

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

IN THE MATTER OF:)

F A. N)

) OAH No. 12-0943-CSS

) CSSD No. 001177016

DECISION AND ORDER

I. Introduction

The obligor, F A. N, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 15, 2012. The children are F, 14, and Y, 3. The other party to the case is N L. S-N.

The formal hearing was held on January 2, 2013. Mr. N did not appear;¹ Ms. S-N appeared 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 dated October 15, 2012 is affirmed. Mr. N' child support is modified to \$860 per month for two children (\$637 for one child), effective September 1, 2012.

II. Facts

Mr. N' child support obligation for F and Y was set at \$468 per month in 2011.² On August 29, 2012, Ms. S-N requested a modification review.³ On August 31, 2012, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.⁴ Mr. N did not respond to the request for income information.⁵ On October 15, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. N' modified ongoing child support at \$860 per month for two children, effective September 1, 2012.⁶ Mr. N filed an appeal on November 6, 2012, but it was not referred to the OAH until December 4,

¹ A telephone call placed to Mr. N before the hearing went unanswered. A message was left for him to call the Office of Administrative Hearings (OAH), but as of the date of this decision, he has not contacted the OAH.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Pre-hearing brief at pg. 1.

⁶ Exh. 4.

2012, apparently because the appeal was initially mis-routed within CSSD. Mr. N asserted his child support had doubled, but his income had not doubled.⁷

Prior to the hearing, CSSD filed an extract of Mr. N' wages and unemployment benefits that the agency received from the Alaska Department of Labor and Workforce Development.⁸

On December 6, 2012, 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. N' "green card" was returned and marked "unclaimed." At the beginning of the hearing, a call was placed to his telephone number of record, but it was not answered. A message was left for him to call the OAH, but as of this writing, Mr. N has not returned the call, nor did he appear for the hearing. Because Mr. N' 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.⁹

III. Discussion

Mr. N 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."¹⁰ 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 order may be modified. Mr. N' child support has been \$468 per month since 2011. A child support calculation of \$538.20 or more would be sufficient to warrant modification in his case.¹¹

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹² CSSD issued the notice in Mr. N' case on August 31, 2012, so a modification would be effective as of September 1, 2012.¹³ CSSD correctly indicated that effective date in its modification order.¹⁴

⁷ Exh. 5.

⁸ Exh. 6.

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 $\$468 \times 115\% = \538.20 .

¹² 15 AAC 125.321(d).

¹³ Exh. 3.

¹⁴ See Exh. 4 at pg. 2.

Mr. N 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 but he did not appear at the hearing to present testimony or any other evidence regarding his appeal. CSSD used Mr. N' income information as reported to the Alaska Department of Labor and Workforce Development to estimate an annual income figure for the year. Specifically, Mr. N had reported earnings of \$33,842.27 through the third quarter of 2012. CSSD divided this total by three to arrive at the quarterly average, which CSSD multiplied by four to get an estimated annual income figure of \$45,527.66.¹⁵ With the addition of the PFD of \$878, this equals total estimated annual income of \$46,405.56.¹⁶ Inserting this income figure into CSSD's online child support calculator¹⁷ yields a child support amount of \$860 per month for two children (\$637 for one child).¹⁸ This is a correct calculation of Mr. N' child support obligation under Civil Rule 90.3.

Mr. N claimed that the modified child support amount CSSD calculated is incorrect, but he did not provide evidence or appear to otherwise argue his case. Thus, in the absence of sufficient evidence, Mr. N 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. N' child support order according to his most recent income information. Mr. N 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 was no variation requested or granted under Civil Rule 90.3(c).

¹⁵ See Exh. 4 at pgs. 5 & 7. CSSD did not show its calculation, but the math appears to be thus: $\$33,842.27 \div 3 = \$11,280.75 \times 4 = \$45,123.02$. CSSD's result is slightly higher, but not enough to disturb the calculation.

¹⁶ Exh. 4 at pg. 7.

¹⁷ <http://www.childsupport.alaska.gov>

¹⁸ Exh. 4 at pg. 7.

V. Child Support Order

- CSSD's Modified Administrative Child Support and Medical Support Order dated October 15, 2012 is AFFIRMED.

DATED this 30th day of January, 2013.

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 19th day of February, 2013.

By: Signed

Signature
Kay L. Howard

Name
Administrative Law Judge

Title

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