

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

In the Matter of)	
)	
C T. X)	OAH No. 14-1962-CSS
_____)	Agency No. 001193413

DECISION AND ORDER

I. Introduction

The obligor, C T. X, appealed a Decision on Request for Modification Review that the Child Support Services Division (CSSD) issued in his case on October 23, 2014. That decision denied his request for modification review of the \$636 child support amount set in a consent order in February 2014. The obligee child is U, 7. The custodian of record in this case is N S. J.

The hearing was held on December 2, 2014. Both parties appeared by telephone. Joe West, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, CSSD's Decision on Request for Modification Review is affirmed. Mr. X has not shown a material change in circumstances sufficient to modify his child support order, which shall remain at \$636 per month for one child.

II. Facts

A. Procedural Background

Mr. X's child support for U was set at \$636 per month in a consent agreement in February 2014.¹ On October 1, 2014, Mr. X requested a modification review. On October 6, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order.² Mr. X filed his 2013 tax return and paystubs from 2014.³ On October 23, 2014, CSSD issued a Decision on Request for Modification Review that denied the request for modification.⁴ Mr. X appealed on October 27, 2014.⁵ Before the hearing, CSSD filed his wage history from 2012 through early 2014 from the Alaska Department of Labor and Workforce Development.⁶

B. Material Facts

Mr. X is a commercial pilot. He previously worked for a regional airline in Alaska, where he earned \$43,107.69 in 2012 and \$44,044.22 in 2013.⁷

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.
⁶ Exh. 6.
⁷ Exh. 6.

Mr. X was arrested on a misdemeanor charge in March 2014 and apparently lost his job because of it. He spent the next six months in a halfway house, but he was not allowed to work outside the facility. At the time of the December 2014 hearing, Mr. X was staying rent-free with a friend. He had regular expenses for food, gas, his cell phone and student loans. His parents had previously paid off the last \$5,000 on his car, so he did not have a car payment. Mr. X still had not found other work, and he was getting ready to leave for a job interview in North Carolina. If he got the job, he would start ground school in February or March 2015 for six to eight weeks before getting his aircraft and route assignments. He estimated that if he were hired, he would earn up to \$20,000 in that job.

Ms. J is employed as an administrative assistant. She testified that she and Mr. X have a good relationship and she wants him to be able to get a good job. Ms. J added that her finances would be tight if Mr. X's child support were lowered, but she could manage if the support amount were at least \$400 per month.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”⁸ 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.⁹ In this case, the notice was issued on October 6, 2014, so if a modification were ordered here, it would be effective as of November 1, 2014.¹⁰ As the person who filed the appeal, Mr. X has the burden of proving that CSSD's order was incorrect.¹¹

In this case, CSSD declined to perform a modification review because “[t]he requesting party did not provide any financial or medical documentation showing a substantial change of circumstances.”¹² It is not known specifically what CSSD meant by this statement because Mr. X did provide income information, so possibly CSSD's determination was that the documents he *did* provide did not show a substantial change of circumstances.

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

⁸ AS 25.27.190(e).

⁹ 15 AAC 125.321(d).

¹⁰ Exh. 2.

¹¹ 15 AAC 05.030(h).

¹² Exh. 4.

burden of proving his or her income earning capacity.¹³ Mr. X received \$44,044.22 in 2013, his last full year of employment before he requested modification.¹⁴ However, because of his arrest, Mr. X was unemployed and no longer earning that income amount after the first quarter of 2014. He was leaving soon after the hearing in December 2014 to interview for employment out of state, but whether he got the job is unknown at this time.

Without more information, it is more likely than not that Mr. X's unemployment status is a temporary circumstance. He may lack the ability to pay the total child support amount every month and thus may incur additional arrears, but there is no evidence that Mr. X 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.¹⁵ Prior decisions from the Office of Administrative Hearings follow this approach,¹⁶ and there is no reason not to follow the court's direction in this case. Mr. X's child support should not be modified until he can prove his income earning capacity.

IV. Conclusion

Mr. X did not meet his burden of proving by a preponderance of the evidence that CSSD's Decision on Request for Modification Review was incorrect. Mr. X was unemployed at the time of the hearing, and there is no information in the record to indicate whether his income earning capacity had changed. Mr. X did not prove that there has been a "material change in circumstances" sufficient to modify his child support order from the current amount of \$636 per month. CSSD's order denying modification should be affirmed.

V. Child Support Order

- CSSD's Decision on Request for Modification Review is affirmed – Mr. X's child support for U shall remain at \$636 per month;
- All other provisions of the prior CSSD order, the Amended Administrative Child Support and Medical Support Order issued on December 19, 2013, remain in full force and effect.

Dated: May 14, 2015

Signed

Kay L. Howard
Administrative Law Judge

¹³ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁴ Exh. 6.

¹⁵ *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

¹⁶ *See In The Matter Of M.J.V.*, OAH Case No. 09-0181-CSS.

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 28th day of May, 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.]