

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

IN THE MATTER OF: )

O. L. S. )

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) OAH No. 07-0533-CSS  
) CSSD No. 001034918  
)

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor O. L. S.'s appeal of a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in his case on August 6, 2007. The Obligee children are G., O. and L.

The formal hearing was held on September 13, 2007. Mr. S. appeared by telephone; the Custodian, M. H. S., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 19, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Based on the entire record in this case and after due deliberation, CSSD's Notice of Denial of Modification Review is affirmed.

**II. Facts**

**A. History**

Mr. S.'s child support order previously was set at \$795 per month for three children. The two older children have emancipated, so his child support obligation for one child under that order would be \$482.22 per month.<sup>1</sup> On May 31, 2007, Mr. S. requested modification of his child support order.<sup>2</sup> On May 31, 2007, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. S. provided a letter from his doctor, but no income information.<sup>4</sup> On August 6, 2007, CSSD issued a Notice of Denial of Modification Review.<sup>5</sup> Mr. S. filed an appeal and requested a formal hearing on August 14, 2007.<sup>6</sup>

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<sup>1</sup> Pre-hearing brief at pg. 1.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 3.

<sup>5</sup> Exh. 4.

<sup>6</sup> Exh. 5.

## **B. Material Facts**

Mr. S. is 55 years old. All that is known of his current situation is that he has arthritis in his neck and has an appeal pending with the Social Security Administration.<sup>7</sup> This much was learned from Dr. Kenneth Norris, who wrote the 2-line letter containing this information. The doctor's letter did not explain whether Mr. S. is able to work, or how much the arthritis affects his movements. Mr. S. said during the hearing that he would contact Dr. Norris to obtain another letter giving the requested information, but he did not. All that Mr. S. filed after the hearing was a form schedule indicating Mr. S. was to take a class called "Computer Skills Development" held four hours per day from October 8, 2007, through November 9, 2007.<sup>8</sup>

## **III. Discussion**

Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>9</sup> 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.

The Obligor has the burden of proving his or her earning capacity.<sup>10</sup> An Obligor who claims he or she cannot work, or pay child support, because of a disability, or similar impairment, must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.<sup>11</sup> The person who filed the appeal has the burden of proving CSSD's action, in this case, issuing the Notice of Denial of Modification Review, was incorrect.<sup>12</sup>

Mr. S. claims he cannot work because of arthritis, but there is insufficient proof in the record that he is disabled. Mr. S. did provide a doctor's statement, but it states only that he has arthritis in his neck. The letter contains no information regarding whether he is able to work, or what his specific limitations might be. Dr. Norris' letter states Mr. S. has an appeal pending with Social Security, but that also does not establish the obligor is disabled or that he cannot work.

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<sup>7</sup> Exh. 3.

<sup>8</sup> Sent by facsimile to the OAH from Nine Star Enterprises on September 13, 2007.

<sup>9</sup> AS 25.27.190(e).

<sup>10</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

<sup>11</sup> *Id.* at 1371.

<sup>12</sup> 15 AAC 05.030(h).

It may be that Mr. S. is able to obtain the evidence necessary to establish he is unable to work because of his medical condition. In the event he does, he is welcome to request another modification review as to his ongoing child support obligation.

**IV. Conclusion**

Mr. S. did not meet his burden of proving that CSSD’s Notice of Denial of Modification Review was incorrectly issued. He did not establish “good cause and material change in circumstances” sufficient to modify his ongoing child support, so CSSD’s Notice of Denial of Modification Review should be affirmed.

**V. Child Support Order**

1. CSSD’s August 6, 2007, Notice of Denial of Modification Review is affirmed;
2. Mr. S. remains liable for paying child support in the amount of \$482.22 per month for one child.

DATED the 8th day of November, 2007.

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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 26th day of November, 2007.

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

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