

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

IN THE MATTER OF: )

O. A. R. )

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) OAH No. 08-0191-CSS

) CSSD No. 001063907

**DECISION AND ORDER GRANTING  
MOTION TO DISMISS APPEAL**

**I. Introduction**

On April 17, 2008, CSSD filed a Motion to Dismiss the appeal in this child support case. Oral argument on the motion was held on May 2, 2008. Mr. R. appeared in person; the Custodian, E. R. H., appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on May 2, 2008.

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, CSSD's motion to dismiss the appeal is granted.

**II. Facts**

Mr. R.'s child support previously was set at \$381 per month effective January 2004 by the Alaska Superior Court.<sup>1</sup> On January 10, 2008, Mr. R. requested a modification review and provided income information.<sup>2</sup> On January 10, 2008, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On March 18, 2008, CSSD issued a Notice of Denial of Modification Review for the reason that a child support amount calculated from Mr. R.'s income did not meet the minimum change of 15%.<sup>4</sup> In response to the denial of modification, Mr. R. filed an appeal and requested a formal hearing on April 15, 2008.<sup>5</sup> Thereafter, CSSD filed the Motion to Dismiss and the motion was argued on May 2, 2008.

**III. Discussion**

At the hearing, CSSD argued that Mr. R.'s appeal must be dismissed because the Office of Administrative Hearings is not the correct forum to hear an appeal from the particular order

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

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

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

<sup>4</sup> Exh. 5.

CSSD issued. CSSD stated that Mr. R.'s child support obligation in this case was established in a court order issued on November 17, 2004.<sup>6</sup> He requested a modification of that order, but CSSD's position is that one is not warranted and as a result issued a Notice of Denial of Modification Review. CSSD asserted that since the original child support order was issued by the court, Mr. R.'s appeal of the denial of modification must be heard by the court instead of the Office of Administrative Hearings.

Based on the record in this appeal, CSSD has correctly stated the law. On November 17, 2004, the Hon. Mark Rindner of the Alaska Superior Court issued an order for Mr. R. to pay support in the amount of \$381 per month for three children, effective January 1, 2004.<sup>7</sup> Mr. R. filed his request for modification of a judicial support order through CSSD, which denied his petition. According to CSSD regulation 15 AAC 125.326(d):

If the agency determines that a modification of the support order is not appropriate, the agency will issue a notice of denial of review. The agency will send the notice of denial of review to both parents and, if appropriate, to a child support agency of another state by first class mail or by electronic means. *An administrative appeal is not available from the notice, but the decision is final for the purpose of appeal to the superior court.*<sup>[8]</sup>

Thus, if Mr. R. desires to appeal CSSD's denial of modification review, he must file that appeal with the Superior Court. The OAH is not the correct forum to hear his appeal.

Mr. R. stated that he understands he must file his appeal in court.

#### **IV. Conclusion**

After he requested modification of his judicial child support order, CSSD issued a Notice of Denial of Modification Review. Thereafter, Mr. R. filed an appeal of the denial with the Office of Administrative Hearings. However, according to CSSD's regulations, an appeal of a denial of modification review must be filed in the Superior Court, not the OAH. Therefore, CSSD's motion to dismiss his appeal should be granted. Mr. R. will have to file his appeal in the Superior Court.

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<sup>5</sup> Exh. 6.

<sup>6</sup> Exh. 1.

<sup>7</sup> Exh. 1 at pg. 2.

<sup>8</sup> Italics added.

**V. Child Support Order**

- CSSD's April 17, 2008, Motion to Dismiss is granted;
- Mr. R.'s appeal received on April 15, 2008, is dismissed.

DATED this 2nd day of May, 2008.

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

DATED this 19th 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.]