

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

In the Matter of:)

J B. J)

) OAH No. 14-0924-CSS

) CSSD No. 001189827

DECISION AND ORDER

I. Introduction

The obligor, J B. J, appealed a Decision on Request for Modification Review that the Child Support Services Division (CSSD) issued in his case on April 21, 2014. That order denied his request for a modification review. The obligee child is C, 7 years old. The other party to the case is K E. A.

The hearing was held on June 23, 2014. Neither party could be reached, so they did not participate. James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on July 3, 2014.

Based on the record as a whole and after careful consideration, the Decision on Request for Modification Review dated April 21, 2014 is affirmed. Mr. J's child support remains at \$477 per month.

II. Facts

A. Procedural history

Mr. J's support obligation for C was set at \$477 per month in March 2013.¹ On March 17, 2014, Mr. J requested a modification review.² On March 21, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. J did not provide financial information. On April 21, 2014, CSSD issued a Decision on Request for Modification Review that denied his request for modification because he did not submit the income information CSSD requested of him.⁴ He appealed on May 8, 2014, stating that he had been attending a construction trades training program at the Alaska Technical Center since January 13,

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.

2014, and would be graduating on May 14, 2014.⁵ Along with his appeal, Mr. J filed copies of his 2012 and 2013 federal income tax returns.⁶ Prior to the hearing, CSSD filed an affidavit of Mr. J's earnings history that was obtained from the Alaska Department of Labor and Workforce Development.⁷

B. Formal hearing

On June 5, 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. J's notice was signed for, and the green card was returned to the OAH on June 11, 2014. Ms. A's notice was signed for, and the green card was returned on June 9, 2014.

At the beginning of the June 23rd hearing, a call was placed to Mr. J's telephone number of record. An automatic system message stated that the number was no longer in service. Since Mr. J's notice was received, the administrative law judge entered a finding of fact that the obligor had notice of the hearing. As a result, service on him was found to be effective and the hearing was conducted without his participation.

A call was also placed to Ms. A's contact numbers, but she could not be reached and at least one voicemail message was left for her to call the OAH. She has not returned the call.

III. Discussion

A. Failure to Appear

Mr. J 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. J has not shown reasonable cause for his failure to appear, as required by the regulation. As of this date, he has not contacted the OAH to inquire about his hearing or appeal, so this decision is issued without any further participation from him.

⁵ Exh. 5.

⁶ Exh. 6.

⁷ Exh. 7.

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.

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. J’s case on March 21, 2014, so if a modification were warranted, the effective date would be on April 1, 2014.

Mr. J 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 the \$477 figure that has been in effect for the past year. CSSD is authorized by regulation to deny a petition for modification if the requesting party fails to provide the information necessary to conduct the review.⁸

Mr. J appealed, stating he is taking training and would be graduating in May 2014. He also filed his 2013 tax return, but he did not appear at the hearing to discuss his current circumstances and whether his 2013 tax return accurately reflects his current income. Thus, in the absence of sufficient evidence or testimony, Mr. J has not met his burden of proving that CSSD’s Decision on Request for Modification Review is incorrect.

IV. Conclusion

Mr. J 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 Decision on Request for Modification Review is 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 Decision on Request for Modification Review dated April 21, 2014 is affirmed;

⁸ 15 AAC 125.321(a).

- Mr. J remains liable for child support for C in the amount of \$477 per month.

DATED this 23rd 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 11th day of August, 2014.

By: Signed

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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