

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

IN THE MATTER OF:)	
)	OAH No. 11-0251-CSS
J R. H)	CSSD No. 001059430
_____)	

DECISION AND ORDER

I. Introduction

J R. H has appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on June 13, 2011. The obligee child is L, 15. The custodian of record is J R. L.

The formal hearing was held on July 13, 2011. Mr. H did not participate.¹ Ms. L appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. H's child support is modified to \$1,094 per month, effective May 1, 2011.

II. Facts

A. Procedural History

Mr. H's child support obligation for L was set at \$680 per month in October 2010.² Ms. L requested a modification review on April 18, 2011.³ On April 22, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.⁴ Mr. H provided financial information.⁵ On June 13, 2011, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. H's child support at \$990 per month.⁶ Mr. H filed an appeal on June 23, 2011, asserting that he provided health care as ordered but it was not taken into account [in the child support calculation]. Mr. H also stated he is paying \$736 for

¹ A telephone call was placed to Mr. H's contact number to participate in the hearing but there was no answer. A voicemail message was left for him but as of this date, the obligor has not contacted the OAH.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

⁶ Exh. 5.

health care pursuant to a court order, he has other child support orders and the modification causes undue hardship.⁷

On June 28, 2011, the Office of Administrative Hearings (OAH) sent each party a notice of the date and time for the hearing by certified mail. The obligor's green card was signed by his wife, K H, on July 8, 2011, and returned to the OAH on July 11, 2011.

Before the hearing, an attempt was made to reach Mr. H by telephone for the hearing. There was no answer at his contact number, so a voicemail message was left for him. He has not contacted the OAH in response. Because Mr. H's notice of the hearing was received and signed for, service on him of the notice of hearing was found to be effective and the hearing was conducted without his participation.⁸

B. Findings of Fact

1. Mr. H received notice of the hearing by certified mail;
2. Mr. H did not appear for the hearing, nor has he contacted the OAH;
3. Mr. H provided income information – six paystubs from February 11, 2011 through April 22, 2011, and a 2010 federal income tax return;⁹ he receives a salary of \$3,592 every two weeks; on an annualized basis, his total gross salary is estimated at \$93,392;¹⁰
4. Mr. H pays support for a prior child in a case that is administered by CSSD; the deduction from income to which he is entitled is \$222.50, which is the total annual amount of his payments divided by 12 months;
5. Mr. H lives in Pennsylvania and in 2010 paid state income taxes of \$2,590.87 and unemployment insurance premiums (SUI) of \$67.52, for a total of \$2,658.39;¹¹ this entitles him to an additional deduction from income of \$221.54 per month;¹²
6. Mr. H's 2011 estimated annual income (minus mandatory deductions for federal taxes, Social Security, Medicare, state taxes and SUI and his prior child support payment) yields a child support amount of \$1,094 per month.¹³

⁷ Exh. 6.

⁸ See 15 AAC 05.010(c).

⁹ Exh. 4.

¹⁰ \$3,592 x 26 weeks = \$93,392.

¹¹ Exh. 4 at pg. 3.

¹² \$2,658.39 ÷ 12 mos. = \$221.54 per month.

¹³ Attachment A.

III. Discussion

Mr. H filed an appeal and requested a formal hearing, but he did not participate in 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.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁴ 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, so this modification is effective on May 1, 2011.¹⁵

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.¹⁶

CSSD modified Mr. H's child support to \$990 based on his 2010 income of \$84,394.¹⁷ According to Mr. H's evidence, however, it is more likely than not that his annual income has increased. The six paystubs he provided indicate that he receives a salary from his employer of \$3,592 every two weeks.¹⁸ When annualized, that salary yields total estimated income of \$93,392 for 2011. This income figure should be used to calculate Mr. H's ongoing child support obligation, especially since it is the income he is receiving during the year in which the modification was requested.¹⁹

Mr. H is also entitled to two deductions from income over and above the standard deductions for federal taxes, Social Security and Medicare.²⁰ These are for his Pennsylvania

¹⁴ AS 25.27.190(e).

¹⁵ 15 AAC 125.321(d). The notice was distributed to the parties on April 22, 2011. Exh. 3.

¹⁶ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁷ Exh. 5 at pg. 6.

¹⁸ Exh. 4 at pgs. 1-2.

¹⁹ The civil rule that governs child support calculations directs CSSD to use income “which will be earned when the support is to be paid.” Civil Rule 90.3, Commentary III.E.

²⁰ CSSD's calculation worksheet has a line item for a deduction called “FICA.” This one line includes the deductions for both Social Security and Medicare. See Attachment A.

state taxes and SUI premium, plus the child support he pays for a child older than L. These were included in the calculation, as shown on the worksheet, Attachment A.

Mr. H's income and deductions yield a child support amount of \$1,094 per month. Other than the paystubs and tax return, Mr. H has not provided any evidence with which to analyze his statement that the child support amount will create "undue hardship" for him. That portion of his appeal is therefore denied.

Finally, Mr. H raised the issue of health insurance premiums for L. He submitted a list of expenses he asserted are for L's health care, but he will need to provide documents from his employer or insurance provider in order to prove those costs. Mr. H should contact his caseworker to find out what specific information he needs to provide. The caseworker is authorized to adjust his child support amount as appropriate based on the parties' costs for health insurance premiums.²¹

IV. Conclusion

Mr. H met 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). His modified child support is now correctly calculated at \$1,094 per month, effective May 1, 2011. This figure should be adopted.

V. Child Support Order

- Mr. H is liable for modified child support for L of \$1,094 per month, effective May 1, 2011;
- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order dated June 13, 2011, remain in full force and effect.

DATED this 11th day of August, 2011.

By: Signed
Kay L. Howard
Administrative Law Judge

²¹ See 15 AAC 125.085(a).

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 29th 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.]