

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

IN THE MATTER OF:)
)
 L G) OAH No. 11-0216-CSS
) CSSD No. 001170117
_____)

DECISION AND ORDER

I. Introduction

This case involves the obligor L G's appeal of an Administrative Review Decision that the Child Support Services Division (CSSD) issued in her case on May 18, 2011. The obligee children are J, 13, and P, 10. The other parent and custodian of record is A D. M.

The formal hearing was held on June 15, 2011. Ms. G did not participate.¹ Mr. M appeared in person. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Administrative Review Decision dated May 18, 2011, is affirmed.

II. Facts

A. Procedural Background

Mr. M applied for child support services for J and P on August 20, 2010.² CSSD requested income information from Ms. G, who provided child support guidelines affidavits.³ On March 3, 2011, CSSD issued an Administrative Child Support and Medical Support Order setting Ms. G's ongoing child support at \$50 per month for two children, plus arrears of \$400 for the period from August 2010 through March 2011.⁴ She requested an administrative review and submitted a short letter stating she has always had custody of the children but they went to visit their father for a period of time while she recovered from health problems.⁵ On May 18, 2011,

¹ Telephone calls were placed to Ms. G's contact numbers, but the calls were not answered. The ALJ left a voicemail message for Ms. G and she contacted the OAH after the hearing. She made arrangements to receive a copy of the digital recording of the hearing but did not want a supplemental hearing.

² Exh. 1 at pg. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

CSSD issued an Administrative Review Decision affirming its earlier administrative support order.⁶ Ms. G filed an appeal on May 27, 2011, asserting that she has always had custody of the children and she should not have to pay child support when the father refuses to return the children to her.⁷

On June 1, 2011, the Office of Administrative Hearings (OAH) sent the parties a notice of the date and time for the hearing by certified mail. Both Ms. G and Mr. M received and signed for their notice of hearing.

Before the hearing was to begin, telephone calls were placed to Ms. G's contact numbers, but the calls were not answered. The administrative law judge left her a voicemail message but when she later contacted the OAH, she did not want a supplemental hearing. Because Ms. G received and signed for her notice of the hearing, service of the notice on her was found to be effective and the hearing was conducted without her participation.⁸

B. Material Facts

1. Notice of the date and time for the hearing was sent by certified mail to Ms. G at her last-known address, and she received and signed for it on June 6, 2011;

2. Ms. G did not appear for the hearing;

3. Ms. G did not meet her burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision is incorrect;

4. Ms. G does not have any discernable earnings so CSSD correctly calculated her child support at \$50 per month, beginning in August 2010;⁹

5. The children J and P were previously under court supervision in Pennsylvania. They were placed with Mr. M by order of the Hon. Kathryn Hens-Greco of the Court of Common Pleas of Allegheny County, Pennsylvania, on April 15, 2009.¹⁰ The court supervision was terminated by order of the Hon. Dwayne Woodruff of the Court of Common Pleas of Allegheny County, Pennsylvania, on January 25, 2010.¹¹

⁶ Exh. 6.

⁷ Exh. 7.

⁸ See 15 AAC 05.010(c).

⁹ Exh. 3 at pgs. 7-9.

¹⁰ Exh. 5 at pg. 3.

¹¹ Exh. 5 at pgs. 4-5.

III. Discussion

Ms. G filed an appeal of a child support order and she received the notice of the date and time set for the hearing. However, she 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 person requesting the hearing fails to appear.

Ms. G argues she has always had custody of the children, but the documents in the record do not support her claim. Mr. M filed copies of court orders having to do with dependent child actions involving J and P issued in the Court of Common Pleas of Allegheny County, Pennsylvania. The first, issued by the Hon. Kathryn Hens-Greco on April 15, 2009, allowed Mr. M to “permanently take the children with him to Alaska . . . on May 11, 2009.”¹² The second order, issued by the Hon. Dwayne Woodruff, terminated the court’s supervision of the children on January 25, 2010, because they had “been placed with father in Alaska”¹³ Ms. G has not come forward with any subsequent court orders granting her custody of the children, so she is obligated to pay support for them through CSSD.

A parent is obligated both by statute and at common law to support his or her children.¹⁴ 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." CSSD calculated Ms. G’s child support at \$50 per month for two children, beginning in August 2010.¹⁵ She does not have any apparent earnings so that is the minimum amount that may be charged, pursuant to Civil Rule 90.3(c)(3). CSSD stated at the hearing that public assistance records suggest Ms. G may be receiving Social Security disability benefits, although the amount is unknown. CSSD’s representative stated she would explain to Mr. M after the hearing about applying for benefits for the children based on Ms. G’s disability.

IV. Conclusion

Since Ms. G did not appear and submit any additional evidence, she did not meet her burden of proving by a preponderance of the evidence that CSSD’s Administrative Review Decision is incorrect, as required by 15 AAC 05.030(h). The children have been placed in Mr.

¹² Exh. 5 at pg. 3.

¹³ Exh. 5 at pgs. 4-5.

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ Exh. 2 at pgs. 7-8.

M's custody by court order, so Ms. G is liable for support based on the father having primary custody. CSSD correctly calculated the child support amount at \$50 per month, so the Administrative Review Decision should be affirmed.

V. Child Support Order

- CSSD's Administrative Review Decision dated May 18, 2011, is affirmed.

DATED this 13th day of July, 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 1st day of August, 2011.

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

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