

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

IN THE MATTER OF:)

L. V. A.)

) OAH No. 10-0616-CSS
) CSSD No. 001118212
)

DECISION AND ORDER

I. Introduction

The obligor, L. V. A., appealed a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in his case on December 1, 2010. The obligee child is B., 8 years of age. The other party is J. K. G.

The formal hearing was held on December 28, 2010. Mr. A. did not participate.¹ Ms. G. appeared in person. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after due deliberation, CSSD's Notice of Denial of Modification Review is affirmed.

II. Facts

Mr. A.'s child support previously was set at \$1,007 per month in April 2009.² On October 16, 2010, Mr. A. requested a modification of his order.³ On October 13, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.⁴ Mr. A. did not respond, so on December 1, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that Mr. A. did not provide the income documentation necessary for CSSD to perform a modification review.⁵ Mr. A. appealed on December 13, 2010.⁶

On December 14, 2010, the Office of Administrative Hearings (OAH) sent each party a notice by certified mail that the hearing had been calendared for December 28, 2010. Mr. A.'s notice was signed for by "G. A. H." and returned to the OAH by the postal service on December

¹ A telephone call was placed to the obligor's contact number before the hearing but it was not answered and a message was left for him to call the Office of Administrative Hearings.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

⁶ Exh. 6.

27, 2010. Before the hearing, CSSD filed a Motion for Summary Adjudication, requesting a decision without a hearing.

Mr. A. could not be reached at the time of the hearing, so a message was left on his voicemail. However, because his notice was received and signed for, service was found to be effective and the hearing was conducted without his participation.⁷

III. Discussion

A. *Failure to appear*

Mr. A. filed an appeal and requested a formal hearing, but he failed to appear for the hearing. 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. The record must remain open for at least 10 days after the hearing so as to provide the individual the opportunity to show “reasonable cause” for his or her failure to appear.

The OAH sent Mr. A. a certified letter on December 14th that his hearing was scheduled for December 28th. He received it on December 25th, but with all of the “holiday stuff going on” he did not open it until the night of December 28th, probably after he received the voicemail message left for him just before the hearing. He then requested another hearing.

Mr. A.’s reason for missing the hearing does not constitute “reasonable cause” for his failure to appear. A certified letter is an obvious indication that the communication within is important and most likely time sensitive. Had Mr. A. picked up his certified mail earlier or merely opened the letter when he received it he would have known the date of his hearing and could have appeared. His hearing absence was the result of his own actions, which do not entitle him to another hearing.

B. *Denial of modification*

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. If the person who requests a review does not provide evidence sufficient to

⁷ “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).

⁸ AS 25.27.190(e).

review the order, CSSD may decline the review.⁹ Mr. A. requested the hearing but he did not provide any income information, as required by CSSD for the modification review. Because it had no information to work with, CSSD denied the modification request. The agency was within its authority to do so. Mr. A. then appealed CSSD's Notice of Denial of Modification Review, but he did not timely read his certified notice and as a result missed the hearing.

Mr. A. is not entitled to a hearing or to a review of his child support order based on the current request for a review. He may file another petition for modification, but he must submit the information CSSD needs to complete the review or his request will be denied again.

IV. Conclusion

Mr. A. did not meet his burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was issued in error, as required by 15 AAC 05.030(h). Therefore, CSSD's order should be affirmed. The Motion for Summary Adjudication should be denied as moot.

V. Child Support Order

- CSSD's Motion for Summary Adjudication is denied as moot;
- The December 1, 2010, Notice of Denial of Modification Review is AFFIRMED;
- Mr. A. remains liable for child support of \$1,007 per month, as set forth in the Modified Administrative Child Support and Medical Support Order issued on April 3, 2009. That order remains in full force and effect.

DATED this 12th day of January, 2011.

By: Signed
Kay L. Howard
Administrative Law Judge

⁹ 15 AAC 125.316(e).

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 8th day of February, 2011.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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