

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

IN THE MATTER OF:)

C. F.)

) OAH No. 06-0605-CSS
) CSSD No. 001007863
)

DECISION AND ORDER

I. Introduction

This case involves the Obligor C. F.’s appeal of a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued on July 11, 2006. The Obligee children are P., DOB 00/00/90, and T., DOB 00/00/92.

The formal hearing was held on September 18, 2006. Mr. F. did not appear; the Custodian, M. S. F., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 28, 2006.

Kay L. Howard, Administrative Law Judge in the Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, I have concluded Mr. F.’s appeal should be denied; he did not establish a “material change in circumstances” sufficient to modify his child support obligation.

II. Facts

A. History

Mr. F.’s child support previously was set at \$669.75 per month for two children in 1994.¹ He filed a petition for modification. On April 26, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.² Mr. F. provided some income information.³ On July 11, 2006, CSSD issued a Notice of Denial of Modification Review for the reason that a child support amount calculated from a teacher’s wages did not meet the 15% minimum threshold required for a modification.⁴ Mr. F. filed an appeal on August 11, 2006. The appeal states that he does not earn the income he used to earn, and he is under a doctor’s care.⁵

¹ Pre-Hearing Brief.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

Mr. F.'s notice of the date and time for the hearing was sent by certified mail to his last-known address and it was signed for and returned to the Office of Administrative Hearings (OAH) on September 8, 2006.

B. Findings

Based on the evidence in the record and after due consideration, I hereby find:

1. Mr. F. did not meet his burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was incorrect, as required by 15 AAC 05.030(h);

2. Mr. F.'s certified notice of the date and time for the hearing was sent to the address he provided and it was signed for and returned to the OAH on September 8, 2006;

3. CSSD correctly denied Mr. F.'s petition for modification because he failed to file evidence sufficient to establish he cannot work and he has no income.

III. Discussion

Mr. F. filed an appeal, but he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear.

A parent is obligated both by statute and at common law to support his or her children.⁶ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that "good cause and material change in circumstances" has been established. If the 15% threshold is not met, the child support amount need not be modified, so long as there are no other circumstances present that would warrant modification.

CSSD denied Mr. F.'s petition for modification because a child support amount calculated from his ability to earn income did not meet the 15% change from the previous order. CSSD was correct to deny the Obligor's petition for modification, but not because the 15% threshold was not met. Rather, the agency correctly denied modification in Mr. F.'s case because he has not provided evidence from his doctor that he is unable to work. Both CSSD and the

⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁷ AS 25.27.190(e).

undersigned administrative law judge previously have ordered Mr. F. to provide a doctor's statement, but to date it appears he has not done so. His appeal stated Mr. F. has previously provided medical records, but the only information he filed for this case consisted of child support guidelines affidavits for 2005 and 2006 showing only PFD earnings and a small amount of child support coming into his home. Until such time as he provides a statement from his doctor that he cannot work, CSSD is not required to complete a modification review.

Mr. F. has not established "good cause and material change in circumstances" sufficient to modify his child support obligation. Therefore, I conclude CSSD's Notice of Denial of Modification Review should be affirmed.

IV. Conclusion

Mr. F. did not establish "good cause and material change in circumstances" sufficient to modify his child support obligation. Therefore, his child support shall remain unmodified.

V. Child Support Order

1. CSSD's July 11, 2006, Notice of Denial of Modification Review is affirmed;
2. Mr. F.'s child support shall remain at \$669.75 per month for two children.

DATED this 19th day of October, 2006.

By: Signed
Kay L. Howard
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 7th day of November, 2006.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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