

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

IN THE MATTER OF:)

W R. K)

) OAH No. 13-0048-CSS
) CSSD No. 001140895
)

DECISION AND ORDER

I. Introduction

The obligor, W R. K, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on December 10, 2012. The child in this appeal is H, 10. The custodian is C Q. L.

The hearing was held on January 28, 2013. Ms. K did not appear; Mr. L attended the hearing by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, the Modified Administrative Child Support and Medical Support Order, dated December 10, 2012, is affirmed. Ms. K's child support is modified to \$274 per month, effective November 1, 2012.

II. Facts

Ms. K's child support obligation for H was set at \$229 per month in October 2011.¹ On October 1, 2012, Ms. K requested a modification review.² On October 4, 2012, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ On December 10, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Ms. K's ongoing child support to \$274 per month, effective November 1, 2012.⁴ Ms. K filed an appeal on January 3, 2013, stating that she had filed the modification request in order to lower the child support amount, not increase it.⁵ Prior to the hearing, CSSD filed a statement about public assistance benefits (food stamps) that Ms. K receives, plus a revised calculation of \$356 per month, which CSSD calculated from full-time

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 6.
⁵ Exh. 7.

minimum wage income the agency imputed to Ms. K, plus Native corporation dividends she receives.⁶

On January 14, 2013, the Office of Administrative Hearings (OAH) sent both parties a notice of the date and time for the hearing by certified mail to each last-known address. Both notices were signed by the addressees and returned to the OAH. At the beginning of the hearing, a call was placed to Ms. K's telephone number of record. It went unanswered, so a voicemail message was left for her to call the Office of Administrative Hearings (OAH). As of the date of this decision, Ms. K had not returned the telephone message, nor did she appear for the hearing. Ms. K received and signed for her notice of the date and time for the hearing, so service on her was found to be effective and the hearing was conducted without her participation.⁷

III. Discussion

Ms. K filed an appeal and requested a formal hearing, but she 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."⁸ 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. Ms. K's child support has been \$229 per month since at least 2006.⁹ A child support calculation of \$263.35 or more would be sufficient to warrant modification in his case.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 Ms. K's case on October 4, 2012, so any modification of her child support obligation would be effective as of November 1, 2012.¹²

⁶ Exhs. 8-9.

⁷ "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).

⁸ AS 25.27.190(e).

⁹ CSSD denied her request for a modification in May 2011, and her appeal was denied because, as here, she received her notice but did not appear for the hearing to present her case. *See In the Matter of VRJ*, OAH No. 11-0322-CSS (Dept. of Revenue Oct. 24, 2011).

¹⁰ $\$229 \times 115\% = \263.35 .

¹¹ 15 AAC 125.321(d).

¹² Exh. 3.

Ms. K has not provided any income information to CSSD other than two blank child support guideline affidavits.¹³ CSSD has been receiving regular child support garnishments from Ms. K's Native corporation dividends. In 2012, CSSD received \$7,158.64.¹⁴ For its revised calculation, CSSD included this amount in an income figure of \$16,120 that was imputed to her.¹⁵ Although Ms. K did not appear at the hearing to present testimony or provide any other evidence regarding her appeal, CSSD's revised calculation should wait until the agency has a chance to examine Ms. K's lack of employment. To impute income to her, and also include the income CSSD knows she uses to support herself, could be viewed as excessive in the absence of a more complete evidentiary record. CSSD's modification order set Ms. K's new child support amount at \$274 per month – without more evidence, this figure is correct.

IV. Conclusion

CSSD calculated Ms. K's modified child support obligation at \$274 per month, based on imputed income from the minimum wage. Ms. K did not appear at the hearing to present any evidence or argument in support of her appeal. Therefore, the modification order CSSD issued should be adopted, effective November 1, 2012. There was no variation requested or granted under Civil Rule 90.3(c).

V. Child Support Order

- Ms. K's child support obligation for H is modified to \$274 per month, effective November 1, 2012, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical
- Support Order dated December 10, 2012 remain in full force and effect.

DATED this 27th day of February, 2013.

Signed _____
Kay L. Howard
Administrative Law Judge

¹³ See Exh. 4.

¹⁴ Affidavit of Erinn Brian, marked as Exh. 10.

¹⁵ Exh. 9.

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 18th day of March, 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.]