

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

In the Matter of)
)
U B) OAH No. 18-0018-CSS
) Agency No. 001194789
_____)

DECISION AND ORDER

I. Introduction

U B appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 23, 2016. The modification added a second child, U, Jr., to Mr. B's existing support order for his older child, Z. It set his ongoing support amount at \$230 per month for two children, effective July 1, 2016. It also set pre-order arrears totaling \$354 in U's case. The order was served on Mr. B in December 2017, and he timely appealed. The custodian of record is U X.

The hearing took place on January 30, 2018. Mr. B could not be reached, and he did not respond to a voice message left at his last-known home number. Ms. X also did not respond to a voice message left at her number of record, and she did not participate. Child Support Specialist Brandi Estes represented CSSD. The hearing was recorded. All submitted documents were admitted to the record.

Mr. B did not show that the modified child support order should be adjusted. Based on the evidence, CSSD properly added U, Jr. to Mr. B's existing support order, and it correctly calculated Mr. B's child support obligation. Accordingly, the August 23, 2016 Modified Administrative Child Support and Medical Support Order is affirmed.

Mr. B's appeal request asserted that he has been financially supporting his children and the family has lived as an intact unit for periods of time. If it can verify this information, CSSD can adjust Mr. B's case as appropriate. Mr. B is encouraged to follow up on these claims with his CSSD caseworker.

II. Facts

Mr. B and custodial parent U X are the parents of two children, Z, age 4, and U, Jr., now age 2.¹ Mr. B's name is on both children's birth certificates as the result of a two-part voluntary

¹ Exhibits 1, 4.

affidavit.² In 2013, CSSD established Mr. B's support obligation for Z, setting his ongoing amount at \$236 per month for one child.³

U, Jr. was born 00/00/2016.⁴ On June 8, 2016, CSSD served on each parent a Notice of Adding a Child to a Support Order and Petition for Modification of Administrative Support Order.⁵ The notice directed both parents to submit income information. Neither parent responded.

On August 23, 2016, CSSD issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal. The order reduced Mr. B's support amount to \$230 per month for two children, effective July 1, 2016. CSSD calculated this obligation based on Mr. B's potential income from a minimum wage job, working 20 hours per week, plus the PFD.⁶ The modified order also set pre-order arrearage of \$59 per month for U Jr., for the six-month period from January through June 2016, for total arrearage of \$354.⁷

Mr. B was personally served with the order on December 8, 2017.⁸ He timely appealed, asserting that he has been financially supporting his children and living in the same household with them.⁹

The hearing took place by telephone on January 30, 2018. Mr. B did not appear or answer a telephone call to either of the two telephone numbers known to CSSD.¹⁰ He did not respond to a voice message left at his home number; it was not possible to leave a message at the other number. Mr. B's hearing notice was sent to his last-known address. Mr. B's open case with CSSD requires him to keep his mailing information current. Therefore, the undersigned determined that Mr. B received proper notice of the hearing, which took place without his participation.

Ms. X also did not appear for the hearing or respond to a voice message left at her telephone number of record. However, she received notice of the hearing, as evidenced by the

² CSSD pre-hearing brief, p. 1; CSSD hearing representative statement.

³ Exhibit 1. It served the order on Mr. B on June 17, 2014. Exhibit 1, pp. 14-16.

⁴ Exhibit 4.

⁵ Exhibit 2. CSSD issued the notice and petition for modification because of public assistance paid on U Jr.'s behalf. See Exhibit 4, p. 7.

⁶ Exhibit 4, pp. 4, 6.

⁷ Exhibit 4.

⁸ Exhibit 4, p. 12.

⁹ Exhibit 5.

¹⁰ Mr. B was in Department of Corrections custody for some time prior to the hearing, but he had been released before the January 30th hearing date.

certified mail return receipt postcard in the Office of Administrative Hearings case file.

Child Support Specialist Brandi Estes represented CSSD. The hearing was audio-recorded. All offered documents were admitted into the record. The record closed on February 12, 2018.

III. Discussion

A. Failure to Appear

Mr. B 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. B has not shown reasonable cause for his failure to appear, as required by the regulation. As of this date, he has not contacted the Office of Administrative Hearings to inquire about his appeal. This decision is issued without any further participation from him.

B. Child Support Modification

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order is incorrect.¹¹ Mr. B filed this appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated August 23, 2016 is incorrect.

A parent is obligated both by statute and common law to support his or her children.¹² Civil Rule 90.3 provides the formula for calculating child support awards. Once a child support order has been issued, modifications are available upon a showing of "good cause and material change in circumstances."¹³ A material change in circumstances exists when a new child is added to an existing order, as occurred in this case.

The evidence in the record does not suggest that CSSD made any errors in adding U, Jr. to Mr. B's case. There is also no evidence of error in its determination of Mr. B's expected gross income or available deductions. CSSD did not have information showing Mr. B's current wages or recent income history, and it reasonably concluded that he is capable of working a part-time job at minimum wage, earning gross annual wages of

¹¹ 15 AAC 05.030(h).

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

¹³ AS 25.27.190(e).

\$10,140.¹⁴ His potential wage income and PFD result in an ongoing obligation of \$230 per month for two children.

C. Suspension of Support Obligation and Credit for Direct Payments

Mr. B's appeal stated that he has been living in the same household with his children and supporting them financially.¹⁵ Mr. B did not provide any evidence to support these claims. However, even if he had, these topics could not be resolved in this administrative appeal.¹⁶

CSSD can suspend Mr. B's child support obligation for periods of time in which he lived with Ms. X and his children as an intact family, but it requires a separate administrative review process.¹⁷ Mr. B should communicate with his CSSD caseworker and provide evidence supporting his claim. CSSD can then determine whether a suspension is warranted.

Similarly, within certain limitations, CSSD can give an obligor credit for direct child support payments made to the custodial parent, if the paying parent provides clear and convincing evidence that the payment was made and that both parents intended it to be a direct payment of child support.¹⁸ However, limitations apply when public assistance has been paid on behalf of the children.¹⁹ Again, Mr. B must pursue this issue with his CSSD caseworker; it cannot be resolved through an administrative appeal.²⁰

IV. Conclusion

Mr. B filed an appeal, but he did not appear at the hearing or provide any evidence showing that CSSD made a mistake when it issued the Modified Administrative Child and Medical Support Order dated August 23, 2016. To pursue the claims raised in his appeal statement, Mr. B should communicate with his CSSD caseworker and provide evidence to support them.

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¹⁴ See 15 AAC 125.050(d); 15 AAC 125.060.

¹⁵ Exhibit 5.

¹⁶ See 15 AAC 125.870(h); 15 AAC 125.465(c), (d).

¹⁷ 15 AAC 125.870(a)(1), (g).

¹⁸ 15 AAC 125.465(a).

¹⁹ 15 AAC 125.465(f).

²⁰ 15 AAC 125.465(c), (d).

V. Child Support Order

- The Modified Administrative Child and Medical Support Order dated August 23, 2016, is affirmed and remains in full force and effect.

DATED: February 13, 2018.

By: Signed
Kathryn 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 28th day of February, 2018.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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