

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

In the Matter of:)	
)	OAH No. 16-0698-CSS
B E)	CSSD No. 001171092
_____)	

DECISION AND ORDER

I. Introduction

The custodial parent, Z E, appeals a Modified Administrative Child Support and Medical Support Order, issued by the Child Support Services Division (CSSD) on March 23, 2016, which reduced obligor parent B E's monthly child support obligation from \$1,624.00 to \$1,276.00 effective January 1, 2016.¹ Mr. E asserts that Ms. E's income is actually greater than her income as determined by the Division, and that her monthly child support payment should therefore not be reduced.²

CSSD and Ms. E sought dismissal of Mr. E's appeal on the grounds that it was filed late.³ This decision concludes that Mr. E's formal appeal (request for hearing) was not filed within 30 days of CSSD's issuance of its Modified Administrative Child Support and Medical Support Order as required by 15 AAC 05.030(a). Further, although 15 AAC 05.030(k) allows the 30 day appeal deadline to be waived if strict adherence to the deadline would work an injustice, Mr. E failed to demonstrate that injustice will result if the appeal deadline in his case is not waived. Accordingly, Mr. E's formal appeal (request for hearing) concerning CSSD's Modified Administrative Child Support and Medical Support Order of March 23, 2016 must be dismissed, due to untimeliness, under 15 AAC 05.030. Because Mr. E's appeal of the support modification order is being dismissed due to untimeliness, this decision does not address the merits of Mr. E's appeal (concerning the proper amount of child support to be paid by Ms. E). The Division's Modified Administrative Child Support and Medical Support Order dated March 23, 2016 therefore remains in effect without review by this office.

¹ Exhibit 10.

² Exhibit 11.

³ See letter from Carol Beecher of CSSD dated June 16, 2016, marked as Exhibit 14. At hearing, CSSD's representative stated that she did not oppose hearing Mr. E's appeal on its merits. However, B E then requested that Mr. E's appeal be dismissed due to untimeliness. Accordingly, regardless of whether CSSD effectively withdrew its own written dismissal request, Ms. E clearly made an oral request at hearing to dismiss this appeal based on untimeliness.

II. Facts⁴

Ms. E and Mr. E have six children: X (currently eight years old), M (currently 11 years old), C (currently 13 years old), Y (currently 16 years old), K (currently 18 years old), and W (currently 20 years old).⁵ Mr. E has had primary physical custody of the children since 2012 or before.⁶

On December 15, 2014 a decision was issued by administrative law judge (ALJ) Bride Seifert which set Ms. E's child support obligation at \$1,624.00 per month.⁷ On November 18, 2015, Ms. E submitted a child support modification request to CSSD.⁸ CSSD notified Mr. E of the modification request on December 28, 2015, and requested updated financial information from both parties.⁹ Ms. E subsequently provided CSSD with substantial information concerning her employment and income.¹⁰

On March 23, 2016, CSSD issued a Modified Administrative Child Support and Medical Support Order that decreased Ms. E's monthly child support obligation to \$1,276.00 effective January 1, 2016.¹¹ Mr. E faxed an appeal form, requesting a formal hearing on CSSD's modification decision, on June 10, 2016.¹² On June 16, 2016 CSSD sought to dismiss Mr. E's appeal based on untimeliness.¹³

Mr. E's hearing was held on July 21, 2016. Mr. E participated in the hearing by phone, represented himself, and testified on his own behalf. Ms. E also participated in the hearing by phone and represented herself. Child Support Specialist Kimberly Sledgister participated in the hearing by phone and represented CSSD. The record closed at the end of the hearing on July 21, 2016.

⁴ The background facts concerning the parties' income and expenses are set forth in two prior decisions of the Office of Administrative Hearings (*In the Matter of B.A.E.*, OAH No. 11-0435-CSS (May 25, 2012) and *In the Matter of B.A.E.*, OAH No. 14-1698-CSS (December 15, 2014)), and need not be repeated here. Because the decision in this case is based on a procedural issue (timeliness), the facts most relevant to the case involve the procedural history of this case.

⁵ W is now in college and is no longer covered by a support order; K was 17 at the time Ms. E's modification request was filed (Exhibit 1 p. 1).

⁶ Exhibit 1 p. 2.

⁷ Exhibit 1.

⁸ Exhibit 2.

⁹ Exhibit 3.

¹⁰ Exhibits 4 - 9.

¹¹ Exhibit 10.

¹² Exhibit 11 p. 1.

¹³ CSSD initially believed that it could deny Mr. E's appeal to OAH itself based on the lateness of the appeal (see Exhibit 14). However, in a notice issued on June 21, 2016, OAH's Deputy Chief Administrative Law Judge clarified that, under the circumstances of this case, it is necessary for an administrative law judge to rule on the timeliness issue.

III. Discussion

A. *Did Mr. E File his Appeal Within the Period Required by Regulation?*

The time within which a party must appeal a child support determination made by CSSD is governed by 15 AAC 05.030(a), which provides in relevant part as follows:

(a) The department will hold a formal hearing if a request for a formal hearing conforming to the requirements of 15 AAC 05.010(a) is filed. If a request for a formal hearing follows an informal conference, it must be filed within 30 days after the date the informal conference decision is issued If a request for a formal hearing follows an administrative review under . . . 15 AAC 125.321 [or] 15 AAC 125.331 [as in this case] . . . it must be filed within 30 days after the date the decision of the review officer is issued

In this case, CSSD's Administrative Child Support and Medical Support Order was issued on March 23, 2016 and served on the parties by mail on March 25, 2016.¹⁴ Even using the later of these two dates as the start date for the 30 day appeal period, the 30 day appeal period ended on Monday, April 25, 2016. According to the fax header at the top of Mr. E's appeal form, his appeal was received by CSSD, via fax, on June 10, 2016.¹⁵ This was 46 days after the appeal deadline as calculated under 15 AAC 05.030(a). Accordingly, Mr. E's formal appeal was filed over six weeks late. The next issue is whether there are any grounds on which to excuse Mr. E's untimely filing.

