

or unemployment compensation from January through March. From April through the end of 2007, her total income was \$8,949.25 (\$993.92 per month), including \$8,435.25 in wages from Kelly Services and \$514 in unemployment compensation.² In 2008, through May 4, Ms. N.'s total income was \$2,764.25 (\$691.06 per month), including wages of \$2,179.25 from Kelly Services (\$11.50 per hour)³ from Kelly Services and \$585 in unemployment compensation.⁴

III. Discussion

A party has a right to a formal hearing when, after conducting a modification review,⁵ the division issues a written decision granting or denying modification.⁶ But not every request for modification review leads to a decision to grant or deny modification. The division has discretion to decline to proceed with modification review when the party requesting review fails to submit evidence that there has been a change of 15% or more in the amount of the support obligation.⁷

The issue on appeal from the denial of modification review is limited to whether the agency properly exercised its discretion not to complete a modification review.⁸ Because K. N. failed to submit income information prior to the denial of modification review, the division's decision to deny modification review was within its discretion and should therefore be affirmed.

After the denial of modification review, and prior to the hearing, K. N. submitted income information indicating that there may have been a change of 15% or more in the amount of her support obligation.⁹ However, because Ms. N. did not participate in the rescheduled hearing, the record has not been fully developed. Should Ms. N. wish to pursue the pending request for modification, she may file a proposal for action requesting

² N. Exhibit, 2007 Tax Return, W-2 Statement, and Form 1099G.

³ N. Exhibit, Paystub dated May 8, 2008.

⁴ N. Exhibit, Unemployment Compensation checks issued 1/29/08, 2/11/08, 2/25/08, 3/10/08, 3/24/08, 4/14/08, 4/21/08.

⁵ 15 AAC 125.321(a).

⁶ 15 AAC 125.321(c).

⁷ 15 AAC 125.316(e).

⁸ *See, e.g., In Re Headd*, OAH No. 06-0670 (November 14, 2006).

⁹ The prior order was based on K. N.'s demonstrated ability to earn \$11 per hour, projected to full time work. However, Ms. N. presented evidence that her employer has provided her less than half time employment. She also presented evidence that she has been actively and unsuccessfully engaged in seeking full time employment since the order was issued: her continuing eligibility for and receipt of unemployment compensation indicates that she was engaged in an active job search.

a remand or that the record be reopened for determination of her request for modification on its merits.

IV. Conclusion

The division did not abuse its discretion in denying modification review.

V. Order

The division's decision to deny modification review is AFFIRMED.

DATED: July 11, 2008

Signed _____
Andrew M. Hemenway
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 5th day of August, 2008.

By: *Signed* _____
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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