

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

In The Matter of:)	
)	OAH No. 10-0188-CSS
J. I. G.)	CSSD No. 001122859
_____)	

DECISION AND ORDER

I. Introduction

The custodian, P. A. K., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. G.'s case on March 15, 2010. The obligee child is B., who is 8 years old.

The formal hearing was held on May 5, 2010. Ms. K. did not participate;¹ Mr. G. appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on May 28, 2010.

Based on the record and after due deliberation, Mr. G.'s child support is modified to \$673 per month, effective October 1, 2009, and further modified to \$343 per month, effective January 1, 2010 and ongoing.

II. Facts

Mr. G.'s child support obligation for B. was set at \$426 per month on June 23, 2004.² On September 9, 2009, Mr. G. requested a modification review.³ On September 28, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order and requested income documents.⁴ Mr. G. provided income information.⁵ On March 15, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. G.'s child support to \$302 per month, effective October 1, 2009.⁶ Ms. K. filed an appeal on March 31 19, 2010, alleging that Mr. G. received a large payout from the Exxon Valdez oil spill settlement in 2009.⁷

¹ Ms. K. did not appear in person for the hearing and telephone calls placed to her contact numbers were not answered.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

⁶ Exh. 5.

⁷ Exh. 6.

III. Discussion

Ms. K. filed an appeal and requested a formal hearing, but she failed to participate in the hearing and she did not present testimony or provide any documents subsequent to filing the appeal. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the requesting party fails to appear.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”⁸ 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 and the order may be modified. A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.⁹

The person requesting the hearing, in this case, Ms. K., has the burden of proving that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect.¹⁰

Ms. K. has met her burden in this case. Mr. G. acknowledged at the hearing that he received a payout check from the Exxon Valdez oil spill settlement. He documented that his 2009 income, including the settlement, was \$44,284.38,¹¹ and after the hearing CSSD used that income figure to revise the 2009 modified child support amount to \$673 per month.¹² The modified amount goes into effect as of October 1, 2009, pursuant to CSSD regulation 15 AAC 125.321(d).

CSSD also prepared an ongoing child support calculation for 2010. The agency stated in its Post-Hearing Brief that the oil spill settlement Mr. G. received should not be used to calculate his 2010 and ongoing child support because he received the funds in 2009 and there is no indication the payment would be duplicated in 2010 or later years. On that basis, CSSD estimated Mr. G. would receive \$21,429.39 in 2010 from the PFD, unemployment benefits and his Native corporation dividends.¹³ CSSD used that income amount to calculate a child support amount for 2010 and ongoing of \$343 per month.¹⁴

CSSD’s calculations for 2009 and 2010 are correct. They are based on Mr. G.’s actual income for 2009 and the agency’s best estimate of his actual income in 2010. CSSD’s decision not to use the obligor’s oil spill settlement money for the 2010 calculation was reasonable, given that there is no evidence in the record that those funds represent a regular and recurring source of income for him.

8 AS 25.27.190(e).
9 15 AAC 125.321(d).
10 15 AAC 05.030(h).
11 Exh. A.
12 Exh. 9.
13 Exh. 10.
14 *Id.*

IV. Conclusion

Ms. K. met her burden of proving by a preponderance of the evidence that CSSD’s March 15, 2010, Modified Administrative Child Support and Medical Support Order was incorrect. Mr. G.’s modified child support has been correctly calculated at \$673 per month for the period from October 2009 through December 2009, and \$343 per month, effective January 1, 2010, and ongoing. CSSD’s calculations should be adopted.

V. Child Support Order

- Mr. G.’s child support is modified to \$673 per month, effective October 1, 2009, and further modified to \$343 per month, effective January 1, 2010 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated March 15, 2010, remain in full force and effect.

DATED this 17th day of June, 2010.

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 6th day of July, 2010.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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