

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

IN THE MATTER OF:)

J. A. H.)

) OAH No. 07-0024-CSS

) CSSD No. 001128640

DECISION AND ORDER

I. Introduction

This case involves the Obligor J. A. H.'s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 3, 2007. The Obligee children are J. and J.

The formal hearing was held on February 13, 2007. Mr. H. did not appear; the Custodian, J. A. W., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on February 23, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings (OAH), conducted the hearing. Based on the record as a whole and after due deliberation, it is concluded that CSSD correctly calculated Mr. H.'s child support obligation and modified his child support order.

II. Facts

A. History

Mr. H.'s support order previously was set at \$229 per month for J.¹ On November 28, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order so as to add the child J. to the order.² Mr. H. did not respond to the request for income information. On January 3, 2007, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. H.'s modified ongoing child support at \$50 per month for two children, based on his incarceration, effective December 1, 2006.³ Mr. H. filed an appeal on January 16, 2007, requesting paternity testing for both children.⁴

¹ Pre-hearing Brief at pg. 1.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 5.

Mr. H. is currently incarcerated.⁵ A notice of the date and time for the hearing was sent by fax to the shift supervisor at the Anchorage Correctional Complex. The notice of hearing specifically states that to appear by telephone, a party must provide a telephone number to the OAH prior to the hearing. Mr. H. did not provide a telephone number for the administrative law judge to call in order for him to participate in the hearing.

At the hearing, CSSD stated Mr. H.'s paternity for the older child, J., was established by a default paternity order issued after Mr. H. did not respond to his notice. As to the child J., CSSD stated Mr. H. voluntarily signed a paternity affidavit in September 2006.

Regarding the actual child support calculation, CSSD stated it had reduced the amount to the statutory minimum of \$50 per month because Mr. H. is incarcerated.

B. Findings

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

1. Mr. H. did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h);
2. A certified notice of the date and time for the hearing was sent to Mr. H. at his last known address, specifically, the Anchorage Correctional Complex;
3. Mr. H. did not provide a telephone number to be called for the hearing, nor did he appear in person to provide evidence regarding his appeal;
4. CSSD correctly added J. to Mr. H.'s child support order and set ongoing modified child support at \$50 per month for two children, effective December 1, 2006.

III. Discussion

Mr. H. filed an appeal and requested a formal hearing, 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 requesting party fails to appear.

A parent is obligated both by statute and at common law to support his or her children.⁶ Child support orders may be modified 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

⁵ See Exh. 5.

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

⁷ AS 25.27.190(e).

the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.⁸

Mr. H. did not provide his income information, as requested by CSSD for the modification. He then appealed CSSD’s Modified Administrative Child Support and Medical Support Order, but he did not appear at the hearing to present any evidence regarding his appeal. CSSD therefore correctly set his child support obligation at the minimum amount of \$50 per month for two children, based on his incarceration.

The central issue in Mr. H.’s appeal, however, is paternity of the two children, J. and J. As to J., CSSD previously issued a default paternity order regarding this child after Mr. H. did not respond to the notice, and CSSD has been enforcing the order for J. ever since then. Regarding J., Mr. H. voluntarily signed an affidavit of paternity for this child in September 2006.⁹ Pursuant to AS 25.20.050(1), a person who want to withdraw a voluntary affidavit of paternity must do so within 60 days of signing it or upon CSSD initiating a child support action, whichever is earlier. Thus, the 60 day period for him to withdraw the paternity affidavit has expired. At this point, Mr. H. must file his petition to disestablish paternity for both children in court.

In the absence of any evidence other than Mr. H.’s appeal form, I conclude that CSSD’s Modified Administrative Child Support and Medical Support Order should be affirmed.

IV. Conclusion

CSSD modified Mr. H.’s child support order by adding the child J. and setting the ongoing obligation at \$50 per month for two children, based on his incarceration. Mr. H. did not provide contact information, nor did he appear at the hearing to provide any evidence. As a result, Mr. H. did not meet his burden of proving by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect. Therefore, CSSD’s order should be affirmed.

⁸ 15 AAC 125.321(d).

⁹ According to CSSD, the original affidavit is in the custody of the Bureau of Vital Statistics and will not release copies to CSSD or the administrative law judge.

V. Child Support Order

- CSSD's January 3, 2007, Modified Administrative Child Support and Medical Support Order is affirmed.

DATED this 15th day of March, 2007.

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 2nd day of April, 2007.

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

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