

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

In the Matter of)	
)	
D N. X)	OAH No. 15-0552-CSS
<hr style="width:45%; margin-left:0"/>)	Agency No. 00119551

DECISION AND ORDER

I. Introduction

The Child Support Services Division (CSSD) entered a Modified Administrative Child Support and Medical Support Order decreasing the monthly child support obligation of D N. X for his minor son, B, from \$511 per month to \$50 per month. C C, B’s mother and custodian, appeals. Based on the record as a whole and after careful consideration, this decision concludes that the modification was in error. Accordingly, Mr. X’s child support obligation for B is \$511 per month, effective March 1, 2015.

II. Facts

D X and C C are the parents of B, age 8, who lives with Ms. C and her parents. Since June 2014, Mr. X has been subject to a CSSD Administrative Child Support and Medical Support Order setting his child support obligation for B at \$511 per month.¹

Mr. X submitted a Request for Modification on January 23, 2015.² On February 4, 2015, CSSD notified both parties of the request for modification, and asked that both parties provide certain income information.³ Neither parent provided income information in response to CSSD’s Notice. In the interim, however, CSSD obtained information from the Department of Corrections, indicating that Mr. X was incarcerated.

On March 28, 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order, lowering Mr. X’s support obligation from \$511 per month to the statutory minimum of \$50 per month, based on his incarceration, effective March 1, 2015.⁴ Ms. C appealed.

¹ Ex. 1.
² Ex. 2.
³ Ex. 3.
⁴ Ex. 4, pp. 1, 5. See *Douglas v. Department of Revenue*, 880 P.2d 113, 115-16 (Alaska 1994).

A hearing on Ms. C's appeal was held on June 8, 2015.⁵ Ms. C participated telephonically, as did Joseph West on behalf of CSSD. Mr. X did not appear, either in person or telephonically, despite having received notice of the hearing via certified mail. Multiple attempts to reach Mr. X by telephone were unsuccessful,⁶ and the hearing was held in his absence.⁷

On behalf of CSSD, Mr. West explained that the modification amount had been set based on Mr. X's incarceration.⁸ However, while the Department of Corrections (DOC) had notified CSSD that Mr. X was in custody, CSSD did not have a projected release date from DOC at the time of the modification.

Ms. C testified that the basis for her appeal was that Mr. X was no longer incarcerated. Rather, he had been released from custody in March 2015 – the same month the modification order was issued – and had resumed the job he had held prior to his incarceration.⁹

At the time of the hearing, CSSD still did not have complete information from DOC regarding the timeline of Mr. X's incarceration. Accordingly, at the close of the hearing, the record was left open until June 15, 2015 for CSSD to provide evidence relating to the dates of Mr. X's incarceration. In response, CSSD submitted documentation indicating that the period of incarceration in question was only 38 days long – beginning on February 18, 2015 and ending on March 27, 2015.¹⁰

III. Discussion

As the party requesting the hearing, Ms. C has the burden of proving by a preponderance of the evidence that the Department's Modification Order is incorrect.¹¹ Ms.

⁵ The hearing was presided over by Administrative Law Judge Kay Howard, who has since retired. However, the undersigned also attended the hearing, and has additionally reviewed the recorded hearing proceedings and administrative record since this matter was reassigned to her.

⁶ Mr. X also did not respond to a voice mail message left at the start of the hearing, notifying him that the hearing was beginning and that he could call in to participate.

⁷ CSSD's regulations require that the record be held open for 10 days if the party requesting the hearing fails to appear. In this case, however, it was Ms. C who requested the hearing, not Mr. X. Accordingly, the record was not required to be held open based on Mr. X's failure to participate. Nonetheless, as noted below, the record in fact *was* held open after the hearing, and Mr. X made no attempts to contact the OAH during that time.

⁸ See Ex 4, p. 5.

⁹ Testimony of Ms. C.

¹⁰ Affidavit of Joseph West.

¹¹ 15 AAC 05.030(h); 2 AAC 64.290(e).

C met her burden of proof because Mr. X's brief period of incarceration does not constitute a material change in circumstances sufficient to justify the modification.

A parent is obligated both by statute and at common law to support his or her children.¹² 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," minus mandatory deductions such as taxes and Social Security. Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹³ But "[t]he change ordinarily must be more or less permanent rather than temporary."¹⁴

Alaska law generally considers unemployment to be a temporary circumstance, and one that should not typically result in the downward modification of an obligor parent's child support obligation.¹⁵ And the Alaska Supreme Court has expressly held that, in order to secure a reduction in child support payments due to incarceration, an obligor must have "suffered more than a temporary or insubstantial setback in earnings as a result of his incarceration."¹⁶

Here, the significant modification of Mr. X's support obligation was based solely on his incarceration and resultant unemployment while incarcerated.¹⁷ But Mr. X was only incarcerated for 38 days, and resumed his prior job upon his release.¹⁸ Mr. X's short period of incarceration – and thus, temporary unemployment – is insufficient to warrant modification of his child support obligation. Under these circumstances, CSSD erred in modifying his child support obligation based on the incarceration.

IV. Conclusion

Mr. X's 38-day period of incarceration does not justify modification of his child support obligation. Accordingly, Ms. C has met her burden of establishing that the March 18, 2015 modification order was incorrect.

¹² *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

¹³ AS 25.27.190(e).

¹⁴ *Curley v. Curley*, 588 P.2d 289, 291, (Alaska 1979).

¹⁵ *See Patch v. Patch*, 760 P.2d 526, 530 (Alaska 1988) ("[A] trial court should be reluctant to modify child support obligations when the obligor's loss of income appears only temporary.")

¹⁶ *Bendixen v. Bendixen*, 962 P.2d 170, 173 (Alaska 1998) (citing *Patch*, 760 P.2d at 526).

¹⁷ Ex. 4, p. 5.

¹⁸ Affidavit of Joseph West; testimony of Ms. C.

V. Child Support Order

1. D N. X is liable for child support in the amount of \$511 per month for B, effective March 1, 2015 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated March 18, 2015 remain in full force and effect.

Dated: July 2, 2015

Signed
Cheryl Mandala
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 within 30 days after the date of this decision.

DATED this 21 day of July, 2015.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

Mr. X has raised an issue in his proposal for action. This issue can be addressed by Mr. X filing a new request for modification with the Child Support Services Division and providing income information to support his request.

Signed
Jerry Burnett

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