

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

In the matter of:)	
)	OAH No. 06-0245-CSS
H. D. M.)	CSSD No. 001137654
_____)	

DECISION AND ORDER

I. Introduction

H. D. M., the obligor parent, appealed an Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 17, 2005. The custodial parent is M. C. The obligee child is A. L. M., born 00/00/05.

The Alaska Office of Administrative Hearings (OAH) attempted to give notice to both parents of a formal hearing to be held April 17, 2006, using Certified Mail sent 14 days in advance. Ms. C. received her notice. No return receipt was received from Mr. M., but the notice was not returned. The Certified Mailing receipt confirms that his notice was sent to the address he provided in his hearing request. Prior to the hearing, CSSD filed and served on both parents a Motion for Remand.

A.J. Rawls, Child Support Specialist, appeared for CSSD at the appointed time for the hearing. Ms. C. attended in person. The Administrative Law Judge twice called the telephone number Mr. M. had provided, and failed to reach him. Messages were left.

The Administrative Law Judge convened the recorded hearing and interviewed Mr. Rawls 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.” Mr. M. did not attempt to make the required showing within ten days after the scheduled hearing, and therefore the administrative law judge will proceed with the decision.

Because this appeal is premature and Mr. M.’s concerns should be explored in an administrative review, the motion to remand will be granted.

II. History

Mr. M.'s child support obligation for A. was set at \$229 per month in the August 17 order. Mr. M. wrote a letter to CSSD requesting a "formal hearing on my child support order" on March 21, 2006. In his letter, Mr. M. claimed he had no knowledge of the child support order until March 20, 2006. However, evidence received at the hearing on April 17 indicated that his father was served with the order in October, 2005, and that Mr. M. was aware of, and was discussing, the order in early February, 2006.

Evidence at the hearing showed that Mr. M. was employed at Carls Jr. in 2005 and at Taco Bell in 2006. Income information was not available at the time of the hearing.

CSSD indicated that 15 AAC 125.050(d)(3) was not applied in the original support order. CSSD desires a remand to apply that regulation, if income information remains unavailable.

Mr. Rawls indicated that, in the event of a remand, CSSD will entertain the March 20 letter as a request for administrative review.

III. Decision

There is a two-step process for challenging an Administrative Child Support and Medical Support Order. The first step is to request an administrative review under 15 AAC 05.0025 and 15 AAC 125.118. If a party is dissatisfied with the result of that process, he or she can appeal to a formal hearing under 15 AAC 05.010(b)(6) and 15 AAC 05.030. Mr. M. has skipped to the second step. Since CSSD is still willing to review the issues in the context of an administrative review, the best course for him is a remand to the agency to allow that process to take its course.¹ The agency's motion for remand will be granted.

A regulation adopted in the spring of 2005, 15 AAC 125.050(d)(3), requires the agency to use the minimum support amount of \$50 per month for obligor parents who are under 19 and for whom no income data is available. If actual income data is available, the regulation does not apply. During the administrative review, the agency will evaluate whether the regulation applies to 2005 support or to ongoing support.

¹ If the agency were not willing to conduct an administrative review, Mr. M. might have been forced to seek "modification" of the order under 15 AAC 125.321, rather than an administrative review potentially leading to amendment of the order as of its original effective date. The relief available on modification might be more limited than what he can obtain through the procedure CSSD has offered, however, especially as to months that have already gone by.

IV. Order

- CSSD's Motion for Remand is granted.
- This matter is remanded with directions to conduct an administrative review.

DATED this 28th 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 15th 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.]