

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

In the Matter of:)	
)	OAH No. 14-0662-CSS
S D. X)	CSSD No. 001113231
_____)	

DECISION AND ORDER OF DISMISSAL

I. Introduction

The obligor, S D. X, requested a modification review for a Superior Court issued child support order. The Child Support Services Division (CSSD) denied his request on April 19, 2014.¹ Mr. X appealed that denial on April 28, 2014.² Mr. X then withdrew his appeal, in writing, on May 5, 2014.³ CSSD moved to dismiss this case based upon Mr. X's written withdrawal.

A status conference was held on May 14, 2014 to address CSSD's motion to dismiss. Mr. X, O G, the custodial parent, and Russell Crisp, Child Support Specialist, who represented CSSD, all participated telephonically.

Mr. X and Ms. G are currently litigating child custody issues in Superior Court. During the course of that litigation, the Superior Court entered an Order on December 31, 2013, which set Mr. X's monthly child support obligation at \$910.46 effective April 1, 2013. As indicated by that Order, there is an unresolved custody dispute.⁴ Because CSSD denied Mr. X's modification review due to the pendency of the Superior Court case, appellate jurisdiction of CSSD's denial lies with the Superior Court, not the administrative appeal process. This case is therefore dismissed due to a lack of jurisdiction.

II. Facts

Ms. G filed a motion in Superior Court to modify child support on March 5, 2013. Mr. X filed a motion to modify custody on June 11, 2013. On December 31, 2013, the Superior Court resolved the child support question, holding that Mr. X's monthly child support obligation was \$910.46 effective April 1, 2013. That same child support order did not resolve the custody issue,

¹ Ex. 1, p. 1.
² Ex. 1, p. 2.
³ Ex. 2, p. 1.
⁴ Ex. A.

indicating that it remained pending.⁵ Mr. X requested modification of the court's child support order by filing a modification review with CSSD, which CSSD denied.⁶

Mr. X appealed the denial of his modification review. He then withdrew his appeal by an email to CSSD, which read in pertinent part:

As requested, I am asking you to cancel my formal hearing request because you are unable to go against a court order.

I don't necessarily understand, but considering my luck with everything, I'm not overly surprised.^[7]

III. Discussion

A. Withdrawal

A status conference was held on May 14, 2014 to discuss Mr. X's withdrawal. Due to the equivocal nature of Mr. X's email, the fact he sent it at CSSD's request, and the fact that he was confused by the administrative appeal process and the interplay between that process and the trial court case, his withdrawal cannot be considered to meet the standards for waiving a right, *i.e.*, it cannot be considered as having been made knowingly and voluntarily.

B. Jurisdiction

During the status conference, CSSD presented a new argument for dismissal in lieu of the voluntary withdrawal argument. That argument was that this administrative case should be dismissed because there was a Superior Court support order in place. After the status conference, a copy of the Superior Court support order was placed in the record. A review of that order shows that it was issued recently, on December 31, 2013, and that there are still issues relating to child custody, which may have an effect upon support, pending in the Superior Court.

There is an administrative process available to review a trial court issued support order. A party can request modification of a trial court support order by CSSD.⁸ CSSD must then determine if modification is appropriate. If CSSD deems that modification is appropriate, it is required to forward its file to the Department of Law for it to present to the trial court.⁹ If CSSD denies the modification request as being inappropriate, the requesting party does not have administrative appeal rights: he or she must file the appeal request with the Superior Court.¹⁰ In

⁵ Ex. A.

⁶ Ex. 1, p. 1.

⁷ Ex. 2.

⁸ 15 AAC 125.316(a)(1).

⁹ 15 AAC 125.326(c).

¹⁰ 15 AAC 125.326(d).

this case, Mr. X had his modification review request denied by CSSD because there was an open Superior Court case. CSSD's denial notice correctly advised Mr. X that "[i]f you disagree with this decision, you must file an appeal in an Alaska court within 30 days of the date this denial was mailed. There is no administrative appeal process for this decision."¹¹ Because there is no administrative appeal process available to Mr. X, the Office of Administrative Hearings does not have jurisdiction to hear this case.

IV. Conclusion and Order

The Superior Court, not the Office of Administrative Hearings, has jurisdiction to hear appeals from CSSD's denial of a request to modify a Superior Court issued child support order. Accordingly, this case is dismissed due to a lack of jurisdiction.

DATED this 20th day of May, 2014.

Signed _____

Lawrence A. Pederson
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 6th day of June, 2014.

By: *Signed* _____
Signature
Lawrence A. Pederson _____
Name
Administrative Law Judge _____
Title

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

¹¹ Ex. 1, p. 1.