

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

In the Matter of)	
R A. M)	OAH No. 05-0885-CSS
_____)	CSSD No. 001121965

**CHILD SUPPORT DECISION & ORDER
GRANTING MOTION TO DISMISS**

I. Introduction

R A. M appealed a decision by the Child Support Services Division increasing his support obligation for the children K and M in response to his request for a modification. He failed to participate in the hearing. After the hearing, the division filed a motion to dismiss because the division's administrative order challenged in the appeal had been superseded by a court order. The motion is granted. The appeal is dismissed.

II. Facts

R A. M filed a request for formal hearing with the Child Support Services Division on November 21, 2005, challenging a Modified Administrative Child Support and Medical Support Order that would have increased his obligation to \$954 per month for two children and \$706 per month for one child.¹ A hearing was scheduled for December 20, 2005. Notice of the hearing was sent to Mr. M and to the custodian, Rosalina M. Neither was available by telephone at their phone numbers of record when called for the hearing.² David Peltier appeared by telephone to represent the division.

During the hearing, Mr. Peltier indicated that he had received additional Department of Labor data on Mr. M's income. He also indicated that the division's position is that the existing child support order should remain in effect unless Mr. M provides evidence that the income calculation for that order is incorrect. The record was held open

to allow the division to submit the additional data and to allow Mr. M an opportunity to (1) respond to that data; (2) submit other evidence; and/or (3) request an oral hearing. If Mr. M fails to submit additional evidence or request an oral hearing by that date, this appeal will be decided based on the record.^[3]

¹ Exhibit 6; Exhibit 4, p. 2.

² December 20, 2005 Hearing Recording.

³ December 22, 2005 Interim Order (distributed to the M's and the division on December 23, 2005).

On December 27, 2005, the division submitted a post-hearing brief listing wages and unemployment data, along with a new income calculation.⁴ Mr. M did not file a response to the division's post-hearing brief, submit other evidence or request an oral hearing by the January 17, 2006 deadline or at anytime since. Similarly, Ms. M submitted nothing and made no request for an oral hearing.

Issuance of a proposed decision was delayed through no fault of the Ms or the division. In the meantime, on February 1, 2006, a court order setting Mr. M's child support obligation at \$836 per month for two children and \$619 per month for one child was issued on February 1, 2006.⁵

On July 17, 2006, the division moved to supplement the record with a copy of the court order and asked that either a decision affirming the division's support calculation be issued or "an order of dismissal of the obligor's appeal [be issued] because the Superior Court order overrides any order issued ..." on behalf of the Department of Revenue.⁶ Mr. M has not filed an objection to the division's motion to supplement and for dismissal.

III. Discussion

A party may file a motion to dismiss an administrative appeal.⁷ When such a motion is filed, the other parties have fifteen days to respond.⁸ If the other parties fail to oppose the motion within that time period, "the administrative law judge may issue an order based on the applicable law and the existing record."⁹ Far more than fifteen days have passed since the division filed its motion requesting, in the alternative, that the appeal be dismissed. Mr. M has not filed an opposition. Neither has Ms. M.

The law applicable to establishment of child support obligations and modification of those obligations through an administrative order limits the division's authority when a court order exists.¹⁰ Essentially, the court's order overrides an administrative order and precludes the division from enforcing an order requiring payment of a different support amount. The record, as supplemented with the court order submitted by the division, shows that the court-ordered child support payments were to begin June 1, 2005.¹¹ The modification order Mr. M challenges in this

⁴ December 27, 2006 Post Hearing Brief; Exhibit 9.

⁵ Exhibit 9.

⁶ July 13, 2006 Supplement to Post Hearing Brief and attachment (Exhibit 9), received July 17, 2006.

⁷ 2 AAC 64.270(b)(2).

⁸ 2 AAC 64.270(a).

⁹ 2 AAC 64.270(c).

¹⁰ See AS 27.25.180(c) & AS 27.25.190(a).

¹¹ Exhibit 9, p. 2.

appeal would not have taken effect until July 1, 2005.¹² The law and the existing record, therefore, show that Mr. M could not have obtained the relief he seeks from the division even if he had participated in the hearing or opposed the motion to dismiss.

IV. Conclusion

Mr. M's support obligation for K and M has been established in a court order. The division cannot enforce a different order. Mr. M did not oppose the motion to dismiss his appeal and dismissing it would have no adverse effect on his ability to petition the court to modify the court-ordered support amount when circumstances justify such a modification.

V. Order

Mr. M's appeal is dismissed. He must pay child support for K and M as required by the February 1, 2006 court order or any later court-ordered modifications.

DATED this 9th day of November, 2006.

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

¹² Exhibit 4, p. 1.
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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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 27th day of November, 2006.

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.]