

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

IN THE MATTER OF:)	
)	OAH No. 13-1165-CSS
S C. T)	CSSD No. 001176217
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DECISION AND ORDER

I. Introduction

The custodian, N L. H, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on June 10, 2013. The obligee children are L and E. The formal hearing was held on October 2, 2013. Ms. H did not participate.¹ Mr. T appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. T’s child support is modified to \$122 per month for two children (\$90 for one child), effective May 1, 2013.

II. Facts

Mr. T and Ms. H have two children, L, 5, and E, 6. Mr. T has had an order to pay support for L in the amount of \$202 per month since January 2012.²

CSSD established Mr. T’s paternity of E by administrative order on April 11, 2013.³ By notice dated April 15, 2013, CSSD initiated an “add-a-kid” modification to add E to the order for L. Mr. T did not provide financial information. On June 10, 2013, CSSD issued a modification order that added E and set Mr. T’s ongoing child support at \$50 per month for both children.⁴ Ms. H appealed on June 18, 2013, asserting that Mr. T fishes commercially for his grandfather and also illegally sells drugs.⁵ CSSD referred the appeal to the Office of Administrative Hearings (OAH) on August 26, 2013.

¹ A telephone call placed to Ms. H’s contact number was not answered and there was no way to leave a voicemail message for her. Neither has Ms. H contacted the Office of Administrative Hearings (OAH) to inquire about her hearing or appeal.

² Exh. 1.

³ Exh. 4. CSSD’s Pre-Hearing Brief states the paternity order was issued on April 13, 2013, but the date on the document itself is April 11, 2013.

⁴ Exh. 7.

⁵ Exh. 5.

On August 26, 2013, the OAH sent Ms. H a notice of the date and time for the hearing by certified mail. She received and signed for it on September 3, 2013. The hearing was convened on September 12, 2013, but Ms. H could not be reached and Mr. T had not received his notice, so the hearing was rescheduled to October 2, 2013. Immediately before that hearing, a telephone call was placed to Ms. H's contact number, but there was no answer and no way to leave a message for her. However, because she received and signed for the notice of hearing, service of the notice on Ms. H was found to be effective and the hearing was conducted without her participation.⁶

III. Discussion

Ms. H 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 regarding alleged illegal activities by Mr. T. 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. H has the burden of proving by a preponderance of the evidence that CSSD's modification order is incorrect.⁷

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁸ Adding other children to a child support order is a material change in circumstance.⁹ In this case, CSSD has modified Mr. T's child support for the purpose of adding E to his previous order for L. CSSD calculated his modified support amount to \$50 per month for two children because he did not submit any financial information and there are no records for Mr. T in the Alaska Department of Labor and Workforce Development database.¹⁰

During the hearing, Mr. T testified that he is a convicted felon without a high school diploma or GED. He said he lives with his aunt, who essentially supports him, although he does buy food occasionally when he has some money. Mr. T acknowledged that he fishes commercially with his grandfather and that his crew share in 2012 was \$3,000 and in 2013 it was \$4,500. He did not know what percentage his share was of the total boat proceeds.

⁶ See 15 AAC 05.010(c).

⁷ 15 AAC 05.030(h).

⁸ AS 25.27.190(e).

⁹ See 15 AAC 125.321(b)(2)(B).

¹⁰ See CSSD's Pre-Hearing Brief received on September 3, 2013, at pg. 1.

After the hearing, CSSD was directed to provide another calculation based on Mr. T's 2013 crew share of \$4,500. The calculation resulted in a child support amount of \$122 per month for two children (\$90 for one child).¹¹ There is insufficient evidence in the record to determine whether Mr. T makes money "under the table" from any illicit activities, as alleged by Ms. H.

IV. Conclusion

CSSD modified Mr. T's child support obligation so as to add his child E to the order for L. However, the calculation of \$50 per month was incorrect because Mr. T earned \$4,500 in 2013 from commercial fishing. CSSD's revised calculation of \$122 per month for two children (\$90 for one child) is correct and should be adopted. There was no variance under Civil Rule 90.3(c) requested or granted in this appeal.

V. Child Support Order

- Mr. T's ongoing child support obligation for L and E is modified to \$122 per month for two children (\$90 for one child), effective May 1, 2013, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated June 10, 2013, remain in full force and effect.

DATED this 16th day of December, 2013.

Signed _____
Kay L. Howard
Administrative Law Judge

¹¹ Exh. 10.

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 3rd day of January, 2014.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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