

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

In the Matter of:)

B I. B)

OAH No. 14-0991-CSS

CSSD No. 001194738

DECISION AND ORDER

I. Introduction

The obligor, B I. B, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 25, 2014. That order added a child and modified his ongoing child support amount. The obligee children are J and T, 15, and M, 8 months. The other party to the case is M E. B.

The hearing was held on July 8, 2014. Mr. B could not be reached, nor could a message be left for him, so he did not participate. Ms. B was contacted by telephone, but could not participate at the time. James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on July 18, 2014.

Based on the record as a whole and after careful consideration, Mr. B's child support is modified to \$460 per month for three children (\$376 for two children; \$279 for one child), effective April 1, 2014, and ongoing. Also, Mr. B is liable for arrears for M in the amount of \$84 per month for December 2013 through March 2014.

II. Facts

A. Procedural history

Mr. B's support obligation for J and T was set at \$448 per month in November 2013.¹ On March 27, 2014, upon learning that the parties have a third child, CSSD initiated a review in order to add M to Mr. B's order for the two older children. On March 28, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order.² Mr. B did not provide financial information. On April 25, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified his child support to \$463 per month for three

¹ Exh. 1.

² Exh. 3.

children and added arrears for just M in the amount of \$336 for the months of December 2013 through March 2014.³

Mr. B appealed on May 22, 2014, claiming that he is only a seasonal employee and is not able to receive unemployment benefits.⁴ Prior to the hearing, CSSD filed an affidavit of Mr. B's earnings history that was obtained from the Alaska Department of Labor and Workforce Development.⁵ CSSD also submitted a revised calculation of Mr. B's modified child support, based on a projection of his annual income taken from his hourly wage and hours worked per year. The amount is \$460 per month for three children (\$376 for two children; \$279 for one child), effective April 1, 2014, and ongoing.

B. Formal hearing

On June 19, 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. Neither green card was returned to the OAH.

At the beginning of the July 8th hearing, a call was placed to Mr. B's telephone number of record. There was no answer, and no opportunity to leave a voicemail message for him. Since Mr. B's notice was sent to his last-known address, and he has had an ongoing case with CSSD, 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. B, but she was at work and could not participate in the hearing.

III. Discussion

A. Failure to Appear

Mr. B 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.

³ Exh. 5.

⁴ Exh. 4.

⁵ Exh. 8.

Mr. B 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.

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. B’s case on March 28, 2014, so any modification would be effective on April 1, 2014.

Civil Rule 90.3(a)(1) provides that a parent’s child support amount is to be calculated based on his or her “total income from all sources.” Mr. B filed paystubs with his appeal. They show his current pay rate as \$18.34 per hour, which CSSD used to estimate his annual income at \$18,156.60.⁶ CSSD inserted that income figure into its online child support calculator, which generated a support amount of \$460 per month for three children (\$376 for two children; and \$279 for one child).⁷ This modified support amount is effective as of April 1, 2014, and ongoing.

Mr. B filed an appeal of his child support modification, but he did not appear at the hearing to discuss his current circumstances and the revised child support amount. Thus, in the absence of sufficient evidence or testimony, Mr. B has not met his burden of proving that CSSD’s revised calculations are incorrect.

IV. Conclusion

Mr. B 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 revised calculations are incorrect, as required by 15 AAC 05.030(h). Therefore, CSSD’s calculations should be adopted. There was no variation requested or granted under Civil Rule 90.3(c).

⁶ Exh. 9 at pg. 2.

⁷ *Id.*

V. Child Support Order

- Mr. B's child support obligation for J, T, and M is modified to \$460 per month for three children (\$376 for two children; \$279 for one child), effective April 1, 2014, and ongoing.
- Also, Mr. B is liable for arrears for M in the amount of \$84 per month for December 2013 through March 2014.
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated April 25, 2014 remain in full force and effect.

DATED this 7th day of August, 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 25th day of August, 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.]