

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

IN THE MATTER OF:)
)
 K D. F) OAH No. 12-0141-CSS
) CSSD No. 001115268
_____)

DECISION AND ORDER

I. Introduction

The obligor, K D. F, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on May 3, 2012. The children are E, 11; N, 10; and L, 9. The other party to the case is J N. X.

The formal hearing was held on June 18, 2012. Mr. F did not appear. Ms. X participated by telephone. 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 is affirmed.

II. Facts

Mr. F's child support obligation for E, N and L was set at \$197 per month in 2004.¹ On March 15, 2012, Ms. X requested a modification review.² On March 20, 2012, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. F did not respond to the request for income information.⁴ On May 3, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. F's modified ongoing child support at \$596 per month for three children, effective April 1, 2012.⁵ Mr. F filed an appeal on May 21, 2012, asserting he cannot afford the modified child support amount. He also submitted copies of bills as evidence of some of his monthly living expenses.⁶

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Pre-hearing brief.
5 Exh. 4.
6 Exh. 5.

Prior to the hearing, CSSD filed an extract of Mr. F's wages and unemployment benefits that the agency received from the Alaska Department of Labor.⁷

The Office of Administrative Hearings (OAH) sent both parties a notice of the date and time for the hearing by certified mail to their last-known address. Mr. F's "green card" was not returned. At the beginning of the hearing, a call was placed to his telephone number of record, but it was not answered and there was no option to leave a voicemail message. A call was placed to Mr. F's place of employment but he was not there at the time. A message was left for him to call the OAH, but as of this writing, Mr. F has not returned the call, nor did he appear for the hearing. Because Mr. F's notice was sent to his last-known address, service of the notice was found to be effective and the hearing was conducted without his participation.⁸

III. Discussion

Mr. F filed an appeal and requested a formal hearing, but he 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.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁹ 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. In this case, a calculated child support amount of \$226.55 or higher would constitute a "material change in circumstances" sufficient to warrant modification of Mr. F's support order.¹⁰

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹¹ CSSD issued the notice in Mr. F's case on March 20, 2012, so any modification would be effective as of April 1, 2012.¹² CSSD correctly indicated that effective date in its modification order.¹³

⁷ Exh. 6.

⁸ "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).

⁹ AS 25.27.190(e).

¹⁰ $\$197 \times 15\% = \29.55 . $\$197 + \$29.55 = \$226.55$.

¹¹ 15 AAC 125.321(d).

¹² Exh. 3.

¹³ See Exh. 4 at pg. 1.

Mr. F did not provide his income information, as requested by CSSD for the modification. He appealed CSSD's Modified Administrative Child Support and Medical Support Order and filed copies of recent bills and paystubs, but he did not appear at the hearing to present testimony or any other evidence regarding his appeal. During the hearing, CSSD stated the agency used Mr. F's income information as reported to the Alaska Department of Labor and Workforce Development, specifically, his hourly wage of \$11.50 per hour, to estimate his total earnings at \$23,920.¹⁴ With the addition of the PFD of \$1,174, these earnings equal total estimated annual income of \$25,094.¹⁵ This income figure yields a child support amount of \$596 per month for three children (\$488 for two children or \$361 for one child).¹⁶ This is a correct calculation of Mr. F's child support obligation under Civil Rule 90.3. It should be noted, also, that this estimated income figure is within about \$525 of his reported 2011 income of \$23,393.42.¹⁷

Mr. F claimed that he cannot afford the child support amount CSSD calculated, but the evidence he provided does not establish Mr. F's claim. In the absence of additional evidence, such as hearing testimony expanding on the documents he submitted, Mr. F has not met his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order is incorrect.

IV. Conclusion

CSSD modified Mr. F's child support order according to his most recent income information. Mr. F did not appear at the hearing to provide any evidence. As a result, he did not meet 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). Therefore, CSSD's order should be affirmed. There is no variation pursuant to Civil Rule 90.3(c).

¹⁴ \$11.50 x 2080 hrs = \$23,920.

¹⁵ Exh. 4 at pg. 6.

¹⁶ See Exh. 6 at pg. 1, and Pre-hearing brief at pg. 1.

¹⁷ See Exh. 6 at pg. 1.

V. Child Support Order

- CSSD's Modified Administrative Child Support and Medical Support Order dated May 3, 2012 is AFFIRMED.

DATED this 4th day of September, 2012.

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 21st day of September, 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.]