

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

IN THE MATTER OF:)

D. L. P.)

) OAH No. 11-0003-CSS
) CSSD No. 001156089
)
)

CORRECTED DECISION AND ORDER *Nunc Pro Tunc*¹

I. Introduction and Procedural Background

This case involves the Obligor D. L. P.'s appeal of the Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in this matter on November 18, 2010.² This order increased Mr. P.'s monthly child support obligation for one child, J., from \$249 per month set in July 2009 to \$1,273 per month effective October 2010. The custodian of record is T. D. G. Ms. G. participated by telephone. Child Support Specialist, Andrew Rawls, appeared for CSSD. The hearing was held January 24, 2011.

At the start of the hearing the Mr. P. was called at the phone numbers he provided. One number was answered by voice mail. A message was left asking Mr. P. to call the Office of Administrative Hearing and providing its phone number. The other number rang, but was never answered. The file contains the certified mailing of the Notice of Hearing which was returned undelivered. The Notice of Assignment was sent by first class mail but has not been returned as either unclaimed or undeliverable. The file indicates that Mr. P. did call the Office of Administrative Hearings on January 24, 2011 after the hearing had concluded and that he was provided instructions on how to request a new hearing.³ Following the hearing the record was left open until February 3, 2011 to provide Mr. P. with an opportunity to show reasonable cause

¹ This decision has been corrected at the direction of the final decision maker to correct typographical or other manifest errors pursuant to 2 AAC 64.350(b) and replaces the original decision in its entirety. The amount of child support owing in Ordering ¶ 1 is corrected to read "modified ongoing child support for J. in the amount of \$1,248 per month, effective October 1, 2010...."

² Exhibit 4.

³ Mr. P.'s contact with OAH indicates he received notice of the proceeding.

for his failure to participate and request a new hearing.⁴ The record closed without further input from Mr. P.

Mr. P. appealed the November 2010 order because he believed that the child support calculation was too high because it included the permanent fund dividend which he does not receive, and because it failed to deduct child support paid for children of a prior relationship. CSSD agreed with Mr. P. and submitted a revised calculation.⁵ Mr. P.'s appeal should be granted and his child support should be set at \$1,248 per month for one child effective October 2010.

II. Facts

In July 2009, Mr. P.'s monthly child support obligation for one child was set at \$249 per month.⁶ Ms. G. requested modification of the 2009 order on September 22, 2010. CSSD served a Notice of Petition for Modification of Administrative Support Order on September 28, 2010.⁷ This notice requested current financial information from the parties. CSSD did not receive Mr. P.'s financial information. CSSD obtained Mr. P.'s earning records from the Alaska Department of Labor and Workforce Development. To calculate child support, CSSD took Mr. P.'s last four consecutive reported quarters:

4 th Quarter 2009	\$25,745.11
1 st Quarter 2010	\$26,117.05
2 nd Quarter 2010	\$26,633.13
3 rd Quarter 2010	\$25,198.00 ⁸

Using Mr. P.'s actual income plus the PFD, CSSD calculated Mr. P.'s monthly child support obligation for one child to be \$1,273 per month effective October 2010.⁹ The Modified Administrative Child Support and Medical Support Order increasing Mr. P.'s child support obligation was issued on November 18, 2010. CSSD received Mr. P.'s untimely appeal on December 28, 2010.

⁴ "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).

⁵ Exhibit 7.

⁶ Exhibit 1.

⁷ Exhibit 3.

⁸ These figures are found at Exhibit 6.

⁹ Exhibit 4 at 6.

In his appeal, Mr. P. did not challenge the amount of earned income used by CSSD. Rather, he appealed because he does not receive a PFD so it should not have been included in his income and because the calculation did not include a deduction for child support paid for children from a prior relationship. Finally, Mr. P. noted that he was out of town and was unable to timely respond to the modification.¹⁰

III. Discussion

Dealing first with Mr. P.'s untimely appeal, his statement that he was out of town and therefore unable to participate in the modification process is accepted as a request to waive the filing deadline and accept the late filed appeal. Because Mr. P.'s appeal was only a few weeks late and because he submitted information that established the amount ordered was incorrect, it is concluded that because strict adherence to the deadline would work an injustice Mr. P.'s request for a waiver is granted.¹¹

Turning to the merits of the appeal, Mr. P., as the individual appealing the November 18, 2010 Modified Administrative Child Support and Medical Support Order, has the burden of proving that it is in error.¹² In support of his appeal he brought to CSSD's attention information of which it was previously unaware. CSSD agreed that based on the new information the first calculation was incorrect. Therefore, CSSD agrees that Mr. P.'s appeal should be granted.

CSSD provided a revised calculation which:

1. Did not include the PFD in annual gross income, and
2. Deducted child support paid for children from a prior relationship.

The revised calculation at exhibit 7 calculated Mr. P.'s monthly child support obligation for one child to be \$1,248 per month. This amount is 15% greater than the prior support obligation of \$249 per month. A child support award may be modified upon a showing of a material change in circumstances. "A material change in circumstances will be presumed if support as calculated under this rule is more than 15 percent greater or lesser than the outstanding support order."¹³

¹⁰ Mr. P. also indicated he did not receive credit for insurance he provides for J. Credits for insurance should be brought to the attention of the CSSD caseworker.

¹¹ "The hearing officer may waive any requirement or deadline established in 15 AAC 05.010 – 15 AAC 05.030 if it appears to the officer that strict adherence to the deadline or requirement would work an injustice...." 15 AAC 05.030(k).

¹² "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).

¹³ AK. R. Civ. P. 90.3(h)(1).

Therefore, Mr. P.'s child support obligation should be modified to \$1,248 per month effective October 2010.

IV. Conclusion

Mr. P. has established by a preponderance of the evidence that the November 18, 2010 Modified Administrative Child Support and Medical Support Order overstates gross income. The correct calculation results in a monthly child support obligation for one child in the amount of \$1,248 effective October 2010.

V. Child Support Order

1. Mr. P. is liable for modified ongoing child support for J. in the amount of \$1,248 per month, effective October 1, 2010; and
2. All other provisions of the Modified Administrative Child Support and Medical Support Order dated November 18, 2010 remain in full force and effect.

DATED the 20th day of April, 2011 *nunc pro tunc*, the 8th day of March, 2011.

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 25th day of March, 2011.

By: Signed _____
Signature
Rebecca L. Pauli _____
Name
Administrative Law Judge _____
Title

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