

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

In The Matter of: )  
 )  
 S J. C ) OAH No. 13-1074-CSS  
 ) CSSD No. 001150983  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case involves obligor S J. C's appeal of an order, denying modification of his child support obligation, issued by the Child Support Services Division (CSSD) on December 7, 2012. The child in this case is U S, age six. The custodian of record is K A. S.

Based on the evidence in the record, CSSD's Decision on Request for Modification Review dated December 7, 2012 is affirmed. CSSD's Administrative Child Support and Medical Support Order dated November 3, 2008, which set Mr. C's ongoing child support obligation at \$323 per month effective December 1, 2008, remains in effect.

**II. Facts**

*A. Material Facts*

In 2007 Mr. C and Ms. S had a son named U S.<sup>1</sup> As of December 2008 Ms. S had primary physical custody of U,<sup>2</sup> and the record indicates that Ms. S has continued to exercise primary physical custody of U up to the present time.

In addition to U, Mr. C also has two children from another relationship: E, age five, and M, age eight.<sup>3</sup> These two children live with their mother.<sup>4</sup> A child support order was issued on July 14, 2009 obligating Mr. C to pay \$569 per month in child support for E and M.<sup>5</sup>

Information obtained by CSSD from the Alaska Department of Labor and Workforce Development (ADOL) indicates that Mr. C earned gross wages of \$33,532.42 in 2010; \$30,226.97 in 2011; \$29,765.84 in 2012; and \$18,766.09 in the first two quarters of 2013.<sup>6</sup> Mr. C's ADOL data

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<sup>1</sup> Ex. 1 p. 1.  
<sup>2</sup> Ex. 1.  
<sup>3</sup> Ex. 10 p. 1.  
<sup>4</sup> Ex. 10 p. 2.  
<sup>5</sup> Ex. 10.  
<sup>6</sup> Ex. 9 p.1.

further indicates that Mr. C received unemployment insurance benefits (UIB) of \$262 in 2011 and \$8,908 in 2012.<sup>7</sup>

Because neither Mr. C nor Ms. S participated in the hearing in this case, the record contains no information as to Mr. C's current household composition or household expenses, or Ms. S's current employment, earnings, household composition, or household expenses.

*B. Relevant Procedural History*

CSSD originally set Mr. C's child support for U at \$323 per month on November 3, 2008.<sup>8</sup> This child support amount was based on gross income of \$28,081.50.<sup>9</sup>

On October 19, 2012 Mr. C requested modification of the 2008 child support order.<sup>10</sup> However, Mr. C did not submit any financial information to support his modification request.<sup>11</sup> On December 7, 2012 CSSD denied Mr. C's child support modification request due to the fact that, because Mr. C failed to provide current financial and medical information, CSSD had no information showing the material change in circumstances necessary to justify modification of the child support award under Civil Rule 90.3.<sup>12</sup>

On January 15, 2013 Mr. C appealed CSSD's denial of his request for modification of his child support obligation.<sup>13</sup> On his appeal form Mr. C stated in relevant part that "I don't make that much money," and "I never received my dividend." He asked that his child support obligation "be put at 15% instead of 40% so that I can live with rent, car, and insurance."<sup>14</sup>

On April 15, 2013, while his appeal of CSSD's order of December 7, 2012 was pending with CSSD, Mr. C filed another request for modification of the 2008 child support order.<sup>15</sup> The second (2013) modification request was not supported by any new information, and was apparently treated by CSSD as subsumed within the first (2012) modification request.

On August 8, 2013 the Office of Administrative Hearings (OAH) mailed hearing notices to the parties by certified mail using their last-known addresses.<sup>16</sup> The formal hearing was held on

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<sup>7</sup> Ex. 9 pp. 2, 3.

<sup>8</sup> Ex. 1 p. 1. Notably, the order establishing child support for U was issued approximately eight months prior to the order establishing child support for E and M. Accordingly, the child support order currently in effect for U does not give Mr. C any credit for child support payments he may actually be making for the other children.

<sup>9</sup> Ex. 1 p. 7.

<sup>10</sup> Ex. 2 p. 1.

<sup>11</sup> Ex. 4 pp. 1, 2.

<sup>12</sup> Ex. 5.

<sup>13</sup> Ex. 6 p. 1. Neither CSSD nor Ms. S have asserted that Mr. C's appeal is untimely.

<sup>14</sup> Ex. 6 p. 1.

<sup>15</sup> Ex. 7.

<sup>16</sup> CSSD's Hearing Representative confirmed on the record at hearing that the addresses to which the parties' hearing notices were mailed were the most recent addresses which CSSD has on file for the parties.

August 27, 2013. Calls were placed to Mr. C at the two phone numbers he had provided. A message was left for Mr. C at one number; no message could be left on the other number. Calls were also placed to Ms. S at the two phone numbers she had provided. One of the numbers was no longer in service, and no message could be left at the other number. The CSSD representative was not aware of any other telephone numbers for Mr. C or Ms. S. Because all notice requirements had been complied with, the hearing proceeded in Mr. C's and Ms. S's absence as authorized by regulation. Child Support Specialist Andrew Rawls participated by telephone and represented CSSD. The record closed following the hearing on August 27, 2013. Neither Mr. C nor Ms. S contacted OAH to request that the hearing be rescheduled.

