

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

IN THE MATTER OF:)

R. S.)

OAH No. 08-0104-CSS

CSSD No. 001041755

DECISION AND ORDER

I. Introduction

This case involves the Obligor R. S.'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 8, 2008. The Obligee child is C., DOB 00/00/93.

The formal hearing was held on March 21, 2008. Neither Mr. S. nor the Custodian, C. G. Y., participated in the hearing. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on March 31, 2008.

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 appeal is granted because he did not receive a PFD in 2007.

II. Facts

A. History

Mr. S.'s support order was previously set at \$50 per month.¹ On June 12, 2007, Ms. Y. requested a modification review.² On October 23, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. S. did not provide his income information so CSSD accessed his earnings data as reported to the Alaska Department of Labor.⁴ On January 8, 2008, CSSD issued a Modified Administrative Child and Medical Support Order that set Mr. S.'s modified ongoing child support at \$470 per month, effective November 1, 2007.⁵ Mr. S. filed an appeal on February 27, 2008, claiming he did not receive a Permanent Fund dividend in 2007.⁶

¹ Pre-hearing brief at pg. 1.

² Exh. 1.

³ Exh. 2.

⁴ Pre-hearing brief at pg. 1.

⁵ Exh. 4.

⁶ Exh. 6.

On March 4, 2008, a notice of the date and time for the hearing was sent by certified mail to the parties. Mr. S. received and signed for his notice and the green card was returned to the OAH. Mr. S. did not appear for the formal hearing.

B. Findings

Based on the evidence in the record and after due consideration, the following findings are entered:

1. Mr. S. met 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. Mr. S. received and signed for his notice of hearing and had actual notice of the date and time for the hearing;
3. Mr. S. did not appear at the hearing to provide evidence regarding his appeal;
4. Mr. S. was not eligible for and did not receive a 2007 PFD;
5. Mr. S.'s 2007 income totaled \$32,658.66, which yields a child support calculation of \$447 per month for one child;⁷
6. CSSD correctly recalculated Mr. S.'s modified child support obligation at \$447 per month, effective November 1, 2007.

III. Discussion

Mr. S. filed an appeal and requested a formal hearing, but he failed to appear for the hearing. He received and signed for the notice of the date and time for the hearing, so there was no reason not to hold the hearing in his absence. 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.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁸ 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 and the child support amount may be modified. A modification is effective

⁷ Exh. 8. CSSD had earlier recalculated Mr. S.'s modified child support at \$446 per month, *see* Exh. 7, but that calculation was done before his final quarter of wage information was reported to the Alaska Department of Labor. The latest calculation of \$447 per month is the most accurate.

⁸ AS 25.27.190(e).

beginning on the first of the month after the parties are served with notice that a modification has been requested.⁹

Mr. S. appealed the Modified Administrative Child Support and Medical Support Order that CSSD issued, but he did not appear at the hearing to present evidence. At the hearing, CSSD indicated that the agency was able to check the PFD database that agrees that Mr. S. did not receive a 2007 PFD because he was not eligible for one. CSSD recalculated Mr. S.'s modified ongoing child support at \$447 per month, utilizing his actual 2007 income figures. The modification should be effective November 1, 2007.

IV. Conclusion

Mr. S. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. He did not appear at the hearing to present evidence to support his appeal, but CSSD verified he was not eligible for the PFD that year and subsequently recalculated his modified child support at \$447 per month, effective November 1, 2007. CSSD's recalculation should be adopted.

V. Child Support Order

- Mr. S. is liable for modified ongoing child support in the amount of \$447 per month, effective November 1, 2007;
- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order dated January 8, 2008, remain in effect.

DATED this 21st day of April, 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

⁹ 15 AAC 125.321(d).

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 9th day of May, 2008.

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

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