

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

In the Matter of :)	
)	OAH No. 13-0657-CSS
P K. X)	CSSD No. 001151263
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)	

DECISION AND ORDER

I. Introduction

The obligor, P K. X, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 15, 2013. The child in this appeal is K, 8. The custodian is D M. N.

The hearing was held on June 19, 2013. Mr. X did not appear; Ms. N participated by telephone, as did Russell Crisp, Child Support Specialist. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Modified Administrative Child Support and Medical Support Order dated April 15, 2013, is affirmed. Mr. X's child support is modified to \$572 per month for one child, effective April 1, 2013, and ongoing. This figure is based on Mr. X's actual annual income for 2012 as reported by the Alaska Department of Labor and Workforce Development.

II. Facts

Mr. X's child support obligation for K was set at \$131 per month in 2008.¹ On March 5, 2013, Ms. N requested a modification review.² On March 15, 2013, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ On April 15, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. X's modified ongoing support at \$572 per month, effective April 1, 2013.⁴ He appealed on May 9, 2013 and provided current paystubs.⁵ Prior to the hearing, CSSD revised the child support calculation to \$677 per month, based on the hourly wage shown on Mr. X's paystubs.⁶

¹ Exh. 8.
² Exh. 1.
³ Exh. 2.
⁴ Exh. 3.
⁵ Exhs. 4 & 5.
⁶ Exh. 6.

On May 15, 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 one's last-known address. Mr. X signed for his notice the next day and the "green card" was returned to the OAH. At the beginning of the hearing, a call placed to Mr. X's telephone number went unanswered, so a voicemail message was left for him to call the OAH. Because Mr. X signed for his notice of hearing, service of the notice was found to be effective and the hearing was conducted without his participation.⁷ Mr. X returned the call later that day and OAH staff sent him an email message detailing how he could request a supplemental hearing. As of this writing, Mr. X has not responded.

III. Discussion

Mr. X 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."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. Mr. X's child support has been \$131 per month since 2008. A child support calculation of \$150.65 or more 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 Mr. X's case on March 15, 2013, so a modification would be effective as of April 1, 2013.¹¹

For the modification, CSSD obtained Mr. X's earnings information from the Alaska Department of Labor and Workforce Development (DOL). The DOL reported that Mr. X earned \$39,772.84 in 2012.¹² CSSD used that income amount to calculate his modified child support at

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 $\$131 \times 115\% = \150.60 .

¹⁰ 15 AAC 125.321(d).

¹¹ Exh. 2.

¹² Exh. 9.

\$572 per month.¹³ Mr. X's appeal included three current paystubs that suggest his hourly wage at his current job is \$24 per hour.¹⁴ Prior to the hearing, CSSD used that hourly wage to estimate his current income would be \$49,920, which yields a child support amount of \$677 per month.¹⁵ Because that figure is higher than the amount reflected in the modification order, CSSD submitted the revised child support calculation for the hearing.¹⁶

At the hearing, CSSD proposed a third method of calculating Mr. X's modified child support. The agency indicated that the DOL had recently reported Mr. X's first quarter 2013 earnings were \$6,414.¹⁷ CSSD added this latest quarter to the previous three quarters of earnings and concluded Mr. X's annual earnings would now be \$44,555.12, which results in total annual income of \$46,495.12 after his unemployment benefits and the PFD are added, and which yields a child support amount of \$630 per month.¹⁸

Based on all the evidence in the record, CSSD's modification order contains the best estimate of Mr. X's modified child support amount, at \$572 per month. Although that amount is somewhat lower than the agency's later calculations, it seems the most reasonable. The \$677 per month calculation seems too high, given Mr. X's appeal statement that "[m]y job was only temporary hire. The bulk of the money I made was because I work a ten week hitch."¹⁹ CSSD's final calculation of \$630 per month is also incorrect because it is not based on Mr. X's annual income, but on three quarters of income from two employers.²⁰

Mr. X did not appear to present testimony or provide any evidence regarding his appeal other than three paystubs from April 2013.²¹ He returned the telephone call later in the day after the hearing, but he did not respond to an email sent to him by OAH staff explaining what he needed to do to request a supplemental hearing. Thus, in the absence of sufficient evidence, Mr. X cannot prevail in his appeal.

¹³ Exh. 3 at pg. 8.

¹⁴ For example, on his 4/5/2013 paystub, Mr. X worked 40 hours of straight time and received \$960. Exh. 5 at pg. 3. $\$960 \div 40 = \24 .

¹⁵ $\$24 \text{ per hour} \times 2,080 \text{ hours per year} = \$49,920$.

¹⁶ Exh. 6.

¹⁷ Exh. 11 at pg. 1.

¹⁸ Exh. 10.

¹⁹ Exh. 4.

²⁰ See Exhs. 10 & 11.

²¹ Exh. 19.

IV. Conclusion

CSSD modified Mr. X's child support order according to his most recent annual income information. Mr. X did not appear at the hearing to provide any evidence other than three recent paystubs. 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).

V. Child Support Order

- Mr. X's child support obligation for K is modified to \$572 per month, effective April 1, 2013, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated April 15, 2013, remain in full force and effect.

DATED this 19th day of July, 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 5th day of August, 2013.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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