

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

IN THE MATTER OF:)

H. G. R.)

) OAH No. 06-0612-CSS

) CSSD No. 001138390

DECISION AND ORDER

I. Introduction

The Obligor, H. G. R., appealed a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in his case on August 8, 2006. The Obligee child is S., DOB 9/21/90.

The formal hearing was held on September 29, 2006. Both Mr. R. and the Custodian of record, D. A. R., appeared in person. David Peltier, Child Support Specialist, appeared for CSSD. The hearing was recorded. The record closed on October 27, 2006.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Based upon the record in this case and after due deliberation, CSSD's Notice of Denial of Modification Review is affirmed. Mr. R.'s child support order should not be modified because the petition for modification does not establish "good cause and material change in circumstances" sufficient to modify his ongoing child support amount.

II. Facts

A. History

Mr. R.'s child support obligation for S. was previously set at \$1243 per month in December 2005.¹ Mr. R. initiated modification of the order on March 23, 2006.² On March 24, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ On August 8, 2006, CSSD issued a Notice of Denial of Modification Review for the reason that Mr. R. did not submit all of the income information CSSD requested.⁴ Mr. R. filed an appeal and requested a formal hearing on August 18, 2006.⁵

¹ Exh. 9 at pg. 2.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 6. CSSD subsequently located Mr. R.'s income information prior to the hearing. See Exh. 4.

⁵ Exh. 7.

B. Material Facts

Mr. R. and Ms. R. are the parents of S., DOB 00/00/90. Both parents live in the greater Anchorage area and Ms. R. has primary custody of the child.

Mr. R. has been employed by the Municipality of Anchorage for over 27 years. He earns \$34.62 per hour as base pay and he works overtime on a regular basis. He pays mandatory retirement and union dues, plus “working dues” of 2% of his wages. In addition, Mr. R. provides health insurance for S. Mr. R. testified he plans to retire at the end of April 2007.

Mr. R.’s pay stub dated 9/17/06 indicates that his year-to-date figures were \$73,797.07 for wages, \$4163.52 for retirement, \$270 for union dues and \$1233.61 for the 2% “working dues” assessment.⁶

III. Discussion

The sole issue in this appeal is whether CSSD correctly denied Mr. R.’s petition for modification. A parent is obligated both by statute and at common law to support his or her children.⁷ 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.” Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”⁸ Civil Rule 90.3 presumes that if the newly calculated child support amount is more than 15% different from the previous order, that the requirement for “good cause and material change of circumstances” has been met and the support amount may be modified. However, Civil Rule 90.3(h) does not require that the child support amount be modified if that 15% threshold figure is not reached.

Mr. R.’s child support was initially set at \$1243 per month in December 2005. CSSD denied Mr. R.’s petition for modification because he did not provide all the income information CSSD requested, but prior to the hearing the division subsequently located what he had filed and used that income information to calculate a tentative child support amount of \$1052 per month.⁹

At the hearing, Mr. R. testified he does not receive the income CSSD attributed to him and he requested that his child support be lowered from \$1243 per month. Ms. R. testified Mr.

⁶ Exh. B.

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ AS 25.27.190(e).

⁹ Exh. 7.

R. has taken an exceptional amount of leave time in 2006, so if his income is somewhat lower, it's because he has voluntarily reduced his opportunity to earn overtime because he is on leave so much of the time.

CSSD was directed to estimate Mr. R.'s 2006 actual income from his 9/17/06 pay stub and to calculate a draft child support amount from the figures it obtained. CSSD filed a Post-Hearing Brief, to which the parties were allowed to respond no later than October 27, 2006. Neither party filed a response to the division's Post-Hearing Brief.

CSSD determined Mr. R.'s 9/17/06 pay stub was issued during the 37th week of 2006. The agency then estimated Mr. R.'s total 2006 income and deductions by dividing each figure by 37, then multiplying the result times 52 weeks. From these figures, CSSD estimated Mr. R.'s total 2006 income and deductions as follows: gross wages of \$97,899.60, retirement of \$5851.56, union dues of \$379.60, and union "working dues" of \$1733.68.¹⁰ CSSD inserted these figures into a child support calculation, which yielded a child support calculation of \$1078 per month.¹¹

Based on the parties' testimony and the record as a whole, I find that this figure is correct based on Mr. R.'s latest year-to-date pay stub and CSSD's estimation of his total 2006 income. However, the calculation of \$1078 per month is less than a 15% change from his previous child support amount of \$1243 per month, so I find that the petition for modification does not establish "good cause and material change in circumstances" sufficient to modify Mr. R.'s child support amount.¹²

IV. Conclusion

Mr. R. did not meet his burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was incorrect. The petition for modification does not establish "good cause and material change in circumstances" sufficient to modify his ongoing child support amount.

¹⁰ See Post-Hearing Brief at pg. 1.

¹¹ Exh. 10 (CSSD numbered this as Exh. 9, but that number was assigned to Ms. R.'s exhibit during the hearing, so CSSD's calculation is renumbered as Exh. 10.).

¹² See AS 25.27.190(e).

V. Child Support Order

- CSSD's August 8, 2006, Notice of Denial of Modification Review is affirmed;
- Mr. R. remains liable for child support in the amount of \$1243 per month.

DATED this 16th day of November, 2006.

By: Signed
Kay L. Howard
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 1st day of December, 2006.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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