

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

In the matter of:)	
)	OAH No. 06-0438-CSS
R. B.)	CSSD No. 001137556
_____)	

DECISION AND ORDER

I. Introduction

R. B., the purported obligor parent, appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on June 9, 2006. The other parent is R. L. B. The obligee children are A., born 00/00/98, and R., born 00/00/02.

The Alaska Office of Administrative Hearings (OAH) attempted to give notice to both parents of a formal hearing to be held July 14, 2006, using Certified Mail sent 19 days in advance. Ms. B. received her notice. The notice to Mr. B. was returned. Prior to the hearing, CSSD filed and served on both parents a Motion for Summary Adjudication.

A.J. Rawls, Child Support Specialist, appeared for CSSD at the appointed time for the hearing. Ms. B. participated by telephone. Mr. B. did not participate.

The Administrative Law Judge convened the recorded hearing and interviewed Mr. Rawls and Ms. B. 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. B. 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.

In this case, CSSD agrees with Mr. B. and has indicated that its child support orders should be vacated. Mrs. B. agrees as well. Accordingly, the motion for summary adjudication will be granted.

II. Facts

Mr. B.'s child support obligation for A. and R. was set at \$592 per month in the April 28 order.¹ Mr. B. requested an administrative review on the basis that the children lived with him. In its June 9 amended order, CSSD lowered support to \$288 per month beginning July 1, 2006, and also told Mr. B. that "you owe an accrued debt . . . of \$0.00"²

In its Motion for Summary Adjudication, CSSD stated that "Mr. B. lives with his children." At the hearing, Mrs. B. agreed.

III. Decision

Mr. B. asserts that the children live with him, and both CSSD and Mrs. B. agree. In addition, the parties all agree that he has lived with his children at all relevant times in the past. Under these circumstances, there is no basis to assess child support, and the orders doing so should be vacated.

There is a hint in the hearing record that CSSD may desire a slightly different result: that the appeal be dismissed as moot (since CSSD is willing to suspend the child support obligation going forward and to acknowledge that there are no arrears), but that the child support amount set on June 9 be left in place as an abstract figure. The division has not explained the legal basis on which a child support amount would be determined in the abstract for a custodial parent whom it agrees does not owe and has never owed any support. Also, a motion for summary adjudication on the basis of mootness probably would not be appropriate where the agency wants to leave part of the order in place over the obligor's objection.

If custody changes and there is a basis to assess child support, the agency has the means to do so through a new order.

IV. Order

- CSSD's Motion for Summary Adjudication is granted.
- The Administrative Review Decision and Amended Administrative Child and

¹ Exhibit 1.

² Exhibit 5, page 6.

Medical Support Order dated June 9, 2006 and the Administrative Child Support and Medical Support Order dated April 28, 2006 are vacated.

DATED this 17th day of August, 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 5th day of September, 2006.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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