

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

IN THE MATTER OF)	OAH No. 12-0375-CSS
V K. M)	CSSD No. 001113126
)	
_____)	

DECISION & ORDER GRANTING SUMMARY ADJUDICATION

I. Introduction

This case is V K. M’s appeal of the order of the Child Support Service Division (Division) that denied his request to adjust his child support obligation for his children, A and B.

On September 26, 2012, a hearing was held on a motion for summary adjudication filed by the Division.¹ The custodial parent, J E. F, participated. Mr. M did not participate. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

Mr. M had filed a request to adjust his arrears and ongoing support based on his actual income for the period covered by his administrative child support order.² The Division denied this request after having determined that the order did not meet the legal requirements for adjustment. The Division made this determination based on the fact that the order had not been set on a default income amount, but rather was set support based on actual income information, that is, a tax return provided by Mr. M. In his request for a formal hearing, Mr. M did not assert that his order was set based on actual income information. Mr. M did not respond to the Division’s motion or appear at the hearing.

Having reviewed the record in this case and after due deliberation, the administrative law judge concludes that the Division’s motion should be granted. Mr. M’s administrative child support order cannot be adjusted.

II. Facts

This case is M’s appeal of the Division’s order denying relief under Alaska Statute

¹ The hearing was held under Alaska Statute 25.27.195.

² Alaska Statute 25.27.195 gives the Division the authority to provide limited relief from orders that are based on default amounts, that is, default income figures. *See* Alaska Statute 25.27.195(b) & Alaska Regulation 15 AAC 125.121.

25.27.195(b).³ This law gives the Division's limited authority to vacate administrative child support orders and retroactively adjust the monthly child support amounts due. This law gives the Division authority to retroactively adjust child support when the amount of monthly child support was set based on a default income figure rather than actual income. A default income figure is an amount arrived at in the absence of any specific information about an obligor's income and earning ability during the relevant time frames.⁴

Mr. M's child support for his child, A and B was originally set in 2002 based on a default income amount in an Administrative Child Support and Medical Support Order issued on July 9, 2002.⁵ However, Mr. M appealed that order and child support for all the periods covered by his administrative child support order were reset based on calculations using a tax return provided by Mr. M. The order that reset child support is the current administrative child support order in effect. This order is the Division's Amended Administrative Child Support and Medical Support Order on February 26, 2003.⁶ Mr. M did not appeal that order. Child support for most of the periods covered by that order, including ongoing child support were later superseded by court ordered child support in case number 1XX-XX-XXXCI.⁷

Mr. M filed a Motion to Vacate Default Order with the Division on July 10, 2012.⁸ This motion was Mr. M's formal request to adjust his arrears and ongoing support based on his actual income for the periods covered by the administrative child support order that were not superseded by the court order. The Division denied Mr. M's request for relief under Alaska Statute 25.27.195(b) in an Administrative Review Decision dated July 27, 2012.⁹ Mr. M appealed.¹⁰ The Division then filed its motion for summary adjudication.

Mr. M did not respond to the motion, did not provide a phone number to call for hearing on the motion and was not at his phone number of record when he was called at the time set for the hearing. In his appeal of the Administrative Review Decision, Mr. M wrote that he had provided tax returns for the years covered by the order. Mr. M did not assert that his

³ See Alaska Statute 25.27.195(b) & Alaska Regulation 15 AAC 125.121.

⁴ See Alaska Regulation 15 AAC 125.121(j).

⁵ Exhibit 1.

⁶ Exhibit 2.

⁷ Exhibit 3.

⁸ Exhibit 4.

⁹ Exhibit 5.

¹⁰ Exhibit 6.

administrative child support order had not set support based on actual income information.¹¹

III. Discussion

When one party asks for summary adjudication, a party wishing to have an evidentiary hearing must show that there is a need to have a hearing to prove issues of disputed fact regarding the action being appealed.¹² Mr. M did not raise issues that preclude summary adjudication. The Division's limited authority to provide the type relief Mr. M requested is restricted to cases where the order that the party seeks to have adjusted was set based on a default income amount in the absence of any actual income information.¹³ Mr. M's administrative child support order is simply not one of those cases. That order was based on income information Mr. M provided. There are no facts in dispute requiring a hearing. Mr. M's administrative child support order cannot be adjusted.

IV. Conclusion

The Division's motion should be granted. The Division correctly denied Mr. M's request to adjust his child support. The child support amounts in the order that remains in effect were calculated using the primary custody formula in Civil Rule 90.3(a).

V. CHILD SUPPORT ORDER

1. The Division's motion for summary adjudication is granted.
2. The Division's Administrative Review Decision dated July 27, 2012, denying Mr. M's Motion to Vacate Default Order, is affirmed.
3. The Division's Amended Administrative Child Support and Medical Support Order issued on February 26, 2003 remains in effect.

DATED this 28th day of September, 2012.

By: Signed
Mark T. Handley
Administrative Law Judge

¹¹ Recording of Hearing & Exhibit 6.

¹² *Smith v. State, Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990).

¹³ *See* Alaska Statute 25.27.195(b) & Alaska Regulation 15 AAC 125.121.

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 3rd day of October, 2012

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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