

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

IN THE MATTER OF:)

F M. C)

) OAH No. 13-0871-CSS
) CSSD No. 001169862 &
) 001172259

DECISION AND ORDER

I. Introduction

The obligor, F M. C, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on May 1, 2013. The children in this appeal are L, 7, B, 5, C, 3, and Q, 6 mos. The custodian of record is Y C.

The hearing was held on July 9, 2013. Neither Ms. C nor Y C appeared – their telephone numbers were not in service. Andrew Rawls, 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 May 1, 2013 is affirmed. Ms. C’s child support is modified to \$50 per month, effective April 1, 2013, and ongoing.

II. Facts

Ms. C’s child support obligation for L, B and C was set at \$397 per month in February 2011.¹ CSSD initiated a modification review to add Q to the order and issued a Notice of Petition for Modification of Administrative Support Order on March 28, 2013.² Ms. C did not provide income information.³ On May 1, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Ms. C’s ongoing child support to \$50 per month, effective April 1, 2013.⁴ Ms. C appealed on May 29, 2013, asserting that L is living with her and Q is living with custodian Irene Demientieff.⁵ Prior to the hearing, CSSD filed a

¹ Exh. 1.
² Exh. 2.
³ CSSD’s Pre-Hearing Brief at pg. 1.
⁴ Exhs. 4-5.
⁵ Exh. 6.

statement of Ms. C's earnings that the agency obtained from the Alaska Department of Labor and Workforce Development.⁶

On June 21, 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 person's last-known address. Ms. C's notice was signed for and returned to the OAH on June 27, 2013. At the beginning of the hearing, calls were placed to the telephone numbers of record for both Ms. C and Y C. The numbers were out of service, so neither party participated in the hearing.

Service on Ms. C was found to be effective because her notice was signed for, so the hearing was 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 \$397 per month since 2011.

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.⁹ CSSD issued the notice in Ms. C's case on March 28, 2013, so any modification of her child support obligation would be effective as of April 1, 2013.¹⁰

Civil Rule 90.3(a)(1) provides that a parent's child support amount is to be calculated based on his or her "total income from all sources." If the parent does not have any income, the child support must be set no lower than \$50 per month. This is the minimum amount allowed under Alaska law, and it may not be reduced below that figure.¹¹ The \$50 per month minimum

⁶ Exh. 7.

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 15 AAC 125.321(d).

¹⁰ Exh. 2.

¹¹ Civil Rule 90.3(c)(1)(B).

order has been upheld by the Alaska Supreme Court, which stated that a parent may not be able to pay an ongoing child support amount, and may even be indigent, but the child support obligation still must be set at a minimum of \$50 per month.¹²

Ms. C did not provide any income information to CSSD for the modification.¹³ CSSD accessed the online database maintained by the Alaska Department of Labor and Workforce Development to ascertain her earnings. The report indicates Ms. C earned less than \$2,000 total since 2010.¹⁴ As a result of Ms. C's lack of earned income, CSSD correctly determined that her child support should be set at \$50 per month.¹⁵

Ms. C's appeal stated that L lives with her and Q lives with another custodian.¹⁶ Because her child support has been set at the minimum of \$50 per month, it does not matter whether one or more of Ms. C's children are currently living with her. That amount applies regardless of the number of children on the order.¹⁷

Ms. C did not appear at the hearing to present testimony or provide any other evidence regarding her appeal. Thus, in the absence of evidence sufficient to establish that the modification was incorrect, the Modified Administrative Child Support and Medical Support Order will be affirmed.

IV. Conclusion

CSSD calculated Ms. C's modified child support obligation at \$50 per month, based on her lack of income. Ms. C 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 affirmed. There was no variation requested or granted under Civil Rule 90.3(c).

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order dated May 1, 2013, is affirmed;

¹² *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

¹³ See Exh. 4.

¹⁴ Exh. 7.

¹⁵ Exh. 5 at pg. 6.

¹⁶ Exh. 6.

¹⁷ See Civil Rule 90.3, Commentary VI.C.

- Ms. C's child support obligation is modified to \$50 per month, effective April 1, 2013, and ongoing.

DATED this 8th day of August, 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 26th 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.]