

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

IN THE MATTER OF: )

E N. H )

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) OAH No. 12-0255-CSS

) CSSD No. 001115811

**DECISION AND ORDER**

**I. Introduction**

The obligor, E N. H, appealed an Amended Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 8, 2012. The child in this case is T, 11. The other party to the case is V S. T.

The formal hearing was held on August 22, 2012, and September 11, 2012. Mr. H did not appear at either proceeding. Ms. T participated by telephone in the second hearing. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Amended Modified Administrative Child Support and Medical Support Order that set Mr. H's modified child support at \$722 per month, effective June 1, 2012, is affirmed.

**II. Facts**

Mr. H's child support obligation for T was set at \$309 per month in 2003.<sup>1</sup> On April 26, 2012, Ms. T requested a modification review.<sup>2</sup> On May 9, 2012, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On June 28, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. H's modified ongoing child support at \$823 per month for one child, effective June 1, 2012.<sup>4</sup> Mr. H filed an appeal on July 18, 2012, asserting his income was lower than the amount CSSD used, and he cannot afford to pay for visitation trips to see T if he has to pay the modified child support amount. He also claimed that his mother occasionally provides items that T needs by paying for them directly out of his banking account that his mother is authorized to use.<sup>5</sup>

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3.  
<sup>4</sup> Exh. 4.  
<sup>5</sup> Exh. 5.

Prior to the hearing, CSSD filed a Motion for Remand of Mr. H's appeal for the purpose of conducting another modification review based on his actual reported income information. According to the agency, CSSD had already amended the modification order to \$722 per month, based on Mr. H's earnings as reported to the Alaska Department of Labor and Workforce Development for the prior four quarters.<sup>6</sup> CSSD's motion was denied.

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 addresses. Mr. H's "green card" was signed, apparently by his mother, and returned to the OAH prior to the hearing. Neither party appeared on August 22, 2012, nor could either one be reached by telephone, so the hearing was rescheduled for September 11, 2012. *Mr. H contacted the OAH on August 24, 2012 and stated he would be available for the next hearing.*

When the second hearing was convened, Ms. T was contacted by telephone and participated in the proceeding. Several calls were placed in an attempt to contact Mr. H, to no avail. His father was reached at one of Mr. H's telephone numbers and provided a different number for his son, but it turned out to be for the No Name Native Association. Remarkably, the call placed to that number was answered by Mr. H's mother. She indicated he was working on the North Slope and could not be reached because he had lost his cell phone. A message was left with her to have him contact the OAH, but as of this writing, he has not returned the call.

Mr. H's notice was received and signed for. Also, he contacted the OAH on August 24, 2012, and indicated he would be available for the September 11, 2012 hearing. Thus, service of the notice regarding the date and time for the hearing was found to be effective and the hearing was conducted without his participation.<sup>7</sup>

### **III. Discussion**

Mr. H filed an appeal and requested a formal hearing, but he failed to appear for the hearing and also failed to contact the OAH after a message was left for him to call the office. 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.

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<sup>6</sup> Exh. 7 at pg. 6.

<sup>7</sup> "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).

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>8</sup> 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 and the support amount may be modified. In this case, Mr. H’s child support was previously set at \$309 per month, so a calculated child support amount of \$355.35 or higher would constitute a “material change in circumstances” sufficient to warrant modification of Mr. H’s support order.<sup>9</sup>

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.<sup>10</sup> CSSD issued the notice in Mr. H’s case on May 9, 2012, so any modification would be effective as of June 1, 2012.<sup>11</sup> CSSD correctly indicated that effective date in its modification order.<sup>12</sup>

Mr. H did not provide current 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 his 2011 W-2, plus copies of some receipts and information on tickets from No Name to Anchorage.<sup>13</sup> He did not appear at the hearing to present testimony or any other evidence regarding his appeal.

During the hearing, CSSD stated the agency calculated the amended modification amount of \$722 per month using the income information reported for Mr. H to the Alaska Department of Labor and Workforce Development, specifically, his earnings for the annual period encompassed by the 3<sup>rd</sup> quarter of 2011 through the 2<sup>nd</sup> quarter of 2012. Those four quarters total earnings of \$52,548.17,<sup>14</sup> and with the addition of the PFD, yield a child support amount of \$722 per month for one child.<sup>15</sup>

Mr. H’s modified child support is now correctly calculated under Civil Rule 90.3. To the extent that he submitted his 2011 W-2 to prove his income, that evidence was not used because

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<sup>8</sup> AS 25.27.190(e).  
<sup>9</sup> \$309 x 115% = \$355.35.  
<sup>10</sup> 15 AAC 125.321(d).  
<sup>11</sup> Exh. 3.  
<sup>12</sup> See Exh. 4 at pg. 1.  
<sup>13</sup> Exh. 8.  
<sup>14</sup> See Exh. 6 at pg. 1.  
<sup>15</sup> See Exh. 7 at pg. 6.

the W-2 reported his 2011 income at \$38,566.50.<sup>16</sup> His current income is nearly \$15,000 higher than the W-2 figure and more accurately represents his ability to pay support.

Finally, Mr. H claimed that he cannot afford the child support amount CSSD calculated, especially with having to pay for transportation back and forth for visitation purposes. This claim appears to be a request for a variance in the calculation due to a financial hardship under Civil Rule 90.3(c), also commonly referred to as a “good cause” reduction in the properly calculated child support amount.

Child support determinations calculated under Civil Rule 90.3 from an obligor’s actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that “good cause” exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”<sup>17</sup> Because Mr. H did not appear at the hearing, he did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not lowered.

#### **IV. Conclusion**

CSSD modified Mr. H’s child support according to his most recent income information. Mr. H 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 Amended Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h), nor did he prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not lowered. CSSD’s order should be affirmed. Mr. H’s request for a variation pursuant to Civil Rule 90.3(c) was properly denied.

#### **V. Child Support Order**

- CSSD’s Amended Modified Administrative Child Support and Medical Support Order dated August 8, 2012 is AFFIRMED;

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<sup>16</sup> Exh. 8 at pg. 5.  
<sup>17</sup> Civil Rule 90.3(c).

- Mr. H's child support is modified to \$722 per month for one child, effective June 1, 2012, and ongoing.

DATED this 30<sup>th</sup> day of November, 2012.

Signed

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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 17<sup>th</sup> day of December, 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.]