

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

In the matter of:)	
)	OAH No. 08-0217-CSS
J. H. H.)	CSSD NO. 001125744
_____)	

DECISION AND ORDER

I. Introduction

J. H. appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 27, 2008. The obligee child is G. C. H., born 00/00/02. The custodial parent is M. L. S.

The Alaska Office of Administrative Hearings (OAH) issued notice to both parents of a formal hearing to be held May 21, 2008, using Certified Mail sent 15 days in advance. A return receipt was received for Ms. S., but not from Mr. H. The Certified Mail receipt shows that the address used for Mr. H. was the same as the one he provided in his request for appeal.

David Peltier, Child Support Specialist, appeared for CSSD at the appointed time for the hearing. M. S. called in at the appointed time and participated by telephone. Mr. H. did not contact OAH in advance of the hearing, and he did not appear at the hearing.

The administrative law judge convened the hearing as scheduled and interviewed Mr. Peltier and Ms. H. about the issues in the appeal. Under 15 AAC 05.030(j), “[i]f a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear.” Mr. H. did not attempt to make the required showing within ten days after the scheduled hearing, and therefore the administrative law judge will proceed with the decision.

II. Facts

Mr. H. is presently the legal father of G.¹ On August 21, 2003 the Superior Court issued an Interim Child Custody and Support Order awarding sole or primary physical custody to Ms.

¹ Exh. 1 at pg. 1 (*H. v. S.-H.*, No. 3PA-03-214 CI (Alaska Superior Court), Interim Child Custody and Support Order, ¶ 1).

S. and setting Mr. H.'s support obligation at \$180.42 per month.² On December 9, 2004, the underlying case in which the Interim Child Custody and Support Order had been issued was dismissed for lack of prosecution.³ This caused the Interim Child Custody and Support Order to dissolve as of that date.⁴ Several years later, the Superior Court formally recognized that this had occurred in 2004 and that no support order had been in effect since that time.⁵ The court also ordered CSSD to cease collection under the Interim Child Custody and Support Order because it had been dissolved.⁶

CSSD issued the order under appeal on March 27, 2008, setting support beginning December 1, 2004 and continuing to the present, with an ongoing obligation in the future.

Currently and at all times in the past relevant to the order under appeal, Ms. S. has had primary physical custody of G.

III. Discussion

Mr. H. has 13 raised issues on appeal.⁷ He has presented no evidence to support any of the arguments or factual assertions in his appeal request, and he did not appear at the hearing on his own appeal.

By statute, when an obligor requesting a hearing fails to appear at the hearing, the administrative law judge must enter an order “in the amounts stated in the notice and finding of financial responsibility.”⁸ Accordingly, with the small exception noted below, this appeal must be resolved by affirming the Amended Administrative Child Support and Medical Support Order.

There is one respect in which this cannot be done. CSSD's Amended Administrative Child Support and Medical Support Order set support beginning December 1, 2004 because “Public Assistance was expended in December 2004 for G.” and “[e]ffective December 2004 you were no longer owed child support under a court order.” In fact, as noted above, there was a Superior Court child support order in effect until December 9, 2004. CSSD and OAH have no

² *Id.* at 2, ¶ 4.

³ Exh. 2 at pg. 1 (*H. v. S.-H.*, No. 3PA-00-000CI (Alaska Superior Court), Third Notice of Intent, March 28, 2007, at 2 (clarifies that the order to cease collection relates only “to the interim child support order”).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*; see also Exh. 2 at pg. 4 (*H. v. S.-H.*, No. 3PA-00-000 CI (Alaska Superior Court), Order, May 24, 2007).

⁷ Exh. 11.

⁸ Alaska Statute 25.27.170.

jurisdiction to impose a support order where a court's support order already exists.⁹

Accordingly, the Amended Administrative Child Support and Medical Support Order can be affirmed only with respect to the first month in which no court order was effective, and thereafter.

The result is that the \$62 in arrears assessed for December 2004 cannot be affirmed.

IV. Child Support Order

- The Amended Administrative Child Support and Medical Support Order issued March 27, 2008 is vacated solely with respect to the imposition of a child support obligation for the month of December 2004.
- In all other respects, the Amended Administrative Child Support and Medical Support Order issued March 27, 2008, is affirmed.

DATED this 22th day of July, 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

⁹ See Alaska Statute 25.27.140.

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 within 30 days after the date of this decision.

DATED this 11th day of August, 2008.

By: Signed _____
Kay L. Howard
Administrative Law Judge

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