

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

IN THE MATTER OF:)

J B. W)

) OAH No. 11-0371-CSS

) CSSD No. 001134802

DECISION AND ORDER

I. Introduction

The custodian, K L. K, has appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. W's case on September 9, 2011. The obligee child is M, 7.

The formal hearing was held on October 10 and 24, 2011. Mr. W participated in the first hearing; Ms. K did not participate in either one. 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 dated September 9, 2011, is vacated. Mr. W's child support shall remain at \$230 per month, as set in an order dated February 6, 2007.

II. Facts

A. Procedural History

Mr. W's child support obligation for M was set at \$230 per month in 2007.¹ Mr. W requested a modification review on February 23, 2011.² On March 9, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. W did not respond so CSSD denied the request for a modification review.⁴ He appealed on July 19, 2011, and a hearing was convened on August 15, 2011. Mr. W agreed to a remand so his case was sent back to CSSD for a modification review.⁵ On September 9, 2011, CSSD issued a Modified Administrative Child Support and Medical Support Order that set his modified child

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Exh. 4.

⁵ Exh. 11. Ms. K had received her certified notice of the hearing but did not participate.

support at \$149 per month, effective August 1, 2011.⁶ Ms. K filed an appeal on September 21, 2011, asserting that Mr. W's income was different than CSSD estimated.⁷

On September 23, 2011, the OAH sent both parties a notice of the date and time for the hearing by certified mail. Both parties received and signed for their respective notices; specifically, Ms. K signed for hers on September 24, 2011. Ms. K could not be reached for the hearing, so it was conducted without her participation with just Mr. W attending. It was later learned that Ms. K had been attempting to reach the OAH but because of a staffing issue at the OAH her message was not received until later. She subsequently contacted the OAH and requested a supplemental hearing. Her request was granted and notices were sent to the parties by first class mail.

The supplemental hearing was convened on October 24, 2011. Neither party attended the hearing, nor could they be reached to participate by telephone. Because Ms. K had signed for the original certified notice of hearing, requested another hearing and was served a notice by first class mail, service on Ms. K was found to be effective pursuant to Department of Revenue regulations and the hearing was conducted without her participation.⁸

B. Findings of Fact

Mr. W received workers compensation benefits for a "temporary total disability" in the amount of \$304.91 (net) per week from October 5, 2009 through January 21, 2011.⁹ On January 22, 2011, the benefits were changed to "permanent partial impairment" and remained at the same amount.¹⁰ Beginning on April 13, 2011, Mr. W began receiving retraining benefits in the amount of \$266.80 (net) per week. Using this information, CSSD estimated Mr. W's income in 2011 would total \$14,407.14.¹¹ Adding the PFD amount of \$1,174 resulted in him having total income from all sources of \$15,581.14. This total income amount yields a child support figure of \$260 per month.¹²

⁶ Exh. 12.

⁷ Exh. 13.

⁸ See 15 AAC 05.010(c). CSSD is one of the divisions in the Department of Revenue.

⁹ CSSD's October 25, 2011, Submission to Record at pg. 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² Exh. 14.

III. Discussion

Ms. K filed an appeal and requested a formal hearing, but she 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.”¹³ 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. If the newly calculated support amount does not reach the 15% threshold, CSSD is not obligated to modify the parent’s order.

If the order is modified, the modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.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 modified Mr. W’s child support to \$149 per month based on the agency’s estimate of his income in September 2011 when the order was issued.¹⁵ After the hearing, however, CSSD obtained up-to-date information which should be the basis for the child support calculation. Mr. W’s income was determined to be approximately \$14,407.14 from his unemployment benefits. When the PFD is added, his child support is correctly calculated at \$260 per month.¹⁶ This is less than a 15% change from the prior order of \$230 per month.¹⁷ Since that threshold figure has not been met, Mr. W’s child support should not be modified.

IV. Conclusion

Child support orders may only be modified upon a showing of “good cause and material change in circumstances.” The record in this appeal does not establish that a correct calculation of Mr. W’s child support would meet the 15% minimum threshold required to modify his child

¹³ AS 25.27.190(e).

¹⁴ 15 AAC 125.321(d). The notice was distributed to the parties on March 9, 2011, making a modification in this case effective on April 1, 2011. Exh. 3. After the remand, CSSD made the modification order effective as of August 1, 2011, but that date is incorrect. The remand would not change the effective date of the modification.

¹⁵ Exh. 5 at pg. 6.

¹⁶ Exh. 14.

¹⁷ $\$230 \times 115\% = \264.50 .

support obligation. Therefore, his child support should remain at the \$230 per month figure established in the 2007 modification order. The 2007 order should remain in effect.

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order dated September 9, 2011, is VACATED;
- Mr. W remains liable for child support in the amount of \$230 per month, as set forth in the Modified Administrative Child Support and Medical Support Order dated February 6, 2007 – that order remains in full force and effect.

DATED this 5th day of December, 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 23rd day of December, 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.]