of the ongoing child support figure of \$250 per month.

¹² Civil Rule 90.3(c)(1)(B).

¹³ *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

¹⁴ 15 AAC 125.321(d).

¹⁵ Civil Rule 90.3(h)(2).

¹⁶ Exh. 2.

of his modification is July 1, 2014.¹⁷ Since he was incarcerated until August 17, 2014, his child support should be set at \$50 per month for July and August 2014, but his support obligation for the months prior to July 2014 cannot be adjusted.

Mr. X's comments during the hearing suggest that he believes CSSD should have seen he was incarcerated and automatically reduced his support to \$50 per month. However, the process does not work that way. CSSD does not have the resources to monitor an obligor parent's circumstances and adjust his or her child support obligation automatically if the person is incarcerated. In modifications especially, it is the individual's responsibility to inform CSSD that his or her situation has changed, and to request a modification review. Mr. X did inform CSSD on June 17, 2014 that he was in jail, but his child support cannot be modified until the effective date of July 1, 2014.

IV. Conclusion

Mr. X met 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). However, only the months of July and August 2014 may be adjusted to \$50 per month to reflect his incarceration because the modification became effective on July 1, 2014. Mr. X stated this was his only issue on appeal, so the ongoing figure of \$250 per month should be affirmed, as of September 1, 2014.

V. Child Support Order

- Mr. X's child support is modified to \$50 per month for July and August 2014; and further modified to \$250 per month, effective September 1, 2014, and ongoing;
- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order dated August 26, 2014 remain in full force and effect.

Dated: May 20, 2015

Signed _____
Kay L Howard
Administrative Law Judge

¹⁷ Exh. 3.

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 within 30 days after the date of this decision.

DATED this 3rd day of June, 2015.

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

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