

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

In the Matter of	)	
	)	
E X. Z	)	OAH No. 15-0977-CSS
<hr style="width:40%; margin-left:0"/>	)	Agency No. 001172637

**DECISION AND ORDER**

**I. Introduction**

E X. Z appeals a July 6, 2015 decision denying his request to modify his monthly child support obligation of \$301 for his daughter, T. Mr. Z failed to prove that the support obligation was incorrect.

**II. Factual and Procedural History**

E Z and U D are the parents of T D, born in October 2006. T lives with Ms. D in Anchorage, Alaska. Mr. Z lives in Colorado.

An April 16, 2014 Amended Administrative Child Support and Medical Support Order set Mr. Z's monthly child support obligation for T at \$301.00 per month effective February 1, 2014.<sup>1</sup> The obligation amount for ongoing support was based on Mr. Z's last known hourly wage, as reported by his former employer to the CSSD.<sup>2</sup> Specifically, in December 2013, CSSD learned that Mr. Z was living and working in Wyoming. CSSD verified Mr. Z's employment with his employer, which informed CSSD that Mr. Z was earning \$10.20 per hour and working full time.<sup>3</sup> CSSD multiplied that hourly wage by 2,080 hours (40 hours per week x 52 weeks) to determine an annual income for the support order.<sup>4</sup>

In May 2015, Mr. Z requested a modification of his child support amount. On May 27, 2015, CSSD notified both parties of the Petition for Modification and requested that the

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<sup>1</sup> Ex. 1. The Order also noted that Mr. Z owed past-due child support in the amount of \$7,287 for the period of November 1, 2011 through January 31, 2014. *Id.*, p. 1.

<sup>2</sup> See Ex. 1, p. 4. Mr. Z's child support obligation amounts for 2011 and 2012 – used to establish support arrears – were based on the Alaska minimum wage (\$7.75 per hour) multiplied times 2,080 hours after Mr. Z failed to provide any income information or any proof of a medical condition that would prevent full time employment. See 15 AAC 125.050(b)(3).

<sup>3</sup> Affidavit of Joseph West. It is assumed from the context of Mr. West's Affidavit that the reference to records of a phone call placed on "December 24, 2015" is a typographical error referencing a call which – having occurred after December 16, 2013 but before April 16, 2014 – must have actually occurred on December 24, 2013.

<sup>4</sup> See 15 AAC 125.050(c)(3), (c)(8), (d)(1).

parties submit financial information to enable its review.<sup>5</sup> However, Mr. Z did not submit any financial or medical documentation. Accordingly, on July 6, 2015, CSSD issued a decision denying the request for modification review.<sup>6</sup> Mr. Z filed an appeal on July 17, 2015, identifying the bases for his request as follows: “I don’t have a job, I am homeless, my life sucks!”<sup>7</sup>

On July 28, 2015, the Department of Revenue referred Mr. Z’s appeal to the Office of Administrative Hearings (OAH). On July 29, 2015, OAH mailed both parties a notice of the date and time for the hearing by certified mail to each person’s last-known address. Mr. Z’s notice was returned on September 4, 2015 because it had gone unclaimed. In the interim, the hearing was rescheduled from its original date, August 31, 2015, to September 15, 2015, and a new notice was mailed to both parties at their address of record on August 12, 2015. Mr. Z’s notice of this rescheduled hearing was not returned to the OAH.

The hearing was held on September 15, 2015. Ms. D appeared in person and testified. CSSD was represented by Child Support Specialist Joseph West. Mr. Z did not appear, and did not answer his telephone number of record when called at that number to participate telephonically.<sup>8</sup> Service of the hearing notice on Mr. Z was effective because it was sent to his last known address.<sup>9</sup> Accordingly, the hearing was conducted without his participation.<sup>10</sup>

The record was held open following the hearing for CSSD to submit further information about the calculations used, and to allow Mr. Z to show cause for his failure to appear. CSSD submitted additional exhibits and an affidavit on September 18, 2015. Mr. Z did not contact the OAH after missing the hearing. The record closed on September 25, 2015. This decision follows.

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<sup>5</sup> Ex. 2.

<sup>6</sup> Ex. 3.

<sup>7</sup> Ex. 4.

<sup>8</sup> Mr. Z’s telephone number did not have voice mail.

<sup>9</sup> “If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department.” 15 AAC 05.010(c).

<sup>10</sup> *Id.*; see also, 15 AAC 05.030(j) (if a person requests a hearing and fails to appear at the hearing, the hearing office may issue a decision without taking evidence from that person, unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear.”).

#### IV. Discussion

A parent is obligated both by statute and at common law to support his or her children.<sup>11</sup> 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.”<sup>12</sup> Where an obligor does not provide information about his or her income, CSSD may base the support obligation on an estimated or projected income based on the obligor’s actual but incomplete information, or based on minimum wage data.<sup>13</sup> The April 2014 Amended Administrative Child Support and Medical Support Order was set based on Mr. Z’s “incomplete but actual information.” Mr. Z did not appeal that Order.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>14</sup> If the newly calculated child support amount is more than 15% different than the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” exists warranting modification of the order.<sup>15</sup> Additionally, CSSD has discretion to grant a petition for modification if a newly calculated support amount is less than 15% different from the previous order but “other circumstances exist that justify a modification of the support order.”<sup>16</sup>

As the person who filed the appeal, Mr. Z has the burden of proving by a preponderance of the evidence that CSSD’s decision to deny modification was incorrect.<sup>17</sup> However, Mr. Z did not participate in the hearing, so there is no evidence of what his circumstances are and why. In the absence of such evidence, Mr. Z did not meet his burden of proving by a preponderance of the evidence that he is entitled to a modification of his child support obligation.

Likewise, to the extent to which Mr. Z’s written appeal statement was intended to request for a hardship variance from the monthly child support obligation set out in the April 2014 Order, he likewise did not meet his higher burden of proof for such a request. A parent may obtain a reduction in the amount calculated under Rule 90.3, but only if he or she shows that “good cause” exists for the reduction. In order to establish good cause, the

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<sup>11</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>12</sup> See 15 AAC 125.010 (Adopting Civil Rule 90.3 by reference).

<sup>13</sup> See 15 AAC 125.050(c)(3); 15 AAC 125.050(d).

<sup>14</sup> AS 25.27.190(e); 15 AAC 125.321.

<sup>15</sup> Civil Rule 90.3; 15 AAC 125.321(b)(1).

<sup>16</sup> 15 AAC 125.321(b)(2)(B)..

<sup>17</sup> 15 AAC 05.030(h).

parent must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”<sup>18</sup> Had Mr. Z participated in the hearing, he might have presented testimony or other evidence that might have addressed this issue. However, the record as it stands is devoid of any such evidence beyond the bare-bones statement in his appeal request. This is insufficient to meet the high burden of showing the right to a hardship variance. This decision does not preclude Mr. Z from seeking a hardship variance in the future by requesting modification.

**V. Conclusion**

Mr. Z did not meet his burden of proving that his child support obligation should be modified. This decision does not preclude Mr. Z from seeking modification in the future.

**VI. Child Support Order**

1. E X. Z is liable for child support in the amount of \$301 per month for one child effective February 1, 2014 and ongoing.
2. All other terms of the Amended Administrative Child Support and Medical Support Order dated April 16, 2014 remain in full force and effect.

Dated: September 29<sup>th</sup>, 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 14<sup>th</sup> day of October, 2015.

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

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

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<sup>18</sup> Civil Rule 90.3(c).