

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

In the Matter of)	
)	
X U)	OAH No. 18-1336-CSS
)	Agency No. 001170058
_____)	

DECISION AND ORDER

I. Introduction

The Child Support Services Division (CSSD) denied X U’s request to reduce his child support obligation for his son, M. Mr. U appealed.

CSSD denied the request because Mr. U did not provide information showing a material change of circumstances. He was provided an additional opportunity to provide that information during the formal appeal process, but he did not do so. Mr. U asserted that he cannot earn wage income because his father needs him as a full-time caregiver. However, his unsupported statements do not meet his burden of proof.

Because he did not show that CSSD made a mistake in denying his modification request, the decision is affirmed. Mr. U may request another modification review if he can provide supporting documentation showing his circumstances.

II. Facts and Proceedings

X U and D G are the parents of M, age 9. M lives in northern Alaska with Ms. G, her partner, and her seven other children. Mr. U lives with his father in Anchorage.

CSSD established Mr. U’s child support obligation for M in an Administrative Child Support and Medical Support Order dated July 29, 2011.¹ The order set the ongoing support obligation at \$610 per month. The calculation was based on expected gross annual wages of \$44,038, plus the PFD.² Mr. U earned that income working as a driver for a produce company. He worked for the same company for approximately 15 years. Sometime after 2011, his mother got sick and he went to a part-time work schedule. According to Department of Labor data, Mr. U earned \$41,889 in 2016. He earned \$6,344 during the first quarter of 2017, and that is when his employer-reported earnings end.³

¹ Exhibit 1.
² See Exhibit 1, p. 8.
³ Exhibit 5.

In early 2017, Mr. U's mother passed away and Mr. U became his father's full-time caregiver. He left his job during the first quarter of 2017 and has not earned wage income since that time. He received \$3,700 in 2017 unemployment compensation and \$4,810 in 2018 unemployment benefits.⁴ He is no longer eligible for unemployment compensation.⁵ He receives the PFD but is otherwise financially dependent on his father. His father's Social Security income pays for all household expenses, including Mr. U's food and other expenses. His father provides Mr. U \$50 each month so he can make a minimum child support payment for M.⁶

Mr. U argued that he cannot earn any wage income because his father requires his assistance at home. For the last two years, he has served as his father's sole caregiver. He explained that his father is on oxygen, and he requires care and physical assistance on a full-time basis. He also asserted that his father requires his help as a translator. He did not explain his father's medical diagnoses or functional abilities in any detail, so it is not possible to determine the amount or extent of care his father requires.

It is also not possible to determine whether alternate resources might be available to help meet his father's needs, thereby enabling Mr. U to find paid employment. Mr. U has an adult sister who lives with her family and young children in Anchorage. His sister works a full-time job; she apparently does not assist Mr. U or share significant responsibility to care for their father. Mr. U asserted that she cannot help because she must provide for her own family. He did not seem to view his own responsibility to provide for M as equally important. Though Mr. U's father is eligible for Medicaid, Mr. U and his father do not appear to have fully investigated whether he could receive certain services, such as personal care assistance or other options, that could enable Mr. U to find paid employment again.

At Mr. U's request, CSSD initiated a modification review in September 2018. It served each parent with a Notice of Petition for Modification of Administrative Support Order on September 17, 2018.⁷ The notice required each parent to submit income information. This was particularly relevant to Mr. U, since he is the parent obligated to pay support. The notice

⁴ *Id.*

⁵ U testimony.

⁶ U testimony.

⁷ Exhibit 2.

advised, “If you are the requesting party and you do not provide supporting documentation we may cease your modification review.”⁸

Mr. U did not provide any documentation showing his income or showing that he cannot earn income due to his father’s care needs. CSSD denied his modification request on November 20, 2018, finding that Mr. U had not shown a material change of circumstances.⁹ Mr. U requested a formal hearing.¹⁰

The formal hearing took place by telephone on January 17, 2019. Mr. U and Ms. G represented themselves and testified for themselves. Child Support Specialist Patrick Kase represented CSSD. The hearing was audio-recorded. The record remained open after the hearing. This provided Mr. U an additional opportunity to submit documentation showing that his father requires full-time care or assistance, and that other resources or programs are not available to help meet his needs. All submitted documents were admitted to the record, which closed on February 14, 2019. Mr. U did not submit any additional information.

III. Discussion

As the person who filed this appeal, Mr. U has the burden of proving by a preponderance of the evidence that CSSD erred when it denied his modification request.¹¹ He did not meet this burden.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹² CSSD denied the modification because Mr. U did not provide any documentation, and it had insufficient information to determine that a material change had occurred.¹³ 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, as they have in this case, CSSD has discretion to issue a modification even if a material change is not shown.¹⁴ It did not exercise that discretion in this case because Mr. U did not provide adequate

⁸ Exhibit 2, p. 1.

