

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

IN THE MATTER OF:)	
)	OAH No. 11-0446-CSS
M A. M)	CSSD No. 001136122
_____)	

DECISION AND ORDER

I. Introduction

The obligor, M A. M, appealed a Decision on Request for Modification Review that the Child Support Services Division (CSSD) issued in his case on October 25, 2011. The obligee child is C, 7. The custodial parent is C H-D.

The formal hearing was held on December 6, 2011. Mr. M did not appear nor could he be contacted by telephone, so he did not participate. Ms. H-D also did not participate. 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. Mr. M's child support remains at \$279 per month.

II. Facts

Mr. M's child support was set at \$279 per month in July 2006.¹ On August 17, 2011, he requested a modification of the order.² On August 26, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ CSSD had telephonic contact with Mr. M but he did not provide income information.⁴ On October 25, 2011, CSSD issued a Decision on Request for Modification Review that denied modification.⁵ Mr. M filed an appeal by facsimile on November 17, 2011.⁶

On November 22, 2011, the Office of Administrative Hearings (OAH) sent the parties a notice by certified mail to their addresses of record of the date and time for the hearing. Ms. H-

¹ Exh. 1.

² Exh. 2.

³ CSSD's Pre-Hearing Brief at pg. 1. There is no exhibit supporting the agency's statement of that the notice was issued on that date.

⁴ CSSD's Pre-Hearing Brief at pg. 1.

⁵ Exh. 3.

⁶ Exh. 4. The top of page 3 of this exhibit has the clearest version of the date stamp.

D's notice was signed for and returned to the OAH on December 2nd.⁷ Mr. M's notice was returned to the OAH, marked "not deliverable" and "unable to forward." Mr. M did not appear for the hearing and could not be reached by telephone.⁸ Because his notice was sent to his most recent address, service on him was effective and the hearing was conducted without his participation.⁹

III. Discussion

Mr. M filed an appeal and requested a formal hearing, but failed to appear for the hearing. The record remained open for at least 10 days after the hearing so as to provide the obligor the opportunity to show "reasonable cause" for his failure to appear, pursuant to 15 AAC 05.030(j). As of the date of this decision, the obligor has not contacted the OAH. 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.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁰ If a support amount calculated from the obligor's current income is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established. If the 15% change has not been met, CSSD may modify the child support obligation, but is not required to do so. The person requesting the hearing, in this case, Mr. M, has the burden of proving that CSSD's Decision on Request for Modification Review was issued in error.¹¹

CSSD denied Mr. M's modification request because he did not supply any income information and a child support calculation using the minimum wage did not yield a 15% change from his prior order. Apparently Mr. M made telephonic contact with CSSD after he requested the modification and indicated income documents were on their way, but none were received. CSSD checked the online earnings database provided by Mr. M's state of residence and found that he earned \$4,250 at what appears to be a temporary job during the third quarter of 2011.¹²

⁷ A notice was also sent to the child support agency in Mr. M's state of residence; that notice was also received and signed for.

⁸ The obligor's telephone provider indicated that his telephone could not accept voicemail messages.

⁹ "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).

¹⁰ AS 25.27.190(e).

¹¹ 15 AAC 05.030(h).

¹² Exh. 5.

When Mr. M filed his appeal on November 17th, he submitted documents showing that he ran out of unemployment benefits in April 2010, but he did not provide evidence of any employment the previous quarter.¹³

If the person who requests a review does not provide evidence sufficient to review the order, CSSD may decline the review.¹⁴ Mr. M requested the hearing but did not provide any current income information, as required for the review. CSSD was within its authority to deny his request for modification under these circumstances. Mr. M appealed CSSD's denial, but he did not appear at the hearing, nor could he be reached at that time.

Mr. M may file another petition for modification, but he must submit the information CSSD needs to complete the review or most likely his request will be denied again.

IV. Conclusion

Mr. M did not meet his 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. Mr. M may file another petition for modification in the future.

V. Child Support Order

- CSSD's Decision on Request for Modification Review dated October 25, 2011, is AFFIRMED;
- Mr. M remains liable for child support of \$279 per month, as set forth *In the Matter of M A. A-M*, OAH No. 06-0260-CSS (Dept. of Revenue July 11, 2006). That order remains in full force and effect.

DATED this 5th day of January, 2012.

By: Signed
Kay L. Howard
Administrative Law Judge

¹³ Exh. 4 at pg. 7.

¹⁴ 15 AAC 125.316(e).

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 January, 2012.

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

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