

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

In the Matter of)	
)	
B J. S-H)	OAH No. 15-1493-CSS
<hr style="width:45%; margin-left:0"/>)	Agency No. 001128924

DECISION

I. Introduction

M D appeals the denial of her request to modify a child support order under which B S-H is obligated to pay support for the parties' daughter, Z. Because there has not been a material change in circumstances since support was set in January 2015, CSSD was correct in declining to modify the order.

II. Facts

B J. S-H and M D are the parents of Z, age 15. This case concerns Mr. S-H's child support obligation for Z, who lives with Ms. D.

Mr. S-H works in the construction industry. His annual wage income was \$69,092 in 2013, and \$68,057 in 2014.¹ He switched jobs during the first quarter of 2015, and in the first two quarters of the year earned \$37,822.² His quarterly income for the second quarter of 2015 was \$21,000 -- \$2,500 more than his quarterly earnings at his prior job.³ Mr. S-H then lost that job on November 1, but has not applied for unemployment because he anticipates soon finding another comparable job.⁴ Mr. S-H believes that he will continue to earn approximately what he has earned in prior years, and believes that his monthly child support obligation of \$844 per month is appropriately set.

Mr. S-H's support obligation for Z was most recently set in a prior OAH decision issued January 8, 2015.⁵ In September 2015, Ms. D requested modification of the parties'

¹ Affidavit of Brandi Estes.

² Affidavit of Brandi Estes.

³ Affidavit of Brandi Estes.

⁴ There was conflicting testimony on this issue at the hearing, with Ms. D testifying that she believes Mr. S-H is likely lying about having lost his job. But Mr. S-H's testimony on this issue was credible. Moreover, as the discussion below explains, this decision does not turn on whether or not Mr. S-H still holds that job.

⁵ Ex. 3.

child support order on the basis that “B has a new job, has higher income.”⁶ CSSD determined that a new monthly support amount calculated using Mr. S-H’s new higher earnings would be 13.6 percent higher than his current monthly support amount. Because this was less than a 15 percent change in the monthly support amount, CSSD denied Ms. D’s request for a modification review.

Ms. D now appeals.⁷ The hearing was on December 16, 2015. Ms. D and Mr. S-H both participated by telephone, and both testified. CSSD was represented by Brandi Estes. All exhibits offered were admitted. The record closed at the end of the hearing and the matter was taken under advisement.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁸ Child support obligations are determined under Alaska Civil Rule 90.3. 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.”⁹

Child support orders may be modified upon a showing of “good cause and material change in circumstances.” If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established and the order may be modified. CSSD’s regulations provide that the agency will grant a petition for modification if the newly calculated support amount is more than 15 percent greater (or less) than the amount in the existing support order.¹⁰ CSSD has discretion to grant a modification if the newly calculated support amount is not more than 15 percent greater (or less) than the amount in the existing order if three years have elapsed since the support order was issued or last modified, or if “other circumstances exist that justify a modification of the support obligation.”¹¹

In a child support hearing, the person who filed the appeal – in this case, Ms. D – has the burden of proving by a preponderance of the evidence that the Division's order is

⁶ Ex. 4.

⁷ Ex. 5.

⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

⁹ See 15 AAC 125.010 (adopting Civil Rule 90.3 by reference).

¹⁰ 15 AAC 125.321(b)(1).

¹¹ 15 AAC 125.321(b)(2)(B), (C).

incorrect.¹² Because this case concerns a request for modification, Ms. D had the burden of proving that a material change in circumstances justifies modifying the existing support Order. Ms. D did not meet that burden.

Ms. D's arguments chiefly reflect disagreements with the applicable regulations. Ms. D believes that requiring a fifteen percent change is arbitrary and unfair. She believes that Z, who has increasing expenses in her teenage years and given her collegiate aspirations, deserves as much support as Mr. S-H can pay, and should not be shortchanged based on the difference between 13.6% and 15%.

Ms. D's concerns are sincerely-held and understandable. But the Commentary to Rule 90.3 provides that, "while the costs of raising children who are very young or who are over about ten years old are generally greater than raising other children, this in itself does not justify an increase in support."¹³ Rule 90.3 and CSSD's regulations require a showing of a "material change in circumstances," and, for mandatory modification, have identified the threshold for identifying such a change as a 15% change in the support amount. That degree of changed circumstances has not been shown in this case. Accordingly, CSSD was not required to grant the modification request.

To the extent to which CSSD has discretion to modify a support order where there is less than a fifteen percent change in the support amount, Ms. D did not show that CSSD erred in declining to do so. Z has increasing financial needs associated with her age and talents. While these increasing needs do not, alone, justify an increase in support, they might support a discretionary modification under 15 AAC 125.321(b)(2)(B). But such a modification is only appropriate where there has actually been a material change in circumstances. Here, the facts here do not show that there has been an actual material change in circumstances. Mr. S-H no longer holds the higher-paying job. His temporary increase in income does not support the request for modification.¹⁴

IV. Conclusion

CSSD's decision declining to modify the parties' Modified Administrative Child

¹² 15 AAC 05.030(h).

¹³ Commentary to Rule 90.3 at B(6) ("Age of children").

¹⁴ Nothing in this decision should be construed as prohibiting either party from seeking a modification in the future should circumstances warrant.

Support and Medical Support Order is AFFIRMED. All terms of the parties' August 25, 2014 Modified Administrative Child Support and Medical Support Order remain in effect.

Dated: December 21, 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 5th day of January, 2016.

By: Signed
Signature
Jay D. Durych
Name
Administrative Law Judge
Title

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