

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

IN THE MATTER OF)	OAH No. 10-0315-CSS
W. R.)	CSSD No. 001110644
)	
_____)	

DECISION AND ORDER

I. Introduction

On July 20, 2010, a formal hearing was held to consider the child support obligation of W. R. (Obligor) for the support of his children, A., B., C. and D. (Obligees).¹ Mr. R. and the custodial parent, E. R., did not participate.² Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on July 30, 2010.

This case is Mr. R.'s appeal of the Division's order adding his child, A. to his existing child support order for his other children, B., C. and D. The order also modified his ongoing child support obligation by setting it at a higher monthly amount. Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be upheld. Mr. R.'s modified ongoing child support obligation should be set at \$428 per month.

II. Facts

This case is an add-a-child modification action.³ Mr. R.'s child support for his children, B., C. and D. was previously set at \$50 per month because he was in jail.⁴ The Division initiated a modification action to add A. because all four children have been receiving public assistance since September of 2008. Mr. R.'s paternity of A., the new child added to the order, is not in dispute.⁵ Mr. R. is named as A.'s father on A.'s birth certificate.⁶

The Division issued notice of the petition for modification on August 20, 2009. Mr. R. did not provide income information as required. The Division issued a Modified Administrative

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

² Neither party appeared or provided a phone number to call for the hearing. There was no answer at either party's phone number of record.

³ Alaska Civil Rule 90.3(h) governs modification actions.

⁴ Recording of Hearing & the Division's Pre-Hearing Brief, page 1.

⁵ Division's Pre Hearing Brief & Recording of Hearing.

Child and Medical Support Order on April 14, 2010.⁷ The Division order set Mr. R.'s ongoing child support obligation at \$428 per month effective March 1, 2010.⁸

Additional arrears totaling \$300 were also added to the \$50 charge for the months of September of 2008 through August 2009. These additional arrears were calculated by adding seven-percent of the income used to set Mr. R.'s prior child support amount at \$50 per month. This is to pay for the addition of A. from the month A. first received public assistance to the date that Mr. R.'s ongoing child support could be modified.⁹

The Division set modified ongoing child support based on imputed full-time minimum wage earnings.¹⁰ Mr. R. requested a formal hearing.¹¹

In his request for a formal hearing, dated May 13, 2010, Mr. R. wrote that he was excused from the Division of Vocational Rehabilitation work force and is currently unemployable. Mr. R. also provided medical records indicating that he was being treated for back pain and high blood pressure from February 2010, through April of 2010. These records also indicated that Mr. R. did not qualify for Social Security or Medicaid, and was living in a cabin with wood heat and no running water, so that he had to haul wood and water himself.¹²

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. R., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹³ Mr. R. did not participate in the hearing.¹⁴ He had been informed by written notice that he could appear at the Division's Juneau Office, and a number was provided for him to call and provide a phone number at which he could be called to participate by phone at the time of the hearing. The mailing receipt for the notice for the hearing was not returned.

⁶ Division's Pre Hearing Brief.

⁷ Ex. 4.

⁸ The Division's Pre-Hearing Brief, page 1 & Ex. 4.

⁹ This is the correct procedure for setting ongoing child support and arrears when adding a new child to an existing child support order, as set out in Alaska Regulation 15 AAC 125.340(e).

¹⁰ Ex. 4, page 7.

¹¹ Ex. 5.

¹² Ex. 5.

¹³ Alaska Regulation 15 AAC 05.030(h).

¹⁴ Recording of Hearing.

The Administrative Law Judge called Mr. R.'s phone number at the time scheduled for the hearing. There was no answer. The message at that number indicated that the number was no longer in service. The record was held open to give Mr. R. ten days to request that the hearing be rescheduled.¹⁵ He did not file a request that the hearing be rescheduled.

Since he missed his hearing, Mr. R. failed to meet his burden of proof to show that the Division's order was incorrect.¹⁶ The information that Mr. R. provided simple does not show that it is more likely than not that he could not earn an income at least equal to full-time minimum-wage earnings. If Mr. R. could provide more evidence to support his assertion that he is unemployable he should have provided it prior to the hearing or participated at the hearing and explained his situation.

IV. Conclusion

I conclude that the Division correctly modified Mr. R.'s ongoing child support and added A. to his child support order. If Mr. R. becomes disabled and is unable to work he should let his caseworker know as soon as possible so that the Division can initiate an action to again modify his ongoing child support.

V. Child Support Order

The Division's Modified Administrative Child and Medical Support Order issued on April 14, 2010, is affirmed.

DATED this 30th day of July, 2010.

By: Signed _____
Mark T. Handley
Administrative Law Judge

¹⁵ Recording of Hearing.

¹⁶ 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."

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 20th day of August, 2010

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

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