

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

IN THE MATTER OF: )

T. F. S. )

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OAH No. 07-0584-CSS

CSSD No. 001096553

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor T. F. S.'s appeal of a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued on September 5, 2007. The Obligee child is K., DOB 00/00/98.

The formal hearing was held on October 17, 2007. Mr. S. did not appear; the Custodian, M. C. H., appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 27, 2007.

Kay L. Howard, Administrative Law Judge, Office of Administrative Hearings (OAH), conducted the hearing. Based on the record as a whole and after due deliberation, Mr. S.'s child support should be modified to \$443 per month.

**II. Facts**

**A. History**

Mr. S.'s child support was set at \$352 per month in July 2001.<sup>1</sup> On June 19, 2007, Mr. S. requested a modification.<sup>2</sup> On June 28, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. S. provided income information but it appeared to CSSD that he was using two different social security numbers, so the agency denied the modification request. On September 5, 2007, CSSD issued a Notice of Denial of Modification Review.<sup>4</sup> Mr. S. appealed the denial and provided proof that he pays support for an older child on September 18, 2007.<sup>5</sup> Based on the information that Mr. S. provided, including his 2006 tax return, CSSD calculated his modified child support at \$426 per month.<sup>6</sup>

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<sup>1</sup> Pre-hearing Brief at pg. 1.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exh. 2.

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

<sup>5</sup> Exhs. 5 – 7.

<sup>6</sup> Exh. 8.

Prior to the hearing, a notice of the date and time for the hearing was sent by certified mail to Mr. S.'s last-known address, but it was returned by the U.S. Postal Service, marked "unclaimed" after three notices were left at his address. Mr. S. did not provide a telephone number to be called for the hearing, nor did he appear in person.

### **B. Findings**

Based on the evidence in the record and after due consideration:

1. Mr. S. met 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. S. pays support for a prior child in the amount of \$367 per month;<sup>7</sup>
3. Mr. S.'s 2006 income was \$36,256;<sup>8</sup> the 2007 PFD was \$1654;<sup>9</sup>
4. Based on his 2006 income, the support he pays for a prior child, and the 2007 PFD amount, Mr. S.'s modified child support is correctly calculated at \$443 per month;<sup>10</sup>
5. A certified notice of the date and time for the hearing was sent to Mr. S. at his last known address, but it was returned "unclaimed" and he did not provide a telephone number to be called for the hearing, nor did he appear in person.

### **III. Discussion**

Mr. S. 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.<sup>11</sup> Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>12</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established.

Mr. S. provided his income information for 2006 and proof that he pays support of \$367 per month for a prior child. However, he did not appear at the hearing to present any evidence

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<sup>7</sup> Exhs. 5-6.

<sup>8</sup> Exh. 1 at pg. 6.

<sup>9</sup> See Exh. 11.

<sup>10</sup> *Id.*

<sup>11</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>12</sup> AS 25.27.190(e).

regarding his appeal, nor did he respond to the revised calculation of \$426 per month in CSSD's Pre-Hearing Brief. During the hearing, CSSD's revised calculation was further adjusted to \$443 per month, based on the 2007 PFD figure. This final calculation is slightly higher (\$17 per month) than CSSD's revised calculation because the 2007 PFD was higher than the 2006 PFD, but it is a minor change. Also, it is more than a 15% change from his prior child order of \$352 per month.

Thus, in the absence of any evidence other than the income and prior child information Mr. S. provided, the calculation of \$443 per month is a correct determination of his child support obligation.

#### **IV. Conclusion**

Mr. S. met his burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was incorrect. His 2006 income, the current PFD, and his support obligation for a prior child result in a child support amount of \$443 per month. Thus, Mr. S.'s child support should be modified to that amount, effective July 1, 2007.<sup>13</sup>

#### **V. Child Support Order**

- Mr. S. is liable for modified ongoing child support in the amount of \$443 per month, effective July 1, 2007.

DATED this 15th day of November, 2007.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>13</sup> A modification is effective beginning the month after the parties are served with notice that a modification has been requested. 15 AAC 125.321(d). In this case, the notice was issued on June 28, 2007. Exh. 2.

**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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 3rd day of December, 2007.

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

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