

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

In the matter of:)	
)	OAH No. 14-1694-CSS
J M. E)	CSSD Case No. 001156512
_____)	

DECISION AND ORDER

I. Introduction

The obligor, J M. E, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 3, 2014. This order increased Ms. E's monthly support obligation from \$50 per month to \$261 per month for two children as of August 1, 2014. The custodians of record are K F. H and N J. E. The obligee children are F (age 12 years) and B (age 10 years).

Ms. E's hearing was held November 25, 2014. She was called at the scheduled time at the numbers she provided but did not answer. A message was left informing her that the record would remain open for 10 days.¹ Ms. E called the Office of Administrative Hearings on November 26, 2014, but did not request a supplemental hearing or submit evidence before December 5, 2014, the record closure date. Robert Lewis, Child Support Specialist, represented CSSD.

Had Ms. E participated, she could have provided information in support of her appeal and she may have prevailed. However, without additional evidence to the contrary, the record supports CSSD's September 3, 2014 Modified Administrative Child Support and Medical Support Order. Ms. E is liable for child support in the amount of \$261 per month for two children effective August 2014 and ongoing.

II. Facts

This matter arises from an automated CSSD-initiated review of Ms. E's child support case.² As a result of the review CSSD notified Ms. E and informed her that "there may be enough of a change in [Ms. E's] income to justify modification of her monthly support obligation."³ The prior support order was issued in 2012 and set Ms. E's child support at the minimum allowed by law, \$50 per month.⁴

¹ As required by regulation, the record remained open for 10 days to provide Ms. E with an opportunity to show reasonable cause for her failure to participate. 15 AAC 05.030(j).

² Exhibit 2 at 1.

³ Exhibit 2 at 1.

⁴ Exhibit 1.

Apparently thinking her support could be reduced below the \$50 legal minimum, Ms. E requested a modification review, writing that she was working part time and concerned about keeping a roof over her head. She provided the financial information as requested by CSSD.⁵

When calculating child support for the two children, CSSD took Ms. E's hourly rate, \$11.50, multiplied by 1,040 hours.⁶ The annualized figure (\$11,960), plus the permanent fund dividend (\$900), less allowable deductions, results in an annual adjusted gross income of \$11,599.⁷ Applying Alaska Rule Civil Procedure 90.3(a) to this figure results in a monthly child support payment for two children in the amount of \$261.

Ms. E appealed, requesting the support amount be returned to \$50 per month because she could not afford the increase and pay rent.⁸

She failed to appear at her hearing. The certified letter addressed to Ms. E's designated representative, a law firm, was returned as claimed. The mail sent first class postage paid and addressed to her representative was not returned. When the representative was called, they stated they no longer represented Ms. E. The parties to a child support case must keep CSSD notified of their current address information.⁹ The Notice of Hearing was received at the address provided by Ms. E. Service was effective.

III. Discussion

The amount of child support received by a child is based on the parent's ability to pay.¹⁰ As the obligor, Ms. E has the burden of proving her earning capacity.¹¹ Also, because she filed the appeal, Ms. E has the burden of proving that CSSD's order is incorrect.¹²

Child support determinations calculated under Civil Rule 90.3(a) from a parent's actual income are presumed to be correct. The parent may obtain a reduction in the amount, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the

⁵ Exhibit 2 and 4.

⁶ Exhibit 6 at 5.

⁷ Exhibit 6 at 6.

⁸ Exhibit 7.

⁹ 15 AAC 05.010. The regulation states:

A current mailing address must be provided to the department with the request for appeal, and any change in mailing address after the request for appeal is filed must be reported to the department immediately. If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department.

¹⁰ Commentary Civil Rule 90.3 I B.

¹¹ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹² 15 AAC 05.030(h).

parent must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”¹³ The existence of “unusual circumstances” may also provide a sufficient basis for a finding of good cause to vary the calculated child support amount.¹⁴ It is appropriate to consider all relevant evidence to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).¹⁵

Ms. E asked for, and was provided, the opportunity to present evidence in support of her appeal. Had she participated in the hearing and presented evidence, it is possible that she may have met her burden. She did not take advantage of the opportunity provided to her. Accordingly, she has not established by clear and convincing evidence that the support amount calculated by CSSD is manifestly unjust.

IV. Conclusion

Ms. E did not take advantage of the opportunity to submit additional evidence in support of her appeal. She has failed to establish by a preponderance of the evidence that CSSD’s September 3, 2014 order was incorrect. Therefore, CSSD’s September 3, 2014 Modified Administrative Child Support and Medical Support Order should be affirmed.

V. Order

CSSD’s September 3, 2014 Modified Administrative Child Support and Medical Support Order is AFFIRMED.

DATED this 24th day of December, 2014.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹³ Civil Rule 90.3(c).

¹⁴ Civil Rule 90.3(c)(1).

¹⁵ See Civil Rule 90.3, Commentary VI.E.1.

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 12th day of January, 2015.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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