

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

IN THE MATTER OF)	OAH No. 14-1964-CSS
G M. X)	CSSD No. 001176187
_____)	

DECISION AND ORDER

I. Introduction

This case is G M. X’s appeal of an order issued by the Child Support Services Division (Division). The order being appealed is the Division’s Decision on Request for Modification Review. This order denied Mr. X’s petition for a downward modification of his ongoing child support order for his child, M. This order was issued on September 23, 2014.

On December 3, 2014, a hearing was held to consider Mr. X’s appeal. S E. U, the custodial parent participated. Mr. X also participated. The Child Support Services Division (Division) was represented by Joe West, Child Support Services Specialist.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be upheld. Mr. X’s ongoing child support obligation for M should remain at \$653 per month, because Mr. X did not timely file his income information, and because Mr. X does not have sufficient earnings history with his new employment situation to show that a modification of child support is appropriate at this time.

II. Facts

This case is a modification action.¹ The Division denied Mr. X’s request for modification review because the Division determined that he had not shown that there had been a material change in his income or earning capacity. Mr. X’s current ongoing child support was set at \$653 per month based on an estimate of his income as an active duty military E4 in 2012.² In 2012, Mr. X earned about \$43,396.06.³ Mr. X’s ongoing child support was set at \$653 per month in 2012 based on this estimate of his 2012 income.⁴

¹ Alaska Civil Rule 90.3(h) governs modification actions.
² Exhibits 1.
³ Exhibits 4.
⁴ Exhibits 4.

The Division denied Mr. X's request for a downward modification, because, after he requested a modification over the phone, he did not timely provide the information the Division requested on his current income. Mr. X does not live in Alaska, so without documentation from him, there was no income information available to the Division to determine if his current income would result in a 15% change from the current child support amount. There was, therefore, no showing of a material change in circumstances, which would be needed to justify a modification of Mr. X's ongoing child support obligation for M.⁵

After the Division denied his request for a downward modification, Mr. X requested a formal hearing.⁶

At the hearing, Mr. X did not provide a clear explanation for his failure to timely provide income information after he requested a modification. Mr. X merely indicated that he had difficulty responding to the Division's request for income information because of the time it took to receive mail.⁷ At the hearing, Mr. X explained that he is now only in the military reserve. He also works part-time for No Name, but can apply for full-time work after he completes his probationary work in April of 2015. Mr. X estimated that he currently works between 15 and 20 hours per week and earns about twelve dollars per hour, but he is still looking for full-time work. He has no children living with him. He lives by himself.⁸

Ms. U testified that she is a single mother, with three children living in her home. She is the only adult in her household. She works full-time and earns about \$29,000 per year.⁹

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. X, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁰ At the hearing, Mr. X did not show that the Division's determination that his ongoing child support obligation for M should not be modified was incorrect.¹¹

⁵ Exhibits 2-5.

⁶ Exhibits 6.

⁷ Exhibits 7, page 1.

⁸ Recording of Hearing-Testimony of Mr. X.

⁹ Recording of Hearing-Testimony of Ms. U.

¹⁰ Alaska Regulation 15 AAC 05.030(h).

¹¹ Recording of Hearing.

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.¹² The rule states that a material change of circumstances “will be presumed” if the modified support amount would alter the outstanding support order by 15 percent.¹³

The evidence in the record shows that it cannot yet be determined whether a material change of circumstances has occurred since Mr. X’s ongoing child support was set at \$653 per month in 2012. At this time, Mr. X’s employment situation is still fluid, although he has suffered at least a temporary decrease in his income. The evidence does not show that Mr. X’s change of employment has led to an indefinite change in his earning capacity or even his short-term ability to earn more than his current income. Because there has not been a material change in circumstance, his ongoing child support should stay at \$653 per month while he is temporarily underemployment and adjusting to having left active duty military service. Annualizing Mr. X’s estimated current income and recalculating his child support obligation would result in a lower monthly obligation if a modification was appropriate at this time, but temporary underemployment is not a justification for a downward modification.¹⁴

Furthermore, the Division has the authority to decline to complete its review of a request for modification when, as in this case, the party requesting the review does not provide all of the required income information.¹⁵ Since he admits that he did not timely provide the information the Division requested, Mr. X admits to facts which show that the Division’s order was correct.¹⁶

Before Mr. X can receive a reduction in his ongoing child support, he will have to request a new modification. During this new modification action, he will have to provide all his income information to the Division. Mr. X will also have to timely respond to any inquiries that the Division might make about his income, his earning capacity, and any unusual circumstances.

It would not be appropriate to attempt to use the limited income information that Mr. X

¹² Alaska Civil Rule 90.3(h)(1).

¹³ Alaska Civil Rule 90.3, Commentary X.

¹⁴ Alaska Civil Rule 90.3, Commentary X.

¹⁵ Alaska Regulation 15 AAC 125.316(e).

¹⁶ Recording of Hearing & Alaska Regulation 15 AAC 125.316(e).

has now provided to modify his ongoing child support at the formal hearing level without the consent of the Division and the custodial parent. The Division and the custodial parent should have a meaningful opportunity to address any issues raised by the income information provided by the noncustodial parent through the modification review process. The custodial parent should then have the opportunity to request a formal hearing to appeal the result of the modification review process. The noncustodial parent would be deprived of these opportunities if the petition for modification were granted now.

IV. Conclusion

I conclude that the Division correctly determined that it should not complete its modification review and denied Mr. X's request for a downward modification of his ongoing child support. The child support amount in his current order was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

The Division's Decision on Request for Modification Review issued on September 23, 2014, is affirmed. The Division's Administrative Child Support and Medical Support Order issued on July 30, 2012, setting ongoing child support at \$653 per month remains in effect.

DATED this 4th day of December 2014.

By: Signed
Mark T. Handley
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 24th day of December, 2014.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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