

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

In the Matter of:)
)
 N T) OAH No. 14-1699-CSS
) CSSD No. 001105305
_____)

DECISION AND ORDER

I. Introduction

The obligor, N T, appealed a Modified Administrative Child Support and Medical Support Order that CSSD issued in his case on August 27, 2014. That order modified his ongoing child support from \$156 per month to \$238 per month, effective July 1, 2014. The obligee child is A, 14. The other party to the case is M D. R.

The hearing was held on October 23, 2014. Neither Mr. T nor Ms. R participated. Joe West, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after careful consideration, Mr. T's child support is modified to \$235 per month for one child, effective July 1, 2014, and ongoing.

II. Facts

A. Procedural history

Mr. T's support obligation for A was set at \$156 per month in February 2006.¹ Mr. T requested a modification in his state of residence on June 16, 2014.² CSSD issued a Notice of Petition for Modification of Administrative Support Order on June 23, 2014.³ On August 16, 2014, Mr. T filed a written statement and a paystub.⁴ On August 27, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified his ongoing child support to \$238 per month for one child, effective July 1, 2014.⁵ The calculation was based on the minimum wage in Mr. T's state of residence of \$8.25 per hour, multiplied times the full-

1 Exh. 1.
2 Pre-hearing Brief at pg. 1.
3 Exh. 2.
4 Exh. 4.
5 Exh. 5.

time work equivalent of 2,080 hours.⁶ Mr. T appealed on September 25, 2014.⁷ He requested that his paychecks be taken into consideration and also stated that he has other children.

On October 3, 2014, CSSD filed an affidavit of Mr. T's earnings history that was obtained from the Alaska Department of Labor and Workforce Development.⁸ It shows that Mr. T was employed during the last quarter of 2013 and the first quarter of 2014.

B. Formal hearing

On October 6, 2014, the Office of Administrative Hearings (OAH) sent both parties a notice of the date and time for the hearing by certified mail. Ms. R's was returned with a notation by the U.S. Postal Service that her post office box was closed and the notice could not be forwarded. Mr. T's notice was sent to the out-of-state agency handling his case; the green card showing service was signed on October 20, 2014.

At the beginning of the hearing, the administrative law judge (ALJ) called the two telephone numbers on record for Mr. T. One was no longer in service, but the second number was operational. The ALJ left a voice mail message for Mr. T to call the OAH, but as of this writing, he has not responded. Ms. R's telephone number of record was not in service.

III. Discussion

A. Failure to Appear

Mr. T 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. T has not shown reasonable cause for his failure to appear, as required by the regulation. In fact, as of this date, he has not contacted the OAH in response to the telephone message left for him. Therefore, pursuant to 15 AAC 05.030(j), this child support decision is issued without any further attempts to secure participation from Mr. T.

⁶ Exh. 5 at pg. 7.

⁷ Exh. 6.

⁸ 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 next month after CSSD issues a notice to the parties that a modification has been requested.⁹ CSSD issued the notice in Mr. T’s case on June 23, 2014, so any modification would be effective on July 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.” After CSSD requested income information from Mr. T in June 2014,¹⁰ he submitted one paystub that indicated he worked 57.45 hours in the 2-week period from May 25, 2014 to June 7, 2014, he was paid \$11 per hour, and his year-to-date wages were \$3,412.01.¹¹ CSSD could not verify this information through Alaska Department of Labor and Workforce Development, most likely because he works out of state, so CSSD prepared a calculation based on the \$8.25 per hour minimum wage in his state.¹² The result is a child support amount of \$238 per month.¹³

After the hearing, CSSD was asked to prepare another calculation, this time using his hourly wage of \$11, and based on a 28-hour average work week. The result is a child support amount of \$235 per month, almost identical to the earlier calculation based on the minimum wage.¹⁴ Although this latest calculation is not appreciably different than the first one, the methodology is supported by the record in this matter, so it is the preferred calculation.

Mr. T 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. T has not met his burden of proving that CSSD’s revised calculation is incorrect.

⁹ 15 AAC 125.321(d).

¹⁰ Exhs. 2-3.

¹¹ Exh. 4 at pg. 2.

¹² Exh. 5 at pg. 7.

¹³ *Id.*

¹⁴ Exh. 9. This calculation was not marked with an exhibit number, so the OAH has marked it with the next available exhibit number in the appeal record.

IV. Conclusion

Mr. T 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 calculation is incorrect, as required by 15 AAC 05.030(h). Therefore, CSSD’s calculation should be adopted. There was no variation requested or granted under Civil Rule 90.3(c).

V. Child Support Order

- Mr. T’s child support obligation for A is modified to \$235 per month for one child, effective July 1, 2014, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 27, 2014 remain in full force and effect.

DATED this 4th day of February, 2015.

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 23rd day of February, 2015.

By: Signed

 Signature
Kay L. Howard

 Name
Administrative Law Judge

 Title

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