

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

IN THE MATTER OF:)	
)	OAH No. 13-0196-CSS
N M. C)	CSSD No. 001175962 &
<hr style="width:50%; margin-left:0;"/>		
)	001174980

DECISION AND ORDER

I. Introduction

The obligor, N M. C, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on January 4, 2013. The child in this appeal is E, 6. The custodian is N R. T.

The hearing was held on March 11, 2013. Neither party participated. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. C's child support is modified to \$50 per month, effective January 1, 2013.

II. Facts

Ms. C's child support obligation for E was set at \$260 per month in October 2011.¹ She requested a modification review on December 3, 2012.² On December 6, 2012, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ On January 4, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Ms. C's ongoing child support to \$365 per month, effective January 1, 2013.⁴ Ms. C filed an appeal on January 3, 2013 that states she has been unemployed since 2007 because of medical reasons.⁵ She attached a letter from her doctor that confirms her statement. Prior to the hearing, CSSD filed a revised calculation of \$50 per month, based on Ms. C's lack of income and medical condition.⁶

On February 21, 2013, the Office of Administrative Hearings (OAH) sent both parties a notice of the date and time for the hearing by certified mail. Ms. C's notice was sent to her

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 6.
⁵ Exh. 7.
⁶ Exhs. 8-9.

attorney of record, Frank Schlehofer; Mr. T's was sent to his last-known address. Mr. Schlehofer responded with a written notice to the OAH that he does not represent Ms. C in this child support appeal. His office also forwarded OR's notice to her at her last-known address. The green card from Mr. T's notice was not returned to the OAH.

At the beginning of the hearing, a call was placed to Ms. C's telephone number of record. It went unanswered, and there was no opportunity to leave her a voicemail message. The call to Mr. T also went unanswered, and a voicemail message was left for him to call the OAH. As of this date, neither Ms. C nor Mr. T has contacted the OAH.

Because Ms. C's notice was sent to her counsel, who then forwarded it to her, service on Ms. C was effective and the hearing could be conducted without her participation.⁷

III. Discussion

Ms. C 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. C's child support has been \$260 per month since 2011. A child support calculation more than \$39 different than \$260 would be sufficient to warrant modification in his case.⁹

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹⁰ CSSD issued the notice in Ms. C's case on December 6, 2012, so any modification of her child support obligation would be effective as of January 1, 2013.¹¹

Ms. C did not provide any income information to CSSD, but she did provide a letter from her doctor, P X, M.D., that states she has kidney disease and is not capable of working either full-

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 $\$260 \times 15\% = \39 .

¹⁰ 15 AAC 125.321(d).

¹¹ Exh. 3.

time or part-time.¹² On the basis of Dr. X's letter, CSSD revised Ms. C's child support calculation to \$50 per month, based on her lack of employment and income.¹³ Ms. C did not appear at the hearing to present testimony or provide any other evidence regarding her appeal, but CSSD's revised calculation should be adopted. It is based on the doctor's diagnosis and meets the preponderance of evidence standard necessary to modify her child support order to \$50 per month.

IV. Conclusion

CSSD revised Ms. C's modified child support obligation to \$50 per month, based on her doctor's statement that she has a medical condition and is unemployable. Ms. C did not appear at the hearing to present any evidence or argument in support of her appeal. Therefore, CSSD's revised calculation should be adopted, effective January 1, 2013. There was no variation requested or granted under Civil Rule 90.3(c).

V. Child Support Order

- Ms. C's child support obligation for E is modified to \$50 per month, effective January 1, 2013, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 4, 2013 remain in full force and effect.

DATED this 10th day of April, 2013.

Signed

Kay L. Howard
Administrative Law Judge

¹² Exh. 8 at pg. 3.

¹³ 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 29th day of April, 2013.

By: Signed
Signature
Jay D. Durych
Name
Administrative Law Judge
Title

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