

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

IN THE MATTER OF)	OAH No. 09-0660-CSS
G. L. W.)	CSSD No. 001138333
_____)	

DECISION AND ORDER

I. Introduction

On January 7, 2010, a formal hearing was held to consider the child support obligation of G. L. W. (Obligor) for the support of his children, M., I. and C..¹ The custodial parent, M. M. V., did not participate. Mr. W. also did not participate.² Andrew Rawls Child Support Services Specialist represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on January 19, 2010.

This case is Mr. W.'s appeal of the Division's order modifying his child support obligation. The Administrative Law Judge concludes that the Division's order should be upheld.

II. Facts

This case is a modification adding children and increasing support.³ Mr. W.'s existing child support for his daughter, M., was previously set in 2006 at \$582.⁴ After that order was issued, the Division began paternity proceedings to add Mr. W.'s other two children, I. and C. to the order. After genetic testing, Mr. W.'s paternity of I. and C. was established in an order dated December 4, 2007. Mr. W. filed a request that his child support be lowered in April of 2009. The Division issued notice of the petition for modification on May 8, 2009.

The Division calculated Mr. W.'s ongoing child support based on his estimated income, using earnings information provided by his employers to the Alaska Department of Labor and

¹ The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.

² Ms. V. and Mr. W. did not appear or answer at their phone numbers of record at the time set for the hearing. Both were sent notice of the hearing with instructions on how to participate.

³ Alaska Civil Rule 90.3(h) governs child support modification actions. The procedure for setting ongoing child support and arrears when adding a new child to an existing child support order is set out in Alaska Regulation 15 AAC 125.340(e).

⁴ Division's Pre Hearing Brief, page 1.

unemployment benefits records.⁵ The Division issued a Modified Administrative Child Support and Medical Support Order on November 16, 2009. Mr. W.'s modified ongoing child support was increased to a total of \$1,142 for all three children per month, effective June 1, 2009. This order also established total arrears for I. and C. going back to May 2007 in the total amount of \$12,458.⁶

Mr. W. requested a formal hearing. In that request, Mr. W. asserted that he has the children about 40% of the time, but did not specify what the custody arrangement is or has been in the past, or whether the percentage he provided refers to time spent with the children during the days or overnights. Mr. W. also wrote that his medical and dental insurance from his work covers the children.⁷

Prior to the hearing, Mr. W. rescheduled the hearing and provided his phone number, but Mr. W. did not participate in the rescheduled hearing.⁸

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. W. has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁹ Mr. W. chose not to appear at his hearing. He did not answer at the phone number he had provided to call at the time scheduled for the hearing. He does not have another phone number on record with the Division. The record was held open to give Mr. W. ten days to request that the hearing be rescheduled.¹⁰ He did not file a request that the hearing be rescheduled.

Shared custody exists when a child resides with a parent at least 30, but no more than 70, percent of the overnights.¹¹ Under the shared custody formula, the annual amount each parent would pay to the other parent if that parent had sole custody is calculated. That support amount is then multiplied for each parent by the percentage of time the other parent will have physical custody of the child. The parent with the larger amount under this calculation is the obligor

⁵ Ex. 3 & Recording of Hearing.

⁶ See Division's Modified Administrative Child Support and Medical Support Order at Ex. 11.

⁷ See Mr. W.'s request for a formal hearing at Ex. 13.

⁸ Recording of Hearing.

⁹ Alaska Regulation 15 AAC 05.030(h).

¹⁰ Recording of Hearing.

¹¹ Alaska Civil Rule 90.3(f).

parent. The annual award from the obligor parent to the other parent is equal to the difference between the two figures multiplied by 1.5.¹²

Since Mr. W. failed to explain whether he had the children overnights or during the day, his assertion that he has the children 40% of the time does not necessarily show that he is entitled to have his child support based on a shared custody calculation. Furthermore, Mr. W. did not provide testimony or documentation that would show what the custody salutation was during the all of months covered by this order and what it is likely to be in the future. In short, Mr. W. did not provide evidence that shows that he is probably entitled to have any of his child support reduced due to shared custody.

At the formal hearing, the Division requested that its order be affirmed.¹³ Since he decided not to participate in his hearing, Mr. W. failed to meet his burden of proof to show that the Division's order was incorrect.¹⁴ The Division will give Mr. W. the appropriate credit for his out-of-pocket expenses for providing health insurance coverage for the children once he gets the necessary documentation to his child support caseworker.¹⁵

IV. Conclusion

The appeal is denied for failure to meet the burden of proof.

V. Child Support Order

The Division's Modified Administrative Child Support and Medical Support Order issued on November 16, 2009, is affirmed.

DATED this 3rd day of February 2010.

By: Signed
Mark T. Handley
Administrative Law Judge

¹² Alaska Civil Rule 90.3(f).

¹³ Recording of Hearing

¹⁴ This decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a decision if "a person requests a hearing and fails to appear at the hearing."

¹⁵ 15 AAC 125.326 allows the Division to make adjustments to child support orders for medical insurance credits without going through the normal modification process.

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 22nd day of February, 2010

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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