

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

In the Matter of:)	
)	OAH No. 16-0336-CSS
U R. N)	CSSD No. 001139375
_____)	

DECISION AND ORDER

I. Introduction

U R. N petitioned for a modification of his child support order based on changed circumstances. The Child Support Services Division (CSSD) denied his request, because the income information Mr. N provided did not result in a 15% change in his existing support obligation. Mr. N appealed and requested a modification or a hardship variance.

Mr. N did not present evidence to show that CSSD’s determination was incorrect. As a result, there is insufficient evidence in the record to support his request for a modification or a hardship variance. Accordingly, CSSD’s March 17, 2016 Decision on Request for Modification Review is affirmed.

II. Facts

Mr. N and custodial parent B E are the parents of U II and Z-X. In 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order, which set Mr. N’s support obligation at \$574 per month, effective November 1, 2012.¹ This calculation was based on Mr. N’s wages of \$14 per hour for a full-time position, plus his Alaska PFD.²

On January 4, 2016, CSSD received Mr. N’s written request to modify his support amount. Mr. N indicated that he had recently lost his job and taken a pay cut. His new wage was \$13 per hour, and he was not working a full-time schedule.³

Based on the request, CSSD initiated a modification review. It served the parties with a Notice of Petition for Modification of Administrative Support Order on January 11, 2016.⁴ Mr. N did not provide financial documentation supporting his modification request. CSSD recalculated his support amount based on a \$13 per hour full-time position and determined that

¹ Ex. 1.
² Ex. 1 at 6.
³ Ex. 2 at 2.
⁴ Ex. 3.

this calculation did not change Mr. N’s support obligation by 15% or more. It therefore denied his modification request.⁵

Mr. N submitted a written appeal on April 1, 2016.⁶ He indicated that he had been unemployed since mid-January 2016 due to recent surgery, and he had not received unemployment income. He requested a reduction of his support obligation to \$50 per month based on hardship.

Prior to the hearing, CSSD submitted an extract of information from the Alaska Department of Labor, showing Mr. N’s employer-reported wages from 2013 to 2015.⁷ The report showed 2013 income of \$40,023.50, 2014 income of \$44,064.55, and 2015 income of \$43,275.66. This information indicates that Mr. N earned significantly more than \$14 per hour from 2013 to 2015, but this income was not factored into his ongoing support obligation. CSSD also submitted a pre-hearing brief, which advised Mr. N to complete a “Hearings Expense Worksheet” and to provide other financial and medical information to support his request for a modification or a hardship variance.⁸

The hearing took place on April 26, 2016, and the record remained open until May 6, 2016. Child Support Specialist Brandi Estes appeared and represented CSSD. Neither Mr. N nor Ms. E appeared, and neither parent could be reached by telephone. After the hearing, Mr. N submitted a letter stating that he wanted to withdraw this appeal. However, his letter also indicated that he wanted his child support obligation lowered while he healed from surgery and looked for a new job in his field.⁹

Mr. N’s letter is ambiguous about his intention to withdraw his appeal. Therefore, this decision is issued on the merits of his case.¹⁰

III. Discussion

The question in this case is whether CSSD properly denied Mr. N’s request for a modification of his ongoing support obligation. As the person appealing CSSD’s action, Mr. N bears the burden of demonstrating that the decision was incorrect.¹¹

⁵ Ex. 4.

⁶ Ex. 5.

⁷ Ex. 6.

⁸ CSSD Pre-hearing brief at 1-2; Ex. 7.

⁹ Ex. 8 (handwritten note from Mr. N dated 4/26/16).

¹⁰ 15 AAC 05.030(j) authorizes the entry of a decision if the requesting party fails to appear.

¹¹ 15 AAC 05.030(h).

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.¹³ Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁴ 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. If the 15% change has not been met, CSSD may modify the child support obligation, but is not required to do so.

CSSD denied Mr. N's modification request because, at the time of the request, Mr. N's hourly wage was \$1 per hour below the \$14 wage used to calculate his support obligation in 2012. This did not meet the 15% threshold that applies to modification cases.¹⁵ More importantly, Mr. N had not submitted any documentation to establish a reduction in his income.

Support obligations ordinarily are not modified based on temporary income reductions.¹⁶ While Mr. N's written request indicated that he was not working at his new job full-time, without additional evidence, it was not unreasonable for CSSD to assume that this reduction in hours was temporary. Similarly, without more information, Mr. N's apparent unemployment due to recent surgery is properly deemed to be temporary. If this temporary situation becomes long-term, Mr. N may re-initiate a modification review. However, he should support his request with appropriate documentation. Based on the evidence in the record, CSSD appropriately denied Mr. N's request for modification.

Mr. N's written appeal also requested a hardship variance from his child support obligation. Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. It appears that the 2012 Modified Administrative Child Support and Medical Support Order set Mr. N's existing obligation based on his actual income. To the extent, Mr. N requests a reduction in the ordered amount based on hardship, he is required to prove by clear and convincing evidence that manifest

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

¹³ Civil Rule 90.3(a); *see also Kowalski v. Kowalski*, 806 P.2d 1368, 1370 (Alaska 1991).

¹⁴ AS 25.27.190(e).

¹⁵ To establish a 15% change from Mr. N's previous order, his modified order would have to be at least \$86.10 higher or lower than the prior amount. $\$574 \times 15\% = \86.10 . A calculation from CSSD's online child support calculator indicates that his modified obligation for a full-time \$13 per hour job, 2080 hours per year, would be \$551, or \$23 per month less than his prior order. *See* <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

¹⁶ *Richardson v. Kohlin*, 175 P.3d 43 (Alaska 2008).

injustice would result if the support obligation were not reduced.¹⁷ This is a high burden, as this remedy is reserved for unusual circumstances. There is insufficient evidence in the record to make this showing, and therefore this request is denied.

IV. Conclusion

Due to the lack of evidence regarding Mr. N's current employment status and medical condition, Mr. N has not met his burden of proving that CSSD incorrectly denied his modification request. Therefore, CSSD's March 17, 2016 Decision on Request for Modification Review is affirmed. Mr. N's ongoing child support obligation remains \$574 per month for two children, as calculated under Civil Rule 90.3(a) and as provided by the Modified Administrative Child Support and Medical Support Order, dated November 30, 2012.

V. Child Support Order

1. CSSD properly denied Mr. N's modification request in its March 17, 2016 Decision on Request for Modification Review, which is affirmed.
2. All provisions of the November 30, 2012 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 10th day of May, 2016.

Signed _____
Kathryn A. Swiderski
Administrative Law Judge

¹⁷ Civil Rule 90.3(c)(1).

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 25th day of March, 2016.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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