

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

IN THE MATTER OF: )

M. J. )

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) OAH No. 07-0331-CSS

) CSSD No. 001129504

**ORDER GRANTING MOTION  
FOR SUMMARY ADJUDICATION**

**I. Introduction**

On June 7, 2007, CSSD filed a Motion for Summary Adjudication in this child support case. Oral argument on the motion was held on June 28, 2007. The Custodian of record, S. D. M., filed the appeal but did not participate. The Obligor parent, M. J., also did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on July 10, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the proceeding. Based on the record as a whole, and after due deliberation, it is concluded that CSSD's motion for summary adjudication should be granted.

**II. Facts**

On April 17, 2007, Ms. J. requested modification of her previous child support order.<sup>1</sup> On April 22, 2007, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>2</sup> Before the modification review could be completed, Ms. J. faxed a request to CSSD to terminate the modification on May 18, 2007.<sup>3</sup> On May 19, 2007, CSSD issued a Notice of Denial of Modification Review on the basis that Ms. J. had withdrawn her request.<sup>4</sup> Mr. M. filed an appeal and requested a formal hearing on May 29, 2007.<sup>5</sup> Thereafter, CSSD filed the Motion for Summary Adjudication and the motion was argued on June 28, 2007.

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 2.

<sup>3</sup> Exh. 3.

<sup>4</sup> Exh. 4.

<sup>5</sup> Exh. 5.

### **III. Discussion**

Mr. M. filed an appeal and requested a formal hearing, but he failed to appear for the hearing.<sup>6</sup> Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a decision if the requesting party fails to appear.

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”<sup>7</sup> Ms. J. filed a request for modification of her support order with CSSD, but subsequently withdrew the request before CSSD completed the modification process.

CSSD may modify a child support order if a parent requests a review.<sup>8</sup> The regulation is silent as to whether CSSD may terminate a modification review if the requesting party withdraws his or her petition. However, the regulation allows CSSD to cease a modification review under other scenarios, most commonly if the requesting party does not file all of the requested income information.<sup>9</sup> Therefore, CSSD is not prohibited from terminating a pending modification when the requesting party withdraws his or her request.

Mr. M.’ appeal argues that the modification should go forward because he mistakenly withdrew from services.<sup>10</sup> Mr. M.’ withdrawal is not crucial to this issue. Even if he had not withdrawn from CSSD’s services, Mr. M. would not be able to force the modification to go forward without having filed his own petition for modification review. Mr. M. is free to re-apply for child support services and pursue a modification.

### **IV. Conclusion**

CSSD is entitled to summary judgment as a matter of law. There are no material facts in dispute that can be resolved at a formal hearing. Thus, in the absence of material issues of fact, CSSD’s Motion for Summary Adjudication should be granted, and Mr. M.’ appeal should be dismissed.

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<sup>6</sup> Mr. M. received and signed for his certified Notice of Hearing on June 12, 2007. The green card showing his signature was received at the Office of Administrative Hearings on June 14, 2007.

<sup>7</sup> AS 25.27.190(e).

<sup>8</sup> 15 AAC 125.316(a).

<sup>9</sup> 15 AAC 125.321.

<sup>10</sup> Both CSSD and Mr. M. referred to his withdrawal from services, but there is no document in the record that indicates he did. Since this decision does not rely on Mr. M.’ withdrawal, there is no need to obtain the document from CSSD.

**V. Child Support Order**

- CSSD's May 19, 2007, Notice of Denial of Modification Review is affirmed;
- Mr. M.' May 29, 2007, appeal is dismissed.

DATED this 26<sup>th</sup> day of July, 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 14<sup>th</sup> day of August, 2007.

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

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