

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

In the Matter of)	
)	
K N. X)	OAH No. 18-1200-CSS
_____)	Agency No. 001145584

DECISION AND ORDER

I. Introduction

In a decision issued on November 9, 2018, the Child Support Services Division (CSSD) denied K X’s request to modify his child support obligation for his son, L. Mr. X appealed. The hearing took place in three telephonic sessions: on December 17, 2018; January 15, 2019; and January 24, 2019. It was audio-recorded. Mr. X represented himself. Child Support Specialist Brandi Estes represented CSSD. Custodial parent L C did not participate. All submitted documents were admitted to the record, which closed on January 24, 2019.

Mr. X did not meet his burden to show that CSSD erred in denying the modification. Its decision is affirmed. Mr. X may request another modification review if he is prepared to submit the necessary documentation showing his financial circumstances.

II. Factual Background

Mr. X and Ms. C are the parents of L, age 12. L is Mr. X’s oldest child. He lives with Ms. C. Mr. X also has two younger children from different relationships, and he has child support orders for each of those children. Mr. X’s household includes himself, his significant other, and two step children.

CSSD last modified Mr. X’s support obligation for L in January 2015, when it set the ongoing monthly obligation at \$582.¹ In late August 2018, CSSD received Mr. X’s request for a modification review. On August 30, 2018, CSSD served a Notice of Petition for Modification of Administrative Support Order on the parties to this case.² The Notice ordered both parents to provide their income information, and it identified the needed documents with specificity. It also advised, “If you are the requesting party and you do not provide supporting documentation we may cease your modification review.”³

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 2, p. 1.

Mr. X did not provide any income information. On November 9, 2018, CSSD issued a Decision on Request for Modified Review that denied the modification.⁴ Mr. X requested a formal hearing, asserting that he cannot afford to pay the ongoing support amount in each of his children's cases while also paying for necessary living expenses.⁵

The formal hearing began on December 17, 2018. It could not proceed without documentation showing Mr. X's income, so a second session was scheduled for January 15, 2019. Mr. X agreed he would submit documents prior to that hearing, including: his recent W-2 and 1099 tax forms; his 2016 and 2017 tax returns or an employer statement verifying income, deductions, and the cost of Mr. X's medical insurance coverage; and pay stubs for the last three months.⁶ A scheduling order issued after that hearing; it provided an email address, a fax number, and a mailing address for the submissions. It also provided a telephone number in case any party had questions.⁷

When the second session commenced on January 15, 2019, Mr. X indicated that he had submitted the requested documents by email. However, no documents were received. The hearing was then rescheduled to January 24, 2019, and a revised scheduling order set new submission deadlines.⁸ The order again provided the email and fax numbers for the submissions, as well as the telephone number for questions or problems.

Prior to the third hearing session, Mr. X submitted by email a three-page child support affidavit.⁹ No other documents were received. During the hearing on January 24th, Mr. X stated that he had tried to submit other materials by email, but he kept getting rejection or failure messages. He did not try other forms of submission. No further extensions were granted, and the hearing completed on January 24, 2019.

III. Discussion

As the person who filed this appeal, Mr. X has the burden of proving by a preponderance of the evidence that CSSD erred when it denied his modification request.¹⁰ He did not meet this burden.

⁴ Exhibit 3.

⁵ Exhibit 4.

⁶ See Scheduling Order issued 12/18/18.

⁷ *Id.*

⁸ See Revised Scheduling Order issued 1/15/19.

⁹ X submission, received 1/22/19.

¹⁰ 15 AAC 05.030(h).

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”¹¹ CSSD denied the modification because Mr. X had not provided documentation showing a material change of circumstances, and CSSD had no other information indicating a material change had occurred.¹² A material change of circumstances exists when the newly calculated child support amount is at least 15% more or less than the prior amount.

When more than three years have elapsed since the order was last modified, CSSD has discretion to issue a modification even if a material change is not shown.¹³ Based on the income information available to CSSD, it calculated that Mr. X’s income would result in a \$600 monthly obligation for L.¹⁴ This minor increase from the prior amount did not constitute a material change, and CSSD exercised its discretion to reject the modification.¹⁵

During the hearing, Mr. X discussed his household circumstances, which appear to be financially strained. His child support affidavit suggests he may be eligible for deductions from income for matters such as his contributions to a 401k retirement plan and his cost for providing his own health insurance coverage. However, Mr. X did not submit sufficient information to accurately determine his 2018 income from all sources or the appropriate amount of applicable deductions. This information is required by Civil Rule 90.3(a) to calculate his support amount under the primary custody formula. It is also readily available to Mr. X, who was provided numerous opportunities to submit it between August 30, 2018 and January 24, 2019.

The absence of documentation prevented Mr. X from meeting his burden. It also precluded review of this case for a possible hardship variance under Civil Rule 90.3(c). Mr. X understood there are significant evidentiary gaps in this appeal. The CSSD hearing representative explained that a future modification remains possible, and Mr. X can request another modification review. However, he will need to supply the requested documentation. Mr. X indicated that he will initiate a new modification review after he has collected the necessary documents. He plans to submit them to CSSD with his next modification request.

¹¹ AS 25.27.190(e). *See also* 15 AAC 125.321(b).

¹² Exhibit 3.

¹³ 15 AAC 125.321(b)(2).

¹⁴ Exhibit 7.

¹⁵ 15 AAC 125.321(b)(1).

IV. Conclusion

CSSD correctly denied Mr. X’s request for a modification due to the absence of information showing a material change of circumstances. Its Decision on Request for Modification Review is affirmed.

V. Child Support Order

- The Decision on Request for Modification Review dated November 9, 2018 is affirmed;
- The Modified Administrative Child Support and Medical Support Order dated January 13, 2015, remains in full force and effect.

DATED: January 25, 2019.

By: Signed
 Name: Kathryn A. Swiderski
 Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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 8th day of February, 2019.

By: Signed
 Name: Kathryn A. Swiderski
 Title: Administrative Law Judge

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