

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

In the Matter of)	
E J. P)	OAH No. 05-0672-CSS
_____)	CSSD No. 001043011

CHILD SUPPORT DECISION & ORDER

I. Introduction

The custodian, N M. M, filed a request for formal hearing on the Child Support Service Division’s August 11, 2005 denial of her request for a modification of obligor E J. P’s child support obligation. The division filed a Motion for Summary Adjudication. A hearing on the motion was held on September 26, 2005. Ms. M and the division’s representative, Andrew Rawls, participated by telephone. Mr. P was contacted by telephone at the correctional center where he is incarcerated, but he elected not participate and hung up shortly after the start of the hearing. The division’s motion is granted; Mr. P’s support obligation cannot be set any lower than \$50 per month.

II. Facts

On April 21, 2005, the division received a Request for Modification of a Child Support Order from N M.¹ The division denied the modification request on August 11, 2005, stating that “[i]t was determined there was not a significant change in circumstance to meet criteria for modification.”² The division received a request for formal hearing on that denial from Ms. M on August 26, 2005.³

Though Ms. M filled out the name, address and telephone blocks on the hearing request form and signed it, she did not write down her reasons for appealing the division’s decision to deny the modification.⁴ The division filed a motion, asking that its decision be upheld because Mr. P is incarcerated and “therefore his support obligation should remain at \$50.00 per month.”⁵ A hearing was scheduled to allow Ms. M to respond to the division’s motion and explain her reasons for appealing.

At the September 26, 2005 hearing, Ms. M testified that she was not trying to get the division to increase Mr. P’s support amount but was simply trying to get the \$50 per month payment requirement dropped. She said she does not want to receive anymore checks from Mr.

¹ Division’s Exhibit 1.
² Division’s Exhibit 3.
³ Division’s Exhibit 4.
⁴ See Division’s Exhibit 4 (appeal form).

P. Her reason is that not many paying jobs are available to inmates in the jail and so Mr. P has no way to pay the support. Mr. Rawls explained that the division cannot set the support obligation any lower than \$50 per month. He added that Ms. M could ask the division to stop collecting support if this case does not involve public assistance reimbursement.

III. Discussion

When a parent asks for modification of a child support obligation and the division denies that request, the parent has the right to appeal.⁶ If no material facts are disputed, the appeal can be decided on summary adjudication.⁷ In cases like this one, when it is not clear from the papers filed why the parent wants to appeal, a hearing can be held to find out whether the parent disputes the facts the division used to make its decision.

In its motion, the division took the position that this appeal could be decided on summary adjudication because there is no dispute about Mr. P being incarcerated. According to the division, the \$50 support amount is correct. Until Ms. M testified that she was not trying to get the support amount increased, it was not clear that no facts are disputed. Once she testified that she was trying to get Mr. P's support obligation eliminated, or to get collections stopped, it became clear that she does not dispute the facts on which the division set Mr. P's support at \$50. She does not dispute that Mr. P is in jail. The only question is a legal one: can Mr. P's support obligation be reduced to zero dollars?

Under Civil Rule 90.3(c)(3), the lowest amount one parent can be charged for child support when the other parent has custody of the children is \$50 per month. In this case, the division had no ability to set Mr. P's support amount any lower than that.

IV. Conclusion

Ms. M appealed to try to get Mr. P's \$50 per month support obligation eliminated. The law does not allow his support obligation to be set lower than \$50. The division's motion, therefore, is granted.

V. Order

It is ordered that the division's denial of Ms. M' request for modification is affirmed and that Mr. M' monthly support obligation remains at \$50. It is further ordered that if this case does not involve public assistance reimbursement, the division will stop collections under the support

⁵ September 2, 2005 Motion for Summary Adjudication.

⁶ See 15 AAC 125.321(c) (providing parent with right to appeal decision on modification review).

⁷ See *Smith v. Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990) (explaining that the right to a hearing does not require development of facts in an evidentiary hearing when no factual dispute exists).

order if Ms. M files the paperwork needed to show that she no longer wants the division to provide that service.

DATED this 14th day of October, 2005.

By: Signed
Terry L. Thurbon
Chief 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.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days after the date of this decision.

DATED this 31st day of October, 2005.

By: Signed
Signature
Terry L. Thurbon
Name
Chief Administrative Law Judge
Title

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