

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

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|-------------------|---|---------------------|
| In the matter of: |) | |
| |) | OAH No. 06-0056-CSS |
| J. E. J. |) | CSSD No. 001106241 |
| _____ |) | |

DECISION AND ORDER

I. Introduction

K. C. W., the custodial parent, appealed a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in his case on July 15, 2005. The Obligee child is D. M. W., born 00/00/89.

CSSD filed a motion to dismiss, which was served on Mr. W. and Ms. J. The Alaska Office of Administrative Hearings (OAH) attempted to give notice to both parents of a formal hearing to be held February 8, 2006, using Certified Mail sent twenty days in advance. Ms. J. returned a confirmation showing receipt on January 28, 2006. Mr. W.'s return receipt had not been received when the time came for the hearing. The Certified Mailing receipt confirmed that his notice had been sent to the address on record for him, and accordingly the hearing went forward.

A.J. Rawls, Child Support Specialist, appeared for CSSD at the appointed time for the hearing. Neither Mr. W. nor Ms. J. contacted OAH in advance of the hearing. Neither appeared at the hearing. The Administrative Law Judge called the home and work telephone numbers on record for Ms. J. and the single telephone number on record for Mr. W., and failed to reach the parties at those numbers. Messages were left at each number.

Under 15 AAC 05.030(j), “[i]f 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. W. made such a showing. He stated that he did not receive his hearing notice until the day after the hearing. A return receipt that later arrived at OAH confirmed that this was true. Accordingly, OAH decided not to issue a final decision without giving the absent parties an additional opportunity to be heard.

OAH issued a tentative decision, and in bold-face type invited Mr. W. and Ms. J. to review it. They were given 20 days to file any objection they might have, attaching any relevant evidence. No response was received.

Because this appeal was untimely and because it seeks relief this office cannot grant, the motion to dismiss will be granted.

II. History

Ms. J.'s child support obligation for D. was established at \$280 per month in 2004. In April, 2005, Ms. J. filed a Request for Modification of Child Support Order.¹ CSSD denied modification on multiple grounds on July 18, 2005. Nearly six months later, on January 6, 2006, Mr. W. filed a Request for Formal Hearing initiating this appeal. He listed the CSSD case number for Ms. J.'s case on his request.

III. Decision

An appeal of a denial of modification must be filed within 30 days.² Mr. W.'s appeal was approximately 145 days past the deadline. The motion to dismiss the appeal as untimely therefore is well taken.

Mr. W.'s appeal is a Department of Revenue appeal. The relief he is seeking is a financial sanction against the Department of Health and Social Services (DHSS) for "cruel, degrading, and inhumane" services. Such relief is beyond the scope of an appeal under the Revenue regulations. To raise concerns about DHSS, Mr. W. would need to initiate a process within that agency or to seek aid from the courts. For the administrative law judge to take up a complaint against DHSS while acting as a hearing officer for a different department, under a delegation from the Commissioner of Revenue, would be wholly outside his jurisdiction. This is a second, fully sufficient ground for dismissal.

¹ Exh. 1.

² 15 AAC 05.030(a).

IV. Order

- CSSD's Motion for Dismissal is granted.
- K. C. W.'s January 6, 2006 appeal is dismissed.

DATED this 17th day of March, 2006.

By: Signed
Christopher Kennedy
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 within 30 days after the date of this decision.

DATED this 10th day of April, 2006.

By: Signed
Signature
Tom Boutin
Name
Deputy Commissioner
Title

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