

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

IN THE MATTER OF: )

L. D. )

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OAH No. 08-0359-CSS

CSSD No. 001061918

**DECISION AND ORDER**

**I. Introduction**

The Obligor, L. D., appeals a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in his case on July 10, 2008. The Oblige child is C., DOB 00/0/95. The formal hearing was held on August 12, 2008. Mr. D. appeared by telephone; the Custodian, I. H., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on August 12, 2008.

Kay L. Howard,<sup>1</sup> Administrative Law Judge, conducted the hearing. Based on the record and after due deliberation, CSSD’s Notice of Denial of Modification Review is affirmed.

**II. Facts**

Mr. D.’ child support order for C. previously was set at \$387 per month in 1997.<sup>2</sup> On March 20, 2008, Mr. D. requested modification of his child support order.<sup>3</sup> On March 26, 2008, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>4</sup> Mr. D. did not submit documentary proof of his income.<sup>5</sup> On July 10, 2008, CSSD issued a Notice of Denial of Modification Review for the reason that Mr. D. did not provide income information.<sup>6</sup> On July 17, 2008, Mr. D. filed an appeal and requested a formal hearing, asserting he is unemployed and homeless.<sup>7</sup>

At the hearing, Mr. D. testified that he is unemployed. He said he previously worked as a kitchen helper for an employer on the North Slope, but he lost his job because he missed a flight back to the work site. Mr. D. further testified that he did not document his income because he

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<sup>1</sup> The administrative law judge is not related to the custodian in this matter.

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

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

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

<sup>5</sup> Pre Hearing Brief at pg. 1.

<sup>6</sup> Exh. 4.

<sup>7</sup> Exh. 5.

lost his paperwork. He explained he got a printout of his earnings from the Social Security Administration, but he lost it and hasn't been able to get another one. He said he has not filed a tax return in several years.

Mr. D. inquired about a default review proceeding, formally known as a Motion to Vacate Default Order, he had initiated in 2007. CSSD's representative explained that it was discontinued because Mr. D. did not provide the income information necessary and had failed to maintain contact with the agency. CSSD indicated Mr. D. is free to file another default review action upon obtaining his income information from past years.

### **III. Discussion**

Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>8</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>9</sup> If the party who requested the modification fails to provide proof that a modification is warranted, CSSD "may decline to complete the review."<sup>10</sup>

In this case, Mr. D. requested a modification review but failed to provide evidence of his income. At the hearing, he said he had not yet been able to replace the Social Security printout showing his annual earnings for CSSD.

The person who filed the appeal has the burden of proving CSSD's action, in this case, denying the request for a modification review, was incorrect.<sup>11</sup> Mr. D. has not proven that CSSD incorrectly denied his request for a modification review. He did not submit income verification at the time he requested the review, and he still had not obtained that information by the time of the hearing. When he obtains the documents that show his income, or lack thereof, Mr. D. is free to file another request for a modification review. Also, CSSD encouraged him to file another request for a default review when he gets the income information he needs. Mr. D. said he would do that.

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<sup>8</sup> AS 25.27.190(e).

<sup>9</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

<sup>10</sup> 15 AAC 125.316(e).

<sup>11</sup> 15 AAC 05.030(h).

**IV. Conclusion**

Mr. D. did not meet his burden of proving that CSSD’s Notice of Denial of Modification Review was incorrectly issued. He did not provide income information with his request, so CSSD was allowed to cease the review. CSSD’s Notice of Denial of Modification Review should be affirmed. Mr. D. may request another modification review in the future.

**V. Child Support Order**

- 1. CSSD’s July 10, 2008, Notice of Denial of Modification Review is affirmed;
- 2. Mr. D. remains liable for paying child support in the amount of \$387 per month for one child.

DATED the 13th day of August, 2008.

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 2nd day of September, 2008.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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