

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

IN THE MATTER OF: )

B. T. H. )

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) OAH No. 10-0305-CSS  
) CSSD No. 001161784  
)

**DECISION AND ORDER**

**I. Introduction**

This case involves the obligor B. T. H.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division ("CSSD") issued in his case on May 13, 2010. The obligee child is I.

The hearing was held on July 8, 2010. Mr. H. did not appear; the custodian, C. J. R., participated in person. Andrew Rawls, Child Support Specialist, represented CSSD. The record closed on July 18, 2010.

As the appellant, Mr. H. had the burden of proving that the May 13, 2010 Amended Administrative Child and Medical Support Order is in error. As discussed below, Mr. H. has not met his burden so CSSD's May 13, 2010 Amended Administrative Child Support and Medical Support Order is affirmed.

**II. Facts**

In September 2009, Ms. R. requested child support services on I.'s behalf.<sup>1</sup> On March 29, 2010 CSSD served an Administrative Child Support and Medical Support Order on Mr. H..<sup>2</sup> He requested an administrative review and provided pay stubs and his 2009 tax return in support of his request.<sup>3</sup> On May 13, 2009, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. H.'s ongoing child support at \$608 per month, with arrears of \$5,472 for the period from September 2009 through May 2010.<sup>4</sup> Mr. H. filed an appeal on May 27, 2010.

By certified notice dated June 26, 2010 and signed for by Mr. H., Mr. H. was informed that the hearing was calendared for July 8 at 2:00 p.m. On June 30, 2010, Mr. H. contacted the

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exhs. 3, 5.  
<sup>4</sup> Exh. 6.

Office of Administrative Hearings and indicated that he would appear in person at the hearing. At the time of the hearing, a telephone call was placed to the number on record for Mr. H., but he did not answer. A voicemail message was placed on the answering machine directing Mr. H. to contact the OAH, but as of the date of this decision, the OAH has not heard from him.

### **III. Discussion**

Mr. H. received his notice of the date and time for the hearing, service of the notice was found to be effective and the hearing was conducted without his participation.<sup>5</sup> 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 person requesting the hearing fails to appear.

A parent is obligated both by statute and at common law to support his or her children.<sup>6</sup> Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." CSSD calculated Mr. H.'s child support using a total gross income amount of \$44,696.70. This amount was based on Mr. H.'s 2009 actual income as reported to the Alaska Department of Labor and Workforce Development and on his income taxes plus PFD, unemployment insurance, and dividend income. After allowable deductions, this resulted in a monthly child support obligation for one child in the amount of \$608. When CSSD calculated Mr. H.'s 2010 monthly child support obligation using actual and imputed wages, the 2010 monthly support payment did not meet the threshold 15% change from \$608 per month necessary to warrant presumptive modification.<sup>7</sup>

Mr. H. appealed stating he is a seasonal employee, the allowable deductions were overstated and there is less work this year.<sup>8</sup> Mr. H. also provided a letter from his employer who confirmed that Mr. H. is a seasonal employee and the season typically runs from May until late October.<sup>9</sup> Mr. H. is a truck driver.

As explained in its May 13, 2010 Administrative Review Decision, CSSD based Mr. H.'s 2009 child support obligation on his reported earnings, permanent fund dividend and

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<sup>5</sup> "If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department." 15 AAC 05.010(c).

<sup>6</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>7</sup> See 15 AAC 125.105(e).

<sup>8</sup> Exh. 7.

<sup>9</sup> Exh. 8.

unemployment benefits.<sup>10</sup> No deduction was given for Mr. H.'s 401(k) benefit because CSSD concluded the contributions were from the employer, not the employee and was neither income nor a deduction. CSSD declined to perform a three year average of Mr. H.'s income for purposes of child support because Mr. H.'s income steadily increased over the years rather than fluctuate. This resulted in a monthly child support obligation in 2009 in the amount of \$608 per month. Finally, CSSD acknowledged that Mr. H.'s first quarter 2010 income was less than what he had earned but without further explanation from Mr. H., is based Mr. H.'s 2010 income for purposes of child support to be based on his year to date (April 23, 2010) earnings plus his current wage of \$23 per hour, at 40 hours per week for the remaining work weeks. When CSSD compared Mr. H.'s anticipated 2010 earnings to his 2009 hearings it applied 15 AAC 125.105(e) and concluded that there is no material change in circumstance so Mr. H.'s 2010 and ongoing monthly child support obligation would remain at \$608 per month.

In response to Mr. H.'s claim that there is less work available and he is a seasonal employee, CSSD indicated in its pre-hearing brief that Mr. H. should provide copies of his three most recent pay stubs and outline his earnings by season. Mr. H.'s appeal also claimed his allowable deductions were understated. CSSD responded that Mr. H. should explain what he disputes and come forward with evidence showing the correct allowable deductions.<sup>11</sup>

Because Mr. H. appealed, he has the burden of proving that CSSD's Amended Administrative Child and Medical Support Order is incorrect.<sup>12</sup> CSSD's request for evidence in support of Mr. H.'s allegations is well taken. Thus in the absence of any additional evidence from Mr. H. -- other than the assertions he made in his appeal, CSSD's Amended Administrative Child and Medical Support Order should be affirmed.

#### **IV. Conclusion**

Mr. H. did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order is incorrect. The order should be affirmed.

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<sup>10</sup> Exh 6 at 8.

<sup>11</sup> CSSD Pre-Hearing Brief.

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

**V. Child Support Order**

- CSSD's May 13, 2010, Amended Administrative Child and Medical Support Order is affirmed.

DATED this 23rd day of July, 2010.

By: Signed  
Rebecca L. Pauli  
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 17<sup>th</sup> day of August, 2010.

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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