

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

IN THE MATTER OF:)	
)	OAH No. 10-0454-CSS
W. A. W.)	CSSD No. 001118051
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DECISION AND ORDER

I. Introduction

This case involves the obligor W. A. W.'s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 2, 2010. The obligee children are A., 10 and B., 8, years of age. The custodian is J. F.

The formal hearing was held on September 28, 2010. Neither Mr. W. nor Ms. F. participated.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 8, 2010.

Based on the record and after careful consideration, CSSD's Modified Administrative Child Support and Medical Support Order is affirmed: Mr. W.'s ongoing child support is modified to \$318 per month, effective July 1, 2010.

II. Facts

A. Procedural History

Mr. W.'s child support obligation for A. and B. was set at \$105 per month in March 2004.² Ms. F. requested a modification review on June 21, 2010.³ On June 24, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.⁴ Mr. W. did not provide the requested financial information,⁵ so on August 24, 2010, CSSD issued a

¹ No less than 4 calls were placed to telephone numbers listed as contact information for Mr. W. He either did not answer or the person who did answer could not locate him. Mr. W.'s father provided a number that he thought would work but was not in service. There was no opportunity to leave Mr. W. a voicemail message, but the undersigned asked his father to give him a message to call the Office of Administrative Hearings (OAH). As of this date, the obligor has not contacted the OAH. Ms. F.'s telephone number was out of service.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Pre-hearing brief at pg. 1.

Modified Administrative Child Support and Medical Support Order that set Mr. W.'s child support at \$314 per month.⁶ CSSD subsequently issued a corrected decision on September 2, 2010, because the child support calculation was actually \$318 per month.⁷ Mr. W. filed an appeal on September 7, 2010, asserting that he has been unemployed for almost a year and he would like to reduce his payment until he is employed again.⁸

On September 13, 2010, the OAH sent Mr. W. a notice of the date and time for the hearing by certified mail to his last-known address. The green card indicating service of the notice was returned by the U.S. Postal Service marked "unclaimed." Before the hearing on September 28, 2010, several unsuccessful attempts to reach Mr. W. were made.⁹ A message was left with his father to contact the OAH, but Mr. W. has not done so. Because notice of the hearing had been sent to Mr. W. by certified mail at his last-known address, service of the notice of hearing was found to be effective and the hearing was conducted without his participation.¹⁰

B. Findings of Fact

1. Notice of the date and time for the hearing was sent by certified mail to Mr. W. at his last-known address, but it was returned to the OAH by the U.S. Postal Service marked "unclaimed;"
2. Mr. W. did not appear for the hearing, nor has he contacted the OAH;
3. Mr. W. did not provide income information;
4. Mr. W. is underemployed and his 2010 income is estimated at \$16,120, based on the Alaska minimum wage of \$7.75 per hour for full-time employment, and it yields a child support amount of \$318 per month.¹¹

III. Discussion

Mr. W. filed an appeal and requested a formal hearing, but he did not participate in the hearing. The only evidence he presented was his appeal statement. 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.

⁶ Exh. 5.

⁷ Exhs. 6 & 8.

⁸ Exh. 7.

⁹ See n.1.

¹⁰ See 15 AAC 05.010(c).

¹¹ See Exh. 5 at pgs. 4& 6.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹² If the newly calculated 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.¹³

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." The obligor has the burden of proving his or her earning capacity.¹⁴ In its modification order, CSSD found Mr. W. to be voluntarily underemployed and on that basis imputed full-time income to him.¹⁵ That income figure resulted in a child support amount of \$318 per month. Other than his appeal form, Mr. W. has not provided any evidence in this case. CSSD's determination that he is underemployed and is capable of earning the minimum wage on a full-time basis is not unreasonable.

IV. Conclusion

Mr. W. did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). The division's calculation of \$318 per month should be adopted.

V. Child Support Order

- CSSD's Modified Administrative Child Support and Medical Support Order dated September 2, 2010, is affirmed; Mr. W.'s child support obligation for A. and B. is modified to \$318 per month, effective July 1, 2010.

DATED this 29th day of October, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹² AS 25.27.190(e).

¹³ 15 AAC 125.321(d).

¹⁴ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁵ Exh. 5 at pg. 4.

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 14th day of November, 2010.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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