⁹ Exhibit 3.

¹⁰ Exhibit 4.

¹¹ 15 AAC 05.030(h).

¹² AS 25.27.190(e).

¹³ Exhibit 3.

¹⁴ 15 AAC 125.321(b)(2).

information to justify his lack of any earned income, and CSSD concluded that he remains capable of earning the same income he earned in 2011.

A parent is obligated both by statute and at common law to support his or her children.¹⁵ A noncustodial parent's support amount is ordinarily calculated under Civil Rule 90.3(a) based on that parent's "total income from all sources," as adjusted by allowable deductions. The obligor-parent bears the burden of proving his income or earning capacity.¹⁶

There is no question that Mr. U's actual income has dramatically dropped since he left his job two years ago. However, he has not been looking for new employment, and his child support obligation should not be reduced simply because he stopped working. Ms. G asserted that Mr. U is using his father's needs as an excuse not to support M. She raised the issue of voluntary and unreasonable unemployment. Because a prima facie case of voluntary and unreasonable unemployment was established, the burden of persuasion shifted to Mr. U to rebut the claim and show that his support for M should be based on a different income figure than CSSD used in 2011.¹⁷

Mr. U agreed he is healthy and physically capable of working and earning income. He voluntarily opted out of the traditional workforce to work for his father. In exchange, he receives in-kind benefits such as housing, meals, and living expenses. The record remained open so Mr. U could provide additional evidence explaining why his choice was not unreasonable, given his circumstances. He did not follow up on this, and his vague statements about his father's condition and the unavailability of other resources are insufficient to meet his burden. If he is prepared to provide additional documentation, Mr. U may request another modification review. He is also encouraged to explore ways in which he can care for his father while also earning income and financially providing for his son.

In deciding whether a parent is voluntarily and unreasonably unemployed, the tribunal is to consider the totality of the circumstances, including factors such as whether the reduced income is temporary, whether the change is "the result of economic factors or of purely personal choices," the children's needs, and the parents' needs and financial abilities."¹⁸ As presented,

¹⁵ AS 25.20.030; *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987).

¹⁶ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁷ *Farr v. Little*, 411 P.3d 630, 635 (Alaska 2018).

¹⁸ *Farr*, 411 P.3d at 634; *Sawicki v. Haxby*, 186 P.3d 546, 550 (Alaska 2008); *Dunn v. Dunn*, 952 P.2d 268, 270 (Alaska 1998).

the evidence is that Mr. U likely is voluntarily and unreasonably unemployed or underemployed. Therefore, his support for M should be based on his “potential income” rather than his actual income.¹⁹

Potential income is determined based on a parent’s work history, qualifications, and job opportunities.²⁰ Obligor parents should not always have to pay support based on their maximum earning capacity when they choose to earn less than they could.²¹ However, the custodial parent and the child should not be forced to finance the noncustodial parent's lifestyle choice if that choice is unreasonable given the duty to provide child support.²²

On this record, CSSD properly concluded that Mr. U remains capable of earning the same income he earned as a driver for a produce company. This could be as a paid employee or through the value of the in-kind benefits provided by his father. That income resulted in a support obligation of \$610 per month for M, which should remain in effect.

This decision takes into consideration Ms. G’s financial circumstances and M’s needs. Mr. U’s care for his father may be commendable. However, he should be able to document his father’s needs and his efforts to identify other possible sources of assistance. CSSD expressed its willingness to consider a variance of Mr. U’s obligation, but it must see that documentation before it can do so. As presented, the equities do not justify placing a greater financial burden on M and Ms. G, while placing a correspondingly lesser responsibility on Mr. U.

IV. Conclusion

CSSD correctly denied Mr. U’s request for a modification review because it had insufficient information documenting his circumstances. Based on the evidence in the record, Mr. U likely is voluntarily and unreasonably unemployed, and he remains capable of earning the income CSSD used to set his support amount for M in 2011. He did not provide enough information to show that CSSD made a mistake in denying his request. CSSD’s decision is affirmed.

V. Child Support Order

- CSSD’s November 20, 2018 Decision on Request for Modification Review is affirmed;

¹⁹ Civil Rule 90.3(a)(4).

²⁰ *Id.*

²¹ *See Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).

²² *Olmstead v. Ziegler*, 42 P.3d 1102 (Alaska 2002).

- The Administrative Child Support and Medical Support Order dated July 29, 2011, remains in full force and effect.

DATED: February 15, 2019.

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

[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 4th day of March, 2019.

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

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