

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

In the Matter of)	
)	
D. C. JR.)	OAH No. 23-0572-CSS
)	
	_____)	

DECISION AND ORDER

I. Introduction

On March 22, 2017, the Child Support Services Division (Division) issued a Modified Administrative Child and Medical Support Order setting Mr. C.’s monthly support obligation for his two children at \$2,279. In June 2023, shortly after being terminated from his employment, Mr. C. requested a review of this calculation. On August 16, 2023, the Division issued a decision denying a modification of the support obligation. Mr. C. appeals this decision.

Through the testimony and evidence presented at the hearing, Mr. C. did not show by a preponderance of the evidence that the Division erred in denying his request for a child support modification. Accordingly, the Division’s August 16, 2023 decision is AFFIRMED. Mr. C.’s monthly child support obligation for two children based on a primary custody calculation will remain as set at \$2,279 by the March 22, 2017 Modified Administrative Child and Medical Support Order.

II. Facts

A. Material Facts

D. C. and U. T. are the parents of L. and M., ages 11 and 12 years old. All reside in City A., Alaska, and Ms. T. exercises primary custody of the children.

Mr. C. has been employed at a mine in northwest Alaska since at least 2019 until February 2023, when he was terminated from his position after missing a flight to the mine at the start of a regularly scheduled work assignment.¹ Per company policy, an employee who is fired may reapply for a position at the mine after six months have elapsed. Mr. C. testified that he spent the summer months camping on his property, intending to reapply for his job and return to work in August. He explained that

¹ When asked why his missed his flight Mr. C. declined to give further details.

he did not seek alternative employment in the interim, as other jobs in the area paid far less than mine wages, and therefore were not worth the effort. He did not have a clear answer about why he did not apply for a position at another mine in Alaska but mentioned that at one point he lost his cell phone.

Mr. C. was rehired by the mine in September 2023.

B. Procedural History

On September 1, 2023, Mr. C. submitted an appeal of the Division's denial of his request for a child support modification. The case was referred to the Office of Administrative Hearings.

A telephonic hearing was calendared for September 26, 2023. At the time of the hearing, custodial parent Ms. T. and Child Support Specialist Mark Phang were both contacted. Mr. C., however, could not be reached at his numbers on record, so the hearing was reset.

On October 19, 2023, the telephonic hearing reconvened, and Ms. T., Mr. Phang and Mr. C. participated. Mr. C. testified about temporarily losing his job. In consideration of his request for a review of his support obligation, both parents were asked to complete and submit a report of their sources of income and monthly household expenses.

On November 16, 2023, the telephonic hearing reconvened, and Mr. Phang and Ms. T. both were contacted at their numbers on record. Mr. C. could not be reached, although he reportedly texted Ms. T. that he was "not feeling well." An order issued reminding both parties to submit the requested monthly budget information and resetting the hearing date.

The hearing resumed on December 19, 2023. Mr. Phang was the only party who could be reached. An order issued advising the parties of the continued hearing date, and that if they failed to participate again, a decision in this matter could issue without their input.

On January 4, 2023, the hearing reconvened. Mr. Phang was the only party who participated. Neither Ms. T. nor Mr. C. could be reached at their numbers on record. None of the requested household budget information was submitted.

III. Discussion

As the person who filed the appeal, Mr. C. has the burden of proving by a preponderance of the evidence that the Division erred in determining that there was no material change in circumstances that implicated a modification of his support obligation.² Apart from Mr. C.'s testimony about losing his job, little other information was provided regarding his life and circumstances, due to his limited participation in the hearing.

A. *Child support calculation under Civil Rule 90.3(a)*

A parent is obligated both by statute and common law to support his or her children.³ Under Civil Rule 90.3, a parent's child support obligation is calculated based on his or her total income from all sources during the period for which the support is being paid.⁴ Income includes any benefits that would have been available to the family unit if it had remained intact.⁵

Once a parent's total income from all sources is determined, the parent's adjusted annual income is calculated in accordance with Alaska Civil Rule 90.3 by subtracting specified deductions, such as for federal income taxes, Social Security and Medicare withholdings.⁶ Alaska Civil Rule 90.3(a) provides the formula used to calculate child support awards in cases where one parent has primary physical custody. This formula applies in the situation at hand, as Ms. T. is the custodial parent of L. and M.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "material change in circumstances" has been established. When the newly calculated amount is less than a 15% change, the Division still may grant the modification if three or more years have elapsed since the prior support order was issued.⁸

In this matter, more than three years have passed since the issuance of the March 2017 Modified Administrative Child and Medical Support Order. However, Mr. C. is not asserting that a modification is necessary due to change in his earning capacity. He

² 15 AAC 05.030(h).

³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

⁴ *See also* 15 AAC 125.020, 15 AAC 125.030.

⁵ *See* Civil Rule 90.3 Commentary, III. Defining Income.

⁶ *See* Civil Rule 90.3(a)(1).

⁷ AS 25.27.190(e).

⁸ 15 AAC 125.321(b)(2)(C).

argues that a review is appropriate, as he experienced a period of unemployment. Generally, a short-term reduction in income is not considered a “material change in circumstances” unless the reduction is temporary, unforeseen and involuntary.⁹ Additional factors to be weighed include the future earning capacity of the obligor parent and the needs of the children.¹⁰

B. Mr. C.’s child support obligation

Mr. C.’s termination at the mine was not unforeseen, as it was pursuant to the mine’s established workplace policies regarding employees who do not show up for work. Furthermore, during the six months he was barred from reapplying for his job, he acknowledged voluntarily opting not to seek other employment. Nothing in the record suggests that he was sick or disabled. Even after he became eligible for rehire in August 2023, he intentionally elected not to return to his position until the following month. Finally, his period of unemployment was short term; he has since returned to his position at the mine, maintaining his original earning capacity.

Good cause does not exist to modify Mr. C.’s support obligation. It is in the best interest of L. and M. that Mr. C. be held to his legal obligation to provide for his children, and not be excused of this responsibility for the months he was unemployed and chose not to pursue other employment.

IV. Conclusion

Mr. C. has not shown by a preponderance of the evidence that the Division erred in denying his request for a modification of his child support obligation. Accordingly, the Division’s August 16, 2023 decision is AFFIRMED, and Mr. C.’s monthly child support obligation for two children based on a primary custody calculation will remain as set at \$2,279.

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⁹ See Civil Rule 90.3 Commentary, X. Modification, A. Material Change in Circumstances.
¹⁰ *Id.*

V. Child Support Order

1. D. C. Jr. is liable for child support in the amount of \$2,279 per month for two children effective January 1, 2017 and ongoing, as set by the by the March 22, 2017 Modified Administrative Child and Medical Support Order.

Dated: January 9, 2024

By: Signed
Signature
Danika Swanson
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 within 30 days after the date of this decision.

DATED this 24th day of January, 2024.

By: Signed
Signature
Danika Swanson
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.]