

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

IN THE MATTER OF:)
)
S. T. M.)
)
_____)

OAH No. 07-0359-CSS
CSSD Case No. 001038717

DECISION AND ORDER

I. Introduction

This case concerns the obligation of S. T. M. for the support of K. D. E. (DOB 00/00/90). The custodian of record is L. C. J..

The Child Support Services Division issued a modified administrative child support order on May 29, 2007, modifying a prior administrative support order issued on August 6, 1993, in the amount of \$50 per month, to \$158 per month effective April 1, 2007. Ms. M. appeals.

The appeal is granted.

II. Facts

A hearing in this case was originally scheduled for July 10, 2007. Ms. M. was notified of the scheduled hearing by certified mail. Ms. M. contacted the Office of Administrative Hearings prior to the hearing date and requested that it be rescheduled. The hearing was rescheduled to July 18, 2007. Notice of the rescheduled hearing date was sent to Ms. M. at her address of record on July 9, 2007.

At the scheduled time on July 18, 2007, the administrative law judge called Ms. M.'s telephone number of record and received no answer. Ms. M. has not subsequently contacted the Office of Administrative Hearings regarding her case.

III. Discussion

When the party requesting a hearing fails to appear and does not, within ten days, show reasonable cause for failure to appear, the administrative law judge may issue a

decision on the record.¹ The party requesting the hearing has the burden of proving the division's action was erroneous.²

In this case, the modified support order was based on Ms. M.'s income in 2006. Ms. M.'s appeal asserts that her 2006 income is not an accurate predictor of her 2007 income because (1) she is no longer eligible for unemployment compensation (which was more than half of her 2006 income), (2) due to her husband's medical problems she will be unavailable for work, and (3) there are presently no jobs available in her home town, Metlakatla.

(1) More than half of Ms. M.'s 2006 income was from unemployment compensation. Ms. M.'s assertion that she will be ineligible for additional unemployment compensation in 2007 is consistent with her limited work history in 2006. The record thus supports her assertion that unemployment insurance compensation received in 2006 should not be included in the calculation of her anticipated income in 2007.

(2) Ms. M.'s request to reschedule the hearing was based on her husband's hospitalization. However, while Ms. M.'s appeal asserts that she is unable to work due to her husband's physical condition, she was unable to state when she would be able to work. In the absence of any testimony or evidence to establish the circumstances, Ms. M. has not established that her husband's condition will preclude any employment in 2007.

(3) Metlakatla is as a Tshimshian community of 1,404 on Annette Island in Southeast Alaska. The town is an Indian Reservation, not part of the Alaska Native Claims Settlement Act, and it has a subsistence-based economy. According to information available online from the Department of Commerce and Community Development:

The community built a salmon hatchery on Tamgas Creek which releases millions of fry of all five salmon species. The largest employer is the Metlakatla Indian Community, which operates the hatchery, the tribal court, and all local services. Annette Island Packing Co. is a cold storage facility owned by the community. The cannery and two sawmills no longer operate. 49 residents hold commercial fishing permits. The community is interested in developing tourism. Residents rely on salmon, halibut, clams and waterfowl for food.

¹ 15 AAC 05.030(j).

² 15 AAC 05.030(h).

In 2006, Ms. M. was seasonally employed, apparently at the Metlakatla hatchery, and briefly at the local school. Ms. M. has not established that employment opportunities in Metlakatla will not be available to her in substantially the same degree that they were in 2006.

IV. Conclusion

Ms. M.'s support obligation should be based on her earned income in 2006. At that income level, her support obligation is \$80 per month, as shown on Appendix A.

CHILD SUPPORT ORDER

1. S. M.'s modified ongoing child support order is set at the rate of \$80 per month effective September 1, 2007.
2. S. M. is liable for any arrears accrued at the rate of \$80 per month, effective April 1, 2007.

DATED: August 7, 2007

Signed

Andrew M. Hemenway
Administrative Law Judge

