

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

IN THE MATTER OF:)
)
 K N. J) OAH No. 13-0843-CSS
) CSSD No. 001175064
_____)

ORDER GRANTING MOTION FOR DISMISSAL

I. Introduction

The custodian, F T, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on May 3, 2013. The obligee children are B, K, and L. The formal hearing was held on July 3, 2013. Ms. T did not participate.¹ Mr. J appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and careful consideration, Ms. T’s appeal is dismissed because CSSD is not charging her with support. CSSD’s Modified Administrative Child Support and Medical Support Order dated May 3, 2013 stands as issued and remains in full force and effect.

II. Facts

Mr. J has three children, B, K, and L. B and K currently live with Mr. J,² and L has lived with F T, the children’s maternal grandmother, since soon after his birth.³ In 2011, CSSD established a child support order for Mr. J to pay support of \$107 per month for B, who was on public assistance for a brief period of time.⁴ She has since gone to live with the obligor.

In 2012, CSSD initiated an “add-a-kid” modification to add K and L to the order for B. CSSD issued a modification order on December 18, 2012, but inadvertently failed to name K in the order.⁵ CSSD subsequently notified that parties that it had made a mistake in the modification,⁶ and issued the May 3, 2013 Modified Administrative Child Support and Medical Support Order that added both K and L to Mr. J’s order for B.⁷

¹ Two calls were placed to the contact numbers for Ms. T. Neither call was answered and there was no way to leave a voicemail message for her. Ms. T has not contacted the Office of Administrative Hearings (OAH).

² CSSD’s Motion to Dismiss at pg. 1.

³ Exh. 5.

⁴ Exh. 1.

⁵ Exh. 2.

⁶ Exh. 3.

⁷ Exh. 4.

Ms. T appealed on June 3, 2013, and wrote that she does not understand why she is being charged child support for L when she has had him in her custody since soon after he was born.⁸ On June 25, 2013, CSSD filed a Motion to Dismiss Ms. T's appeal because it appears she mistakenly believes the modification order was for her to pay child support to Mr. J for L. The hearing was calendared for June 3, 2013.

On June 14, 2013, the OAH sent Ms. T a notice of the date and time for the hearing by certified mail to her address. She received and signed for it on June 20, 2013. Before the hearing, two unsuccessful attempts were made to reach Ms. T for the hearing. Because she received and signed for the notice of hearing, service of the notice on Ms. T was found to be effective and the hearing was conducted without her participation.⁹ During the hearing, Mr. J did not object to the modified child support amount CSSD calculated.

III. Discussion

Ms. T filed an appeal and requested a formal hearing, but she did not participate in the hearing. She did not submit any evidence other than a letter with her appeal that states she should not have to pay support when she has been L's custodian since soon after his birth.¹⁰ 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 person requesting the hearing fails to appear. Ms. T has the burden of proving by a preponderance of the evidence that CSSD's modification order is incorrect.¹¹

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹² Adding other children to a child support order is a material change in circumstances.¹³ In this case, CSSD has modified Mr. J's child support for the purpose of adding K and L to his previous order for B. Both B and K are currently in Mr. J's custody at this point, so he is only obligated to pay support for L. However, it was necessary for CSSD to include all of the children on his order so that the correct support amount for L could be separated out from the total he would owe if all three children were in someone else's custody.¹⁴

⁸ Exh. 5.

⁹ See 15 AAC 05.010(c).

¹⁰ Exh. 5.

¹¹ 15 AAC 05.030(h).

¹² AS 25.27.190(e).

¹³ See 15 AAC 125.321(b)(2)(B).

¹⁴ See Civil Rule 90.3(i).

There is no reason to have a hearing on any contested issues in this matter because there aren't any contested issues in this appeal. As CSSD pointed out, it appears Ms. T requested a hearing because she believed the agency was charging her for support. Obviously, CSSD is not charging Ms. T with child support – she received copies of documents relating to the modification of Mr. J's support obligation, and apparently misunderstood their content.

IV. Conclusion

CSSD has modified Mr. J's child support obligation so as to add his children K and L to a prior order for B. However, K and B are in Mr. J's custody, so he owes support only for L, who is in Ms. T's custody.

When Ms. T received a copy of the modification order CSSD issued in Mr. J's case, she thought she was being charged with support and filed an appeal of that order. But Ms. T is not being charged with support for L and there is no reason to have a hearing. Accordingly, her appeal should be dismissed.

V. Child Support Order

- Ms. T's appeal filed on June 3, 2013, is dismissed;
- The Modified Administrative Child Support and Medical Support Order that CSSD issued on May 3, 2013, stands as issued and remains in full force and effect.

DATED this 23rd 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 8th day of August, 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.]