

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

In the matter of:

J. A. E.

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OAH No. 06-0198-CSS
CSSD No. 001138596

DECISION AND ORDER

I. Introduction

J. A. E. appealed a notice denying his Request for Administrative Review that the Child Support Services Division (CSSD) issued in his case on March 7, 2006. The obligee child is C. J. B., born 00/00/05. The custodial parent is A. B.

The Alaska Office of Administrative Hearings (OAH) attempted to give notice to both parents of a formal hearing to be held March 31, 2006, using Certified Mail sent sixteen days in advance. A return receipt was received for Mr. E.

David Peltier, Child Support Specialist, appeared for CSSD at the appointed time for the hearing. Neither Mr. E. nor Ms. B. contacted OAH in advance of the hearing. Neither appeared at the hearing. The Administrative Law Judge called the telephone numbers on record for the parents, and failed to reach them at those numbers.

The Administrative Law Judge convened the hearing and interviewed Mr. Peltier about the issues in the appeal. 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.” Neither Mr. E. nor Ms. B. attempted to make the required showing within ten days after the scheduled hearing, and therefore the administrative law judge will proceed with the decision.

Using evidence submitted by Mr. E. with in advance of the hearing, together with Department of Labor and Workforce Development data, Mr. Peltier and the judge were able to determine without additional input from the other parties that Mr. E.’s appeal is well-taken. Mr. E.’s monthly child support obligation should be \$97 rather than \$735.

II. Facts

A. History

Mr. E.'s child support obligation for C. was set at \$735 per month in an Administrative Child Support and Medical Support Order dated November 23, 2005.¹ Because Mr. E. had failed to supply income information but was believed to be a mason, the child support amount was set using average hourly wages for such a worker.

In a document dated January 5, 2006 but not received by CSSD until March 6, 2006, Mr. E. requested an administrative review of the order on the basis that his income had been overestimated. He supplied W-2 forms for 2005. CSSD denied the request as untimely.² Mr. E. requested a formal hearing, contending that he was out of town and unable to request the administrative review within the deadline.

In responding to the hearing request, CSSD verified the income figures Mr. E. had supplied and developed a revised child support calculation, showing gross income of \$6285.90 and child support of \$97 per month.

B. Material Facts

Mr. E.'s corrected income figures are undisputed in the record. In 2005, Mr. E. had total gross income of \$6285.90 per year.³ After allowable deductions, his adjusted annual income is \$5842.50.⁴ Twenty percent of that figure is \$1168.50 per year, which equals \$97 per month.

Ms. B. has primary physical custody of C.

III. Discussion

When one parent has primary custody of the children, the other parent's child support obligation is "calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in [Civil Rule 90.3](a)(2)."⁵ By "adjusted annual income" the rule means "the parent's total income from all sources minus mandatory deductions

¹ Exh. 3.

² Exh. 5. The request was probably untimely because it was made more than 30 days after service of the order to be reviewed. *See* 15 AAC 125.118(a). Mr. E. had signed for the order on December 13, 2005. Ex. 3, p. 11, and although his request was dated January 5, it did not reach CSSD until March. However, the envelope in which the request was sent does not seem to have been preserved, and so it is not possible to be completely certain it was untimely. To be timely, requests must be "postmarked or received" before the deadline.

³ Exh. 4 at 3.

⁴ Exc. 7 at 1.

⁵ See Alaska R. Civ. P. 90.3(a).

...” which include the basic taxes and unemployment insurance that CSSD has deducted in its revised calculation.⁶ Child support for one child is calculated at 20% of the resulting figure.⁷ For Mr. E., the support amount is therefore \$1168.50 per year, or \$97 per month.

IV. Child Support Order

- J. A. E. is liable for child support in the amount of \$97 per month, effective July 1, 2005, and ongoing.

DATED this 17th day of April, 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 2nd day of May, 2006.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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

⁶ Alaska R. Civ. P. 90.3(a)(1).

⁷ Alaska R. Civ. P. 90.3(a)(2)(A).