B. *Has Mr. E Shown Good Cause to Relax the Appeal Deadline?*

The regulation which allows the 30 day formal appeal deadline to be relaxed under certain circumstances is 15 AAC 05.030(k). Under that regulation, the administrative law judge (ALJ) "may waive any requirement or deadline established in 15 AAC 05.010 - 15 AAC 05.030 if it appears to the [ALJ] that strict adherence to the deadline or requirement would work an injustice...."¹⁶

¹⁴ Exhibit 10.

¹⁵ Mr. E did not dispute that his appeal form was not filed with CSSD until June 10, 2016.

¹⁶ There is one other regulation applicable to this case which provides authority to relax the appeal filing deadline. 15 AAC 125.805, titled "Extension of Time and Leave to File Late," provides that "[i]f a person is required by this chapter to respond or take some action within a specified period of time, the agency may grant an extension of time or leave to file late," and that "[t]he agency may grant the extension or leave only upon request and proof of good cause for the failure to comply within the specified period of time. Although the regulation speaks in terms of giving discretionary power to "the agency," the regulation also provides discretionary authority to the administrative law judge because the Office of Administrative Hearings acts by delegation from the Commissioner of Revenue in these cases. In any event, the "good cause" standard under 15 AAC 125.805 is equivalent to the "necessary to avoid an injustice" standard under 15 AAC 05.030(k), so the analysis under both regulations is essentially the same.

The question of whether holding an applicant to a statutory or regulatory deadline will "work an injustice" in a given case is somewhat subjective. Fortunately, a body of administrative case law has developed interpreting the "injustice" requirement of 15 AAC 05.030(k). According to those cases, factors that may be considered in determining whether to grant an untimely request for an administrative hearing in a child support proceeding include (1) the reasons for the delay; (2) the extent of the delay; (3) the degree of prejudice to the other parties; (4) the strength and nature of the asserted grounds for the appeal; (5) whether the agency's determination was previously contested; and (6) any other relevant circumstances.¹⁷

In this case, as to the first factor, there is no evidence that Mr. E *could not* timely file his appeal; he just did not; there was no compelling reason for the delay. As to the second factor, Mr. E's appeal was over six weeks late. As to the third factor, the only real prejudice to the parties in allowing the late appeal would be the time involved in hearing the case on the merits. As to the fourth factor, no matter how meritorious the grounds for and/or strength of Mr. E's appeal, the parties have (as discussed below) agreed to have child support determined in another jurisdiction beginning in the near future. As to the fifth factor, Mr. E did not actively oppose Ms. E's request for modification until after CSSD had already granted the request at the initial administrative level. Overall, the factors identified in the prior decisions (discussed above) weigh in favor of enforcing the appeal deadline in this case.

Finally, on the day of the hearing in this case, Mr. E filed copies of an *Interim Parenting Agreement* which has been signed by both parties, approved by their Montana attorneys as to form and content, and incorporated into the parties' *Final Decree of Dissolution of Marriage* by the Montana District Court.¹⁸ Pursuant to this agreement, the parties have stipulated that, beginning in August 2016, Mr. E will discontinue use of CSSD's services, and thereafter child support will be administered through the state of Montana.¹⁹ Accordingly, there is little if any prejudice to enforcing the Alaska appeal deadline against Mr. E in this case, because support will be re-determined in the near future by the Montana Child Support Enforcement Division.

In summary, based on the way 15 AAC 05.030(k) has been interpreted in prior cases, I find that enforcing the 30 day formal appeal deadline in this case will not result in an injustice.

¹⁷ See, e.g., *In Re R.L.B.*, OAH No. 08-0646-CSS, at 3-5 (Commissioner of Revenue 2009); *In Re A.B.H.*, OAH No. 07-0655-CSS, at 2 (Commissioner of Revenue 2007); *In Re L.(M.)A.*, OAH No. 06-0610-CSS at 3 (Commissioner of Revenue 2006).

¹⁸ Exhibits A and B.

¹⁹ Exhibit B p. 6.

IV. Conclusion

It is undisputed that Mr. E's formal appeal was not filed within 30 days of the Division's issuance of its Modified Administrative Child Support and Medical Support Order of March 23, 2016 as required by 15 AAC 05.030(a). Further, although 15 AAC 05.030(k) allows the 30 day appeal deadline to be waived if strict adherence to the deadline would work an injustice, Mr. E failed to demonstrate that injustice will result if the appeal deadline in his case is not extended. Accordingly, Mr. E's formal appeal (request for hearing), concerning CSSD's decision granting Ms. E's petition for modification of child support, is dismissed, due to untimeliness, under 15 AAC 05.030(k). CSSD's Modified Administrative Child Support and Medical Support Order dated March 23, 2016 therefore remains in effect.

V. Child Support Order

- Mr. E's appeal, received by CSSD on June 10, 2016, is dismissed.
- CSSD's Modified Administrative Child Support and Medical Support Order dated March 23, 2016 remains in full force and effect.

DATED this 29th day of July, 2016.

Signed _____
Jay Durych
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 12th day of August, 2016.

By: *Signed* _____
Signature
Jay D. Durych _____
Name
Administrative Law Judge _____
Title

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