### **III. Discussion**

#### *A. Mr. C Received Legally Sufficient Notice of Hearing*

The notice requirements for formal child support hearings are set forth in two separate regulations. The first regulation, 15 AAC 05.030(g), requires that the hearing office "give reasonable notice to the parties." As long as "reasonable notice" has been given, if the person who requested the hearing fails to appear for or participate in the hearing, the administrative law judge may issue a decision without taking evidence from that person unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for his or her failure to appear.<sup>17</sup>

The second regulation, 15 AAC 05.010(c), requires that the person requesting a formal child support hearing provide a current mailing address to the department with the request for appeal. The regulation further states that if a document is mailed to the party by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department.

In this case, Mr. C's hearing notice was sent to him, via certified mail, at the address Mr. C had provided to CSSD. Accordingly, the notice provided to Mr. C complied with the requirements of 15 AAC 05.010(c) and 15 AAC 05.030(g).<sup>18</sup>

In summary, the relevant regulations do not require confirmation of the obligor's actual receipt of the hearing notice. The specific requirements of the notice regulations were complied with in this case. Accordingly, Mr. C received legally sufficient notice of hearing. 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.

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<sup>17</sup> 15 AAC 05.030(j).

<sup>18</sup> The notice sent to Ms. S also complied with the applicable regulations.

*B. CSSD was Correct to Deny Mr. C's October 19, 2012 Request for Modification in its Order Dated December 7, 2012*

Child support orders may be modified only upon a showing of good cause and material change in circumstances.<sup>19</sup> If a party's new financial circumstances would result in a new child support obligation more than 15% less than or greater than the amount due under the previous support order, Civil Rule 90.3(h) assumes a material change in circumstances has been established, and the child support order may be modified.

When an obligor parent requests that CSSD conduct a modification review of an ongoing child support order, he or she must provide the financial information necessary to determine the parent's income, and other information necessary to recalculate child support.<sup>20</sup> If the parent does not provide sufficient information for CSSD to conduct its modification review, CSSD may decline to perform a review or cease its review.<sup>21</sup> In this case, CSSD denied Mr. C's October 19, 2012 request for modification because Mr. C did not provide CSSD with any information showing a substantial change of circumstances.<sup>22</sup> Mr. C then appealed that denial.

The person appealing a CSSD decision granting or denying modification (in this case, Mr. C) has the burden of proving, by a preponderance of the evidence, that CSSD's decision was incorrect.<sup>23</sup> In this case, Mr. C did not testify at his hearing or provide any documentary evidence to support his October 19, 2012 request for modification. Accordingly, Mr. C has once again failed to satisfy his burden of proof, and CSSD's order dated December 7, 2012, denying modification of Mr. C's child support obligation, must be affirmed.

*C. Mr. C's April 15, 2013 Request for Modification Cannot be Addressed by the Office of Administrative Hearings in the Context of this Case*

On April 15, 2013, while his appeal of CSSD's order of December 7, 2012 was pending with CSSD, Mr. C filed another request for modification. The second (2013) modification request was apparently treated by CSSD as subsumed within the first (2012) modification request, because there is no evidence in the record that CSSD ever granted or denied the second modification request. However, pursuant to 15 AAC 125.321(a), CSSD is *required* to issue a written review decision either granting or denying Mr. C's April 15, 2013 modification request. Further, pursuant to 15

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<sup>19</sup> AS 25.27.190(e).

<sup>20</sup> 15 AAC 125.316(e).

<sup>21</sup> 15 AAC 125.316(e).

<sup>22</sup> Ex. 5.

<sup>23</sup> 15 AAC 05.030(h).

AAC 05.010(i), this Office does not have jurisdiction to address Mr. C's April 15, 2013 modification request until CSSD has acted on it and issued its decision.

CSSD should proceed to issue a decision on Mr. C's April 15, 2013 modification request. In doing so, CSSD should consider the income information which it obtained from ADOL<sup>24</sup> in preparation for the hearing in this case, but which was not mailed to Mr. C or Ms. S until the day of the hearing.<sup>25</sup> If either Mr. C or Ms. S are dissatisfied with CSSD's decision on Mr. C's April 15, 2013 modification request, either may then appeal CSSD's decision to this Office.

#### **IV. Conclusion**

Mr. C did not participate at his hearing and did not otherwise present any evidence or argument in support of his October 19, 2012 request for modification of his child support obligation. Accordingly, he failed to prove that he qualifies for modification of his child support payment under Civil Rule 90.3. CSSD's order dated December 7, 2012, denying modification of Mr. C's child support obligation, should therefore be affirmed. No variance under Civil Rule 90.3(c) was requested or granted.

#### **V. Child Support Order**

CSSD's Decision on Request for Modification Review dated December 7, 2012 is affirmed.

DATED this 18th day of September, 2013.

By: Signed \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

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<sup>24</sup> Ex. 9.

<sup>25</sup> There is no indication in the record that the income information from ADOL was provided to the parties prior to the hearing. Accordingly, due process considerations are best satisfied by deferring issuance of any decision by this Office utilizing that information until after CSSD has made its own determination using that evidence, and has notified the parties of its determination.

## **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 7<sup>th</sup> day of October, 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.]