

of monthly support at \$1,159 for the obligee children. CSSD received Ms. T's appeal of the Modified Order on July 2, 2014.⁴ In her appeal, Ms. T stated that the custodial parent had essentially abandoned the obligee children. Ms. T further stated that the three youngest obligee children had been living with her since March 5, 2014.⁵

B. Formal Hearing

A hearing initially was scheduled for July 30, 2014. The parties were not reached at that time. Subsequently, the United States Postal Service returned Ms. T's hearing notice, which was marked "unclaimed." Because the obligor had not received notice of the initial hearing, an order was issued which reopened the record and the hearing was rescheduled for October 10, 2014. Copies of that order were sent to the parties at their respective addresses of record.

At the time of the rescheduled hearing, on October 10, 2014, a call was placed to Mr. T's telephone number of record. The phone message said that it was a non-working number. Since Mr. T's notice was sent to his last-known address, was not returned, and Mr. T has had an ongoing case with CSSD, the administrative law judge finds that service on him was effective and he had notice of the hearing, although he did not attend it.

III. Discussion

A. Facts

Ms. T's appeal stated that Mr. T had abandoned his four youngest children to move to Anchorage to be with his girlfriend, K.⁶ Ms. T's two oldest children – J (22) and C (24) – cared for their younger siblings after Mr. T moved to Anchorage.⁷ On March 5, 2014, Ms. T's three youngest obligee children – V, B, and O – and J T moved to No Name 1, Alaska to live with Ms. T. U T at that time continued to reside with his elder brother, C T,⁸ until Ms. T returned to No Name 2, Alaska in August of 2014.⁹

Ms. T testified that she has had *de facto* custody of her children since March 5, 2014.¹⁰ She has further maintained that Mr. T had not used the child support she had been

⁴ Exh. 7.
⁵ Exh. 7.
⁶ Exh. 7; *see also* Testimony of Ms. T.
⁷ Exh. 7; *see also* Testimony of Ms. T.
⁸ Testimony of Ms. T.
⁹ Testimony of Ms. T.
¹⁰ Testimony of Ms. T; *see also* Exh. 7.

paying to him, nor the SSI that he was receiving, for U T, who is autistic, or to pay for the obligee children's living expenses.¹¹

Ms. T testified that she had been paying for the obligee children's living expenses since March 5, 2014, in addition to paying child support to Mr. T.¹² Ms. T also testified that she is the named "emergency contact" on the school list for her children and that she intends to file for full custody of her obligee children.¹³

B. Child Support Modification.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁴ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "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 Ms. T's case on April 29, 2014, so any modification would be effective on May 1, 2014. Since Ms. T has had custody of her children since March 5, 2014, her ongoing support should be suspended as of May 1, 2014. However, as a matter of fairness, her child support obligations should be suspended by CSSD as of April 1, 2014, since she had custody of the obligee children by that date¹⁵ and Mr. T was fully aware that the obligee children were no longer in his custody.

Ms. T did not challenge the child support amount CSSD set out in the modification order. Her appeal focused on the location of the children. For technical reasons, the child support amount in the Modified Order will be affirmed in the event Ms. T becomes liable for support again, but collection of that amount will be suspended.

IV. Conclusion

Ms. T met her burden of proving by a preponderance of the evidence that the Modified Order is incorrect, as required by 15 AAC 05.030(h). The child support amount of \$1,159 per month for four children remains unchanged from 2011, but Ms. T became the custodial parent prior to May 1, 2014, the effective date of the modification. Thus, her ongoing support

¹¹ Exh. 7.
¹² Testimony of Ms. T; *see also* Exh. 7.
¹³ Testimony of Ms. T.
¹⁴ *See* Civil Rule 90.3.
¹⁵ Exh. 7; *see also* Testimony of Ms. T.

obligation should be suspended as of May 1, 2014. In the event she ever becomes liable for ongoing support in the future, the \$1,159 figure can be reinstated, after which time it would be subject to a prospective modification upon Ms. T's petition.

V. Child Support Order

- Ms. T remains liable for modified child support for U, V, B and O in the amount of \$1,159 per month for four children, as ordered on December 9, 2011;
- Ms. T's ongoing child support for all four children is SUSPENDED as of May 1, 2014, and shall remain suspended so long as Ms. T has custody of the children;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated May 28, 2014 remain in full force and effect.

DATED this 5th day of November, 2014.

Signed

Kathleen A. Frederick
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 24th day of November, 2014.

By: *Signed* _____
Signature
Kathleen A. Frederick _____
Name
Administrative Law Judge _____
Title

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