

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

IN THE MATTER OF:)

S. K. M.)

) OAH No. 08-0132-CSS

) CSSD No. 001140812

DECISION AND ORDER

I. Introduction

This case involves the Obligor S. K. M.' appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 23, 2008. The Obligee child is J., DOB 00/00/04.

The formal hearing was held on April 3, 2008. Mr. M. did not appear. The custodian, A. L. W., appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on April 13, 2008.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Based on the record as a whole and after due deliberation, Mr. M.' appeal is denied. CSSD correctly calculated his modified child support obligation.

II. Facts

A. History

Mr. M.' support order was previously set at \$277 per month in November 2006.¹ On November 29, 2007, Ms. W. requested a modification review.² On December 5, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. M. did not provide his income information.⁴ On February 23, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. M.' modified ongoing child support at \$367 per month, effective January 1, 2008.⁵ Mr. M. filed an appeal on March 5, 2008. He claimed CSSD overestimated his income and he is not able to have any contact with the child.⁶

¹ Exh. 1.

² Exh. 3.

³ Exh. 4.

⁴ Pre-hearing brief at pg. 1.

⁵ Exh. 5.

⁶ Exh. 7.

On March 14, 2008, the OAH sent both parties a notice of the date and time for the hearing by certified mail to their last known addresses. Ms. W. signed for her notice and appeared at the hearing. Mr. M.' notice was returned to the OAH and marked by the U.S. Postal Service as "unclaimed." He did not appear at the hearing.

B. Findings

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

1. Mr. M. 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. Mr. M.' notice of the date and time for the hearing was sent to his last known address, the one he disclosed in his appeal that was received by CSSD on March 5, 2008;
3. Mr. M. did not appear at the hearing to provide evidence regarding his appeal;
4. Mr. M.' actual income in 2007 was \$40,046.07, plus the PFD;
5. CSSD correctly calculated Mr. M.' modified ongoing child support obligation at \$367 per month, effective January 1, 2008.

III. Discussion

Mr. M. filed an appeal and requested a formal hearing, but he failed to appear for the hearing. Service of the notice of the date and time for the hearing was effective because his notice was sent to the last address he reported, so it was permissible 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."⁷ 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. A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.⁸

At the hearing, CSSD requested that the administrative law judge affirm its Modified Administrative Child Support and Medical Support Order. The division said the modified child

⁷ AS 25.27.190(e).

⁸ 15 AAC 125.321(d).

support amount was calculated from Mr. M.' actual 2007 income of \$40,046.07, which his employer reported to the Alaska Department of Labor and Workforce Development.⁹ CSSD requested that since Mr. M. did not appear at the hearing to present evidence regarding this case, the agency's Modified Administrative Child Support and Medical Support Order should be affirmed.

Mr. M. appealed the Modified Administrative Child Support and Medical Support Order, but he did not appear to present any evidence regarding his appeal. CSSD correctly calculated Mr. M.' modified ongoing child support at \$367 per month, based on his most recent actual income figures.

IV. Conclusion

Mr. M. 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. He did not appear for the hearing to present evidence regarding his appeal, and CSSD's calculation appears to be correct, so it should be affirmed.

V. Child Support Order

- Mr. M. is liable for modified ongoing child support in the amount of \$367 per month, effective January 1, 2008.

DATED this 5th day of May, 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

⁹ See Exh. 9.

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 23rd 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.]