

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

IN THE MATTER OF:)	
)	OAH No. 11-0020-CSS
D. E. K.)	CSSD No. 001119820
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DECISION AND ORDER

I. Introduction

This case involves the obligor D. E. K.’s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on December 20, 2010. The obligee children are J., E., N. and L. This is a foster care case so the other party is the State of Alaska.

The formal hearing was held on February 2, 2011. Ms. K. did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD’s Modified Administrative Child Support and Medical Support Order is affirmed, but collection of support from Ms. K. pursuant to the order is suspended because the children were out of Ms. K.’s care for less than two weeks.

II. Facts

A. Procedural History

Ms. K.’s child support obligation for J., E. and N. was set at \$491 per month for three children in April 2003.² The children were placed in foster care on May 17, 2010, so CSSD initiated a modification review so as to add L. to the order – on July 29, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Ms. K. did not provide the requested financial information,⁴ so on September 17, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that set her child support at \$721 per

¹ A telephone call was placed to the number Ms. K. provided on her appeal form so she could participate in the hearing. An individual who answered the telephone indicated Ms. K. was not there but could be reached at a cell phone number. That number was called but it was a wrong number. Ms. K. did not contact the Office of Administrative Hearings to find out what had happened at the hearing.

² Exh. 1.

³ Exh. 2.

month effective August 1, 2010, with additional arrears owed just for L. totaling \$180 for May 2010 through July 2010.⁵ Ms. K. filed an appeal on January 14, 2011, asserting that she has had the children for all but 10 days in May and that she was instructed by the Office of Children's Services (OCS) to file for daycare assistance so she could continue to work while still living with the children.⁶

On January 19, 2011, the OAH sent Ms. K. a notice of the date and time for the hearing by certified mail to her last-known address. She received and signed for it on January 20, 2011. Before the hearing on February 2, 2011, an unsuccessful attempt was made to reach Ms. K. for the hearing. Because Ms. K. received and signed for the notice of hearing, service on her of the notice was found to be effective and the hearing was conducted without her participation.⁷

B. Findings of Fact

1. The obligees J., E., N. and L. were placed in foster care from May 17, 2010, through May 30, 2010;⁸

2. Notice of the date and time for the hearing was sent by certified mail to Ms. K. and she signed for it on January 20, 2011;

3. Ms. K. did not appear for the hearing, nor has she contacted the OAH;

4. Ms. K. is employed and her income is estimated at \$27,459, based on wage information she reported to her caseworker on March 29, 2010, that she earned \$14 per hour and her income for that month had been \$2,288.30, which, when annualized, yields a child support amount of \$721 per month for four children.⁹

III. Discussion

Ms. K. filed an appeal and requested a formal hearing, but she did not participate in the hearing. The only evidence she presented was her 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.

⁴ Pre-hearing brief at pg. 1.

⁵ Exh. 3. The modification order was served on Ms. K. on December 20, 2010. Pre-Hearing Brief at 1.

⁶ Exh. 4.

⁷ See 15 AAC 05.010(c).

⁸ Exh. 5.

⁹ See Exh. 3 at pg. 6; Exh. 5.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁰ 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.¹¹

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." In its modification order, CSSD calculated Ms. K.'s child support at \$721 per month for four children from income information she reported to her caseworker in March 2010. Other than her appeal form, Ms. K. has not provided any evidence in this appeal. CSSD's determination is correct and should be adopted.

However, it is also clear from the record in this matter that Ms. K.'s children were in foster care only from May 17, 2010, through May 30, 2010, a period of less than two weeks. On that basis, CSSD has indicated that it will not be charging Ms. K. support pursuant to the modification order. Rather, CSSD merely wants the order left in place in case the children go into foster care again; the agency has taken the position that ongoing support and the \$180 in arrears due for L. from May 2010 through July 2010 should be suspended. Based on all the evidence presented, CSSD's position is reasonable.

IV. Conclusion

Ms. K.'s child support has been correctly modified to \$721 per month for four children, effective August 1, 2010. However, the obligee children were in foster care for less than two weeks in May 2010. Accordingly, CSSD will not be collecting ongoing support based on this order, nor does CSSD desire to collect the \$180 in arrears due for L. from May 2010 through July 2010. Thus, CSSD's order should be affirmed, but ongoing support should be suspended, effective August 1, 2010, as well as the extra arrears due for L.

V. Child Support Order

- CSSD's Modified Administrative Child Support and Medical Support Order dated September 17, 2010, is affirmed – Ms. K. is liable for ongoing support of \$721 per month for four children;

¹⁰ AS 25.27.190(e).

¹¹ 15 AAC 125.321(d).

- The additional \$180 in arrears due for L. from May 2010 through July 2010 are suspended;
- Ongoing support is suspended, effective August 1, 2010, and shall remain suspended unless one or more of the children leave Ms. K.'s custody and public assistance, foster care or child support services for them are requested.

DATED this 7th day of March, 2011.

By: Signed
 Kay L. Howard
 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, 2010.

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

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