

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

In the Matter of:)
)
X G. C) OAH No. 14-1879-CSS
) CSSD No. 001188254
_____)

DECISION AND ORDER

I. Introduction

The obligor, X G. C, appealed a Decision on Request for Modification Review that the Child Support Services Division (CSSD) issued in his case on October 8, 2014. That order denied the request for modification of his \$929 per month child support obligation. The obligee children are H, J, K, and L. The custodian is N M. E.

The hearing was held on December 1, 2014. Mr. C could not be reached, nor could a message be left for him, so he did not participate. Ms. E participated by telephone. Joe West, Child Support Specialist, represented CSSD. The hearing was recorded.

After careful consideration, CSSD's order denying the petition for modification is affirmed. The evidence in the record does not establish good cause and a material change in circumstances in this case. Mr. C's child support shall remain at \$929 per month.

II. Facts

A. Procedural History

Mr. C's support obligation for H, J, K, and L was set at \$929 per month in March 2013.¹ One of the parties requested a modification review on September 16, 2014. On September 19, 2014, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.² Mr. C did not provide financial information. On October 8, 2014, CSSD issued a Decision on Request for Modification Review that denied the petition for modification.³ Mr. C filed an appeal.⁴ Prior to the hearing, CSSD filed an affidavit of Mr. C's earnings history that was obtained from the Alaska Department of Labor and Workforce Development.⁵

1 Exh. 1.
2 Exh. 4.
3 Exh. 5.
4 Exh. 6.

B. Formal Hearing

On October 30, 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. C's green card was not returned to the OAH.

At the beginning of the December 1st hearing, a call was placed to both Mr. C's telephone numbers of record. He could not be reached and there was no opportunity to leave a voicemail message for him.⁶ Since Mr. C'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. During the hearing, Ms. E stated that Mr. C had traveled to Africa and she believed he would return the next month.

III. Discussion

A. Failure to Appear

Mr. C 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. C 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. If Mr. C did travel to Africa, as Ms. E said, he did not contact CSSD or the OAH about his appeal prior to traveling, 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.

⁵ Exh. 8.

⁶ The call placed to Mr. C's home number went unanswered and there was no answering machine connected to the number. A call was also placed to his work number, but the person who answered stated there was no one in the office by that name.

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. C's case on September 19, 2014, so any modification would be effective on October 1, 2014.

Civil Rule 90.3(a)(1) provides that a parent's child support is to be calculated based on his or her "total income from all sources." Mr. C earned \$38,753.74 during the one-year period from the fourth quarter of 2013 through the third quarter of 2014.⁷ When this income figure is inserted into CSSD's online child support calculator, and Mr. C is given deductions for taxes and Social Security, plus 7.5% for retirement, it results in a support amount of \$912 for four children.⁸ This figure is only \$17 less than his prior child support amount of \$929, so it does not meet the 15% reduction in support that is necessary to modify his child support.

Mr. C filed an appeal of the denial of modification, but he did not appear at the hearing to discuss his current circumstances and address the issues in his appeal. Thus, in the absence of sufficient evidence or testimony, Mr. C has not met his burden of proving that CSSD's denial is incorrect. CSSD's denial of the petition for modification should be affirmed.

IV. Conclusion

Mr. C 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 denial of modification is incorrect, as required by 15 AAC 05.030(h). Therefore, CSSD's order should be affirmed.

V. Child Support Order

- CSSD's Decision on Request for Modification Review dated October 8, 2014 is affirmed; Mr. C's child support remains at \$929 per month.

DATED this 11th day of March, 2015.

Signed

Kay L. Howard
Administrative Law Judge

⁷ Exh. 8 at pg. 1.

⁸ Attachment A.

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 27th day of March, 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.]