

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

IN THE MATTER OF:)
)
 V R. J) OAH No. 11-0322-CSS
) CSSD No. 001140895
_____)

DECISION AND ORDER

I. Introduction

The obligor, V R. J, appealed a Decision on Request for Modification Review that the Child Support Services Division (CSSD) issued in her case on August 5, 2011. The obligee child is G, 7. The custodial parent is B Q. K.

The formal hearing was held on September 7, 2011. Ms. J did not appear nor could she be contacted by telephone, so she did not participate. Mr. K appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after due deliberation, CSSD’s Decision on Request for Modification Review is affirmed. Ms. J’s child support shall remain at \$229 per month.

II. Facts

Ms. J’s child support was set at \$229 per month in April 2006.¹ On May 27, 2011, she requested a modification of her order.² On June 8, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Ms. J did not respond.⁴ On August 5, 2011, CSSD issued a Decision on Request for Modification Review because there had been no material change in circumstances.⁵ Ms. J filed an appeal on August 15, 2011.⁶

On August 18, 2011, the Office of Administrative Hearings (OAH) sent the parties a notice by certified mail that the hearing had been calendared for September 7th. Ms. J’s notice was signed for and returned to the OAH on August 25th. At the time of the hearing, Ms. J did not appear nor could she be reached by telephone. Mr. K said he had received a text message from

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 CSSD’s Pre-Hearing Brief at pg. 1.
5 Exh. 5.
6 Exh. 6.

Ms. J that she would not be at the hearing. Because her notice was signed for, service on Ms. J was found to be effective and the hearing was conducted without her participation.⁷

III. Discussion

Ms. J filed an appeal and requested a formal hearing, but 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.

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.

CSSD denied Ms. J’s modification request because she did not supply any income information. The Division’s representative stated during the hearing that he had checked the Alaska Department of Labor and Workforce Development database, but had found no indication that currently she is a member of the workforce – there is no wage or employer information for Ms. J, nor any data showing that she has received unemployment benefits.

If the person who requests a review does not provide evidence sufficient to review the order, CSSD may decline the review.⁹ Ms. J requested the hearing but did not provide any income information, as required by CSSD for the modification review. Also, CSSD could not obtain any income records for her online, so in the absence of evidence of her income, the agency denied the modification request. CSSD was within its authority to do so. Ms. J appealed CSSD’s Decision on Request for Modification Review, but she did not appear at the hearing, nor could she be reached at that time.

Ms. J may file another petition for modification, but she must submit the information CSSD needs to complete the review or most likely her request will be denied again.

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).

⁹ 15 AAC 125.316(e).

IV. Conclusion

Ms. J did not meet her burden of proving by a preponderance of the evidence that CSSD's Decision on Request for Modification Review was issued in error, as required by 15 AAC 05.030(h). Therefore, CSSD's order denying modification review should be affirmed. Ms. J may file another petition for modification in the future.

V. Child Support Order

- CSSD's Decision on Request for Modification Review dated August 5, 2011, is AFFIRMED;
- Ms. J remains liable for child support of \$229 per month, as set forth in the Administrative Child Support and Medical Support Order issued on April 24, 2006. That order remains in full force and effect.

DATED this 5th day of October, 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 24th day of October, 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.]