

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

In the Matter of:	)	
	)	OAH No. 16-0334-CSS
K S. O	)	CSSD No. 001147076
_____	)	

**DECISION AND ORDER**

**I. Introduction**

On March 21, 2016, K O appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 21, 2009.<sup>1</sup> The 2009 Modified Administrative Order added a third child, X, to Mr. O's existing child support order for his two daughters, set arrears for X, and modified Mr. O's ongoing support obligation for three children, effective July 1, 2009.<sup>2</sup> CSSD was not able to personally serve Mr. O with the Modified Administrative Support Order until March 11, 2016.<sup>3</sup>

The hearing was scheduled for April 28, 2016. Mr. O did not appear, and his telephone number of record was no longer in service. Custodian of record Q H also did not participate. Child Support Specialist Brandi Estes appeared telephonically and represented CSSD. The record remained open until May 9, 2016, so that Mr. O had an opportunity to show reasonable cause for his failure to appear.<sup>4</sup> He did not take advantage of that opportunity.

Mr. O did not meet his burden to show errors in the Modified Administrative Child Support and Medical Support Order dated September 21, 2009. Therefore, that order is affirmed.

**II. Facts**

Mr. O and custodian of record Q H are the parents of three children: B, Y and X. A 2007 Administrative Child Support and Medical Support Order set Mr. O's support for B and Y at \$874 per month.<sup>5</sup>

On March 23, 2009, Ms. H requested a modification review to add X to Mr. O's support order. She indicated that Mr. O was named on X's birth certificate and Mr. O had signed the certificate.<sup>6</sup> CSSD also learned that public assistance was being paid on X's behalf as of June

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<sup>1</sup> Exhibit 6.  
<sup>2</sup> Exhibit 4.  
<sup>3</sup> Exhibit 5.  
<sup>4</sup> 15 AAC 05.030(j).  
<sup>5</sup> Exhibit 1.  
<sup>6</sup> Exhibit 2.

2008.<sup>7</sup> CSSD served a Notice of Petition for Modification of Mr. O's existing support order by first class mail on April 14, 2009.<sup>8</sup> It did not receive income information from either party.

CSSD issued a Modified Administrative Child Support and Medical Support Order on September 21, 2009, based on Ms. H's primary custody of the three children. The 2009 Modified Order added X, set arrears of \$1488 for past due support for X from June 2008 through June 2009, and it set ongoing support for three children at \$1362 per month, effective July 1, 2009.<sup>9</sup> CSSD calculated Mr. O's 2009 annual gross income by doubling his 1<sup>st</sup> and 2<sup>nd</sup> Quarter 2009 earnings. This resulted in gross income of \$64,402.<sup>10</sup> After appropriate deductions, this income level produced a support amount of \$1362 per month for three children. It also resulted in monthly arrears of \$248 for X's support for the six months from January through June 2009, prior to the effective date of the modified order.<sup>11</sup> No arrears were established for 2008 based on Mr. O's actual 2008 income.<sup>12</sup>

CSSD was not able to serve Mr. O with the Modified Support Order until March 11, 2016, when it achieved service by process server.<sup>13</sup> Mr. O submitted a written appeal request.<sup>14</sup> He wrote: "The children listed below – B O, Y O and X O have lived with me, K O since March of 2014."

On April 13, 2016, the Office of Administrative Hearings sent Mr. O, by certified mail, a Notice indicating that his hearing in this matter was scheduled for April 28, 2016. At the April 28 hearing, the undersigned administrative law judge called the telephone number on record for Mr. O, but it was no longer in service. There was no telephone number of record for Ms. H. At the hearing, Ms. Estes presented CSSD's case. The record remained open for ten days after the hearing, but neither Mr. O nor Ms. H contacted the Office of Administrative Hearings during this time to explain their failure to participate.<sup>15</sup>

### **III. Discussion**

#### *A. Failure to Appear*

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<sup>7</sup> Exhibit 4 at 8.

<sup>8</sup> Exhibit 3.

<sup>9</sup> Exhibit 4. The record does not explain why the effective date of the modification was July 1, 2009, and this date is not challenged.

<sup>10</sup> Exhibit 4 at 7.

<sup>11</sup> Exhibit 4 at 8.

<sup>12</sup> See Exhibit 4 at 6.

<sup>13</sup> Exhibit 5.

<sup>14</sup> Exhibit 6.

<sup>15</sup> Mr. O's signed certified mail postcard was returned to the Office of Administrative Hearings.

Mr. O 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. O has not shown reasonable cause for his failure to appear, as required by the regulation. Therefore, pursuant to 15 AAC 05.030(j), this child support decision is issued without any further attempts to secure his participation.

*B. Child Support Modification*

A parent is obligated both by statute and at common law to support his or her children.<sup>16</sup> A parent's duty of support begins on the child's date of birth.<sup>17</sup> When a child support obligation is determined by CSSD, the agency collects support from the date a parent requests child support services, or the date public assistance or medical assistance is provided on behalf of the child.<sup>18</sup>

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. Either party may request modification of an existing child support order, and such orders may be modified upon a showing of "good cause and material change in circumstances."<sup>19</sup> A material change in circumstances is established when a new child is added to an existing order, as occurred in this case.

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order is incorrect.<sup>20</sup> Mr. O filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated September 21, 2009 is incorrect.

Based on his written appeal statement, Mr. O's sole issue on appeal is that the three children have lived with him since March of 2014. Presumably, Mr. O's argument is that his support obligation should be suspended for the time in which he had primary custody of the children.

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<sup>16</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>17</sup> *State, Child Support Enforcement Div. ex rel Hawtorne v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997).

<sup>18</sup> 15 AAC 125.105(a)(1), (a)(2).

<sup>19</sup> AS 25.27.190(e).

<sup>20</sup> 15 AAC 05.030(h).

Mr. O did not submit any evidence to support his assertion that the children have lived with him since March of 2014, and there is insufficient evidence in the record to make such a finding. Mr. O still could provide proof of this change to his CSSD caseworker, however. Upon receipt of information adequately documenting the change, Mr. O's ongoing support obligation can be suspended for the period of time in which the children were in his care, and his arrears adjusted accordingly. His child support order remains valid, however, and the support obligation may be reinstated for periods of time in which the children moved back to live with the custodian of record.

Mr. O did not submit any documentation or other evidence to challenge CSSD's calculation of his modified ongoing child support obligation. He also did not challenge the addition of X to his case or the calculation of arrears for X. As a result, Mr. O has not met his burden to show any errors in CSSD's modified support order. The evidence presented does not suggest that CSSD made mistakes in calculating Mr. O's modified child support amount.

#### **IV. Conclusion**

Mr. O did not appear at the hearing or provide sufficient evidence to show any errors in this case. As a result, the Modified Administrative Child Support and Medical Support Order dated September 21, 2009, is affirmed. Mr. O's son X is added to his support obligation, effective July 1, 2009, with arrears of \$1488 covering the period June 1, 2008 to June 30, 2009. Mr. O's ongoing child support obligation for three children is modified to \$1362 per month, as calculated under Civil Rule 90.3(a), effective July 1, 2009. No variation was requested or granted under Civil Rule 90.3(c).

#### **V. Child Support Order**

- The Modified Administrative Child Support and Medical Support Order dated September 21, 2009 is upheld.

DATED this 16<sup>th</sup> day of May, 2016.

*Signed*

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Kathryn A. Swiderski  
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 1<sup>st</sup> day of June, 2016.

By: Signed  
Signature  
Andrew M. Lebo  
Name  
Administrative Law Judge  
Title

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