

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

In the Matter of:	)	
	)	OAH No. 14-0640-CSS
C D. T	)	CSSD No. 001139853
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	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, C D. T, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 12, 2014. The obligee child is K, 8 years old. The custodian is D C. A.

The hearing was held on May 12, 2014. Mr. T could not be reached, so he did not participate. Ms. A appeared by telephone. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after careful consideration, the Modified Administrative Child Support and Medical Support Order dated April 12, 2014 is affirmed. Mr. T did not meet his burden of proof. His child support remains at \$241 per month.

**II. Facts**

*A. Procedural History*

Mr. T's support obligation for K was set at \$241 per month in April 2006.<sup>1</sup> On March 11, 2014, Mr. T requested a modification review.<sup>2</sup> On March 20, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.<sup>3</sup> Mr. T did not provide financial information. On April 12, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified his child support order by adding a visitation credit, but it did not modify the ongoing child support amount of \$241 per month.<sup>4</sup> He appealed

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<sup>1</sup> Exh. 2.  
<sup>2</sup> Exh. 3.  
<sup>3</sup> Exh. 4.  
<sup>4</sup> Exh. 5.

on April 21, 2014.<sup>5</sup> Prior to the hearing, CSSD filed an affidavit of Mr. T's earnings history that was obtained from the Alaska Department of Labor and Workforce Development.<sup>6</sup>

On April 25, 2014, 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. Mr. T signed for his notice and the green card was returned to the OAH on April 28, 2014.

At the beginning of the May 12, 2014 hearing, a call was placed to Mr. T's telephone number of record. It went unanswered, so a voicemail message was left for him to call the OAH. Since Mr. T had actual notice of the hearing, service on him was found to be effective and the hearing was conducted without his participation.

On May 13, 2014, Mr. T sent the OAH an email message and requested another hearing. His email stated,

I C T was not able to receive any calls do (sic) to cell phone signal loss on the date and time of hearing I was out of Anchorage area driving for my employer. If possible I would like a reschedule.

### **III. Discussion**

#### *A. Failure to Appear*

Mr. T 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 states:

If a person requests a hearing and fails to appear at the hearing, the hearing officer 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 failure to appear.

Mr. T timely requested another hearing, but he did not show reasonable cause for his failure to appear, as required by the regulation. "Reasonable cause" is generally considered to be something beyond the requesting party's control, such as a flat tire, medical emergency, or a snowstorm, that prevents him or her from participating in the hearing. Because he was working at the time of the hearing, Mr. T should have made arrangements with his employer to be available for the hearing. Failing that, he should have contacted the OAH and rescheduled the hearing. There was nothing about Mr. T's circumstances at the time of the hearing that was beyond his control. Accordingly, his request for another hearing is denied.

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<sup>5</sup> Exh. 6.

<sup>6</sup> Exh. 9.

*B. Child Support Modification*

Child support orders may be modified upon a showing of “good cause and material change in circumstances.” 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. Mr. T’s child support has been \$241 per month since 2006. Thus, a child support calculation \$36.15 higher or lower than \$241 would be sufficient to modify his case.<sup>7</sup>

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested. CSSD issued the notice in Mr. T’s case on March 20, 2014, so if a modification were warranted, it would be effective on April 1, 2014.

Mr. T did not provide income information, as requested by CSSD, for the review. As a result, CSSD did not modify his ongoing child support amount from \$241 per month. Instead, the modification only changed the order’s visitation credits – CSSD added a provision that indicates Mr. T would be entitled to a visitation credit if he exercised extended visitation with K in excess of 27 consecutive days. Mr. T appealed CSSD’s order, claiming that his income had changed and that he has another child support obligation of \$321.50.<sup>8</sup> Mr. T attached a child support affidavit for 2013 that reported his annual income for the year consisted of wages of \$4,945 and employer-provided benefits of \$1,656, for total income of \$6,601.<sup>9</sup> Mr. T also submitted an affidavit for 2014 that reported his year-to-date income as of April 1, 2014 was \$2,168.03.<sup>10</sup>

Finally, Mr. T’s appeal stated that he was unemployed.<sup>11</sup> However, the email he submitted after the hearing, about six weeks later, indicated he missed the hearing because he was driving for his employer. Obviously, Mr. T was no longer unemployed.

Mr. T did not appear at the hearing to present testimony on the evidence he did provide or to explain his current circumstances. Thus, in the absence of sufficient evidence or testimony, Mr. T has not met his burden of proving that CSSD’s Modified Administrative Child Support and Medical Support Order is incorrect.

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<sup>7</sup> \$241 x 15% = \$36.15.

<sup>8</sup> Exh. 6 at pg. 1.

<sup>9</sup> Exh. 6 at pg. 2.

<sup>10</sup> Exh. 6 at pg. 3.

<sup>11</sup> Exh. 6 at pg. 1.

**IV. Conclusion**

Mr. T did not appear at the hearing or provide sufficient evidence of his current circumstances. As a result, he did not meet his burden of proving by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Therefore, CSSD’s order 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 April 12, 2014 is affirmed;
- Mr. T remains liable for modified ongoing child support for K in the amount of \$241 per month.

DATED this 11<sup>th</sup> day of July, 2014.

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 28<sup>th</sup> day of July, 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.]