

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

IN THE MATTER OF: )

R. L. M. )

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) OAH No. 10-0310-CSS

) CSSD No. 001133679

**DECISION AND ORDER**

**I. Introduction and Procedural Background**

This case involves the Custodian S. H.'s appeal of the Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in this matter on March 22, 2010.<sup>1</sup> This order decreased the Obligor R. L. M.'s monthly child support obligation from \$224 per month set in 2005 to \$50 per month. Ms. H. believed that the child support calculation is too low because Mr. M. has assets and supported other children. The Obligee child is J. who is six years old.

After Ms. H. appealed and a hearing was held July 12, 2010. At the start of the hearing the parties requested it be rescheduled and Ms. H.'s mailing address was confirmed. A supplemental hearing was held August 4, 2010 during a time of the day Ms. H. stated would be best for her.<sup>2</sup> Mr. M. participated by phone. Child Support Specialist Erinn Brian represented CSSD. Ms. H. did not participate. Following the hearing the record was left open until August 16, 2010 to provide Ms. H. with an opportunity to show reasonable cause for her failure to participate.<sup>3</sup> The record closed without further input from Ms. H.

**II. Facts**

In April 2005, Mr. M. was ordered to pay child support in the amount of \$224 per month and ongoing.<sup>4</sup> Mr. M. requested modification of the 2005 Child Support Order.<sup>5</sup> On December 18, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order

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<sup>1</sup> Exhibit 5.

<sup>2</sup> At the July hearing Ms. H. stated a preference for the afternoon.

<sup>3</sup> "If a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless the person within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear." 15 AAC 05.030(j).

<sup>4</sup> Exhibit 1.

<sup>5</sup> Exhibit 2.

and, as requested by CSSD, Mr. M. provided 2008 and 2009 child support affidavits reporting no income.<sup>6</sup> At the time he requested modification, Mr. M. was incarcerated. CSSD set Mr. M.'s child support at the statutory minimum of \$50 per month effective January 1, 2010 and ongoing.<sup>7</sup> Ms. H. appealed believing that Mr. M. had resources and J. should not be penalized because Mr. M. was incarcerated.<sup>8</sup>

Mr. M. was released from prison April 30, 2010. The Department of Labor and Workforce Development has no record of reported earnings for Mr. M. after the third quarter 2006.<sup>9</sup> Mr. M.'s unchallenged testimony established that:

- Prior to his incarceration on November 6, 2007, he was on workers compensation and had not been released to work.
- Upon incarceration his workers' compensation benefits ceased.
- Because he has no benefits he has not been able to visit a physician.
- He has no income.
- His only means of financial support is his wife.
- He and his wife and live in a home owned by one of her children.
- He has two children older than J.

### **III. Discussion**

Ms. H., as the individual appealing the March 22, 2010 Modified Administrative Child Support and Medical Support Order, has the burden of proving that it is in error.<sup>10</sup> The evidence in support of Ms. H.'s appeal is her unsworn Request for Appeal of Modification. The reasons advanced by Ms. H. in support of her request for appeal have been challenged by Mr. M.'s sworn testimony. His testimony was subject to cross examination by CSSD. The sworn evidence by Mr. M. is given greater weight than Ms. H.'s uncorroborated request for modification. Accordingly, Ms. H. has failed to meet her burden of proving that it is more likely than not that the Modified Administrative Child Support and Medical Support Order issued March 22, 2010 is incorrect.

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<sup>6</sup> Exhibits 3, 4.

<sup>7</sup> Exhibit 5.

<sup>8</sup> Exhibit 6.

<sup>9</sup> Exhibit 7.

<sup>10</sup> "At the hearing, the person requesting the hearing has the burden of proving that the action by the department to which that person objects is incorrect." 15 AAC 05.030(h)

**IV. Conclusion**

Ms. H. has not established by a preponderance of the evidence that the March 22, 2010 Modified Administrative Child Support and Medical Support Order is incorrect. Therefore, her appeal fails and the March 22, 2010 Modified Administrative Child Support and Medical Support Order should be affirmed.

**V. Child Support Order**

- 1. The Modified Administrative Child Support and Medical Support Order issued March 22, 2010 is AFFIRMED.

DATED the 31<sup>st</sup> day of August, 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 September, 2010.

By: Signed

Signature

Rebecca L. Pauli

Name

Administrative Law Judge

Title

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