

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

IN THE MATTER OF:)

T W)

OAH No. 13-1067-CSS

CSSD No. 001179326

DECISION AND ORDER

I. Introduction

The obligor, T W, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on June 21, 2013. The children in this appeal are X, 5, and K, 7 mos. The custodian of record is G B.

The hearing was held on September 3, 2013. Neither Mr. W nor Ms. B appeared – their telephone numbers were not in service. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. W’s child support should be modified to \$1,449 per month for two children (\$1,073 per month for one child), effective as of May 1, 2013, and ongoing.

II. Facts

Mr. W’s child support obligation for X was set at \$347 per month in January 2012.¹ CSSD initiated a modification review to add K to the order and issued a Notice of Petition for Modification of Administrative Support Order on April 23, 2013.² On June 21, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. W’s ongoing support to \$1,516 per month for two children, effective May 1, 2013.³ CSSD also charged Mr. W with arrears for K of \$393 per month for March and April 2013.⁴ Mr. W submitted an appeal, along with income information, on June 21, 2013.⁵ Mr. W asserted that his income has been reduced from \$22.15 per hour to \$16.52 per hour.

On August 8, 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.

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 3 at pg. 3.
⁵ Exh. 4.

Ms. B's notice was returned on August 28, 2013 because it had gone unclaimed. Neither Mr. W's green card nor the notice was returned to the OAH.

At the beginning of the hearing, calls were placed to the telephone numbers of record for both Mr. W and Ms. B. Mr. W's telephone was not accepting calls and Ms. B's number was not in service, so neither party participated in the hearing. Service of the notice on Mr. W was effective because it was sent to his last known address. Thus, it was permissible to conduct the hearing without his participation.⁶

III. Discussion

Mr. W 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."⁷ If the new 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. W's support was set at \$347 per month for one child in 2012. A support amount of \$399.05 would be sufficient to modify his child support.⁸

CSSD initiated this modification in order to add K to the order for X. 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 this case on April 23, 2013, so any modification of Mr. W's obligation would be effective as of May 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." Total income includes all of a parent's wages, overtime pay and cost of living (COLA) benefits.¹¹ CSSD calculated Mr. W's modified ongoing child support at \$1,516 per month for two children.¹² The income figure the division used to arrive at that calculation was \$89,647.¹³ The notation on the bottom of the calculation

⁶ "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).

⁷ AS 25.27.190(e).

⁸ $\$347 \times 1.15 = \399.05

⁹ 15 AAC 125.321(d).

¹⁰ Exh. 2.

¹¹ Civil Rule 90.3, Commentary III.A.1 & 28.

¹² Exh. 3 at pg. 8.

¹³ *Id.*

worksheet indicates that the calculation was “[b]ased on Employer Reported Earnings & PFD.”¹⁴ The reference to “Employer Reported Earnings” typically means one of two things: 1) that CSSD has obtained and used the person’s income information that was reported to the Alaska Department of Labor and Workforce Development; or 2) that CSSD made a written inquiry to the person’s employer, who filled out and returned a form with information regarding the person’s employment status and wage information.

CSSD has not documented its income information for Mr. W. There is no actual evidence in the record that shows what information CSSD used to determine he had total annual income of \$89,647. The calculation worksheet only shows how CSSD used the information it obtained – the worksheet is not evidence. Accordingly, that calculation should not be used.

The best estimate of Mr. W’s 2013 income can be derived from the income information he provided with his appeal. Mr. W’s paystub dated June 7, 2013, includes the pay period that ended on May 31, 2013.¹⁵ This paystub indicates his total gross pay as of that date was \$35,500.76.¹⁶ Dividing that figure by five months equals a monthly average income of \$7,100.15. When that amount is multiplied by twelve months, it equals total estimated income of \$85,201.82. This is the annual income figure that should be used to calculate Mr. W’s modified child support obligation.¹⁷ When it is inserted into CSSD’s online child support calculator, it yields a child support amount of \$1,449 per month for two children and \$1,073 per month for one child.¹⁸ This is the correct amount of modified ongoing child support for Mr. W to pay.

Mr. W is also liable for two months of child support for March and April 2013, when Ms. B applied for and began receiving public assistance for K.¹⁹ This amount is arrived at by taking the difference between the one-child and two-child support amounts, using Mr. W’s newly determined income for 2013. Subtracting the one-child amount of \$1,073 from the two-child amount of \$1,449 yields the figure of \$376. This is the amount that should be added to Mr. W’s obligation for the two months K was on public assistance prior to the effective date of the modification order.

¹⁴ *Id.*

¹⁵ Exh. 4 at pg. 7.

¹⁶ *Id.*

¹⁷ It should be noted that Mr. W had received COLA payments totaling \$4,714.45 through May31, 2013, which equals an average of approximately \$392.87 per month. Exh. 4 at pg. 7. Mr. W’s COLA was included in his total gross income for the child support calculation.

¹⁸ Attachment A.

¹⁹ *See* Exh. 3 at pg. 9, n.1.

Mr. W did not appear at the hearing to present testimony or provide any evidence other than the income documents he submitted with his appeal. Thus, based on the record as a whole, Mr. W's modified ongoing child support obligation has been correctly calculated.

IV. Conclusion

Mr. W met his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. His child support has been correctly calculated at \$1,449 per month for two children and \$1,073 per month for one child. These figures should be adopted, effective May 1, 2013. In addition, Mr. W is obligated to pay an additional \$376 per month for March and April 2013, when K was on public assistance prior to the effective date of the modification.

There was no variation requested or granted under Civil Rule 90.3(c).

V. Child Support Order

- Mr. W is liable for modified ongoing child support for X and K in the amount of \$1,449 per month for two children (\$1,073 per month for one child), effective May 1, 2013, and ongoing;
- Mr. W is also liable for arrears for K of \$376 per month for March and April 2013;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated June 21, 2013 remain in full force and effect.

DATED this 3rd day of October, 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 21st day of October, 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.]