

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

IN THE MATTER OF:)

B U)

) OAH No. 08-0411-CSS

) CSSD No. 001131603

DECISION AND ORDER

I. Introduction

The obligor, B U, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on July 23, 2008. The children are Q, DOB 00/00/01, and Z, DOB 00/00/05.

The formal hearing was held on September 4, 2008. Mr. U did not appear; the Custodian, S T. U, participated by telephone. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 15, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record and after careful consideration, CSSD's Modified Administrative Child Support and Medical Support Order is affirmed.

II. Facts

Mr. U's child support obligation for Q was set at \$216 per month in 2004.¹ On March 11, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order so as to add the child Z to the order.² Mr. U did not respond to the request for income information.³ On July 23, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that added Q and set Mr. U's modified ongoing child support at \$393 per month for two children, effective April 1, 2008.⁴ The order also charged Mr. U with additional arrears for Z of \$714 for the period from September 2007 through March 2008, for public assistance reimbursement.⁵ Mr. U filed an appeal on August 5, 2008, asserting he is not eligible for the PFD because he did not become a citizen until April 10, 2007, he received a lower

¹ Exh. 1.

² Exh. 2.

³ Pre-hearing brief at pg. 1.

⁴ Exh. 3.

⁵ Exh. 4 at pg. 1.

amount of unemployment benefits (“UIB”) than CSSD attributed to him, and he had 40% shared custody of the children.⁶

The Office of Administrative Hearings (“OAH”) sent the parties a notice of the date and time for the hearing by certified mail. Ms. U received and signed for her notice. Mr. U’s notice was sent to the address he provided on his appeal form, but the “green card” was not returned to the OAH, and he did not call the office and provide a number in order to participate by telephone. Because Mr. U’s notice was sent to the address he provided, service of the notice was found to be effective and the hearing was conducted without his participation.⁷

At the hearing, CSSD stated Mr. U’s appeal form correctly asserted his UIB benefits were lower than calculated. As to his claim that he is not entitled to a PFD, Ms. U testified that Mr. U is a resident alien and he received his green card in 2007. She said the PFD division told him he would not be eligible for the PFD until 2008, but that he had also been in jail from February 2008 through April 2008, so that fact might also affect his eligibility. Ms. U said that Mr. U was currently working the evening shift at a local retail store and she thought he was being paid \$10 per hour. Finally, Ms. U testified that Mr. U’s claim of shared custody was not accurate because she has custody of the children and he rarely sees them.

At the end of the hearing, CSSD was requested to prepare a draft child support calculation for the administrative law judge’s consideration, based on earnings of \$10 per hour, but not including the PFD in the calculation. After the hearing, CSSD filed the draft calculation of \$399 per month for two children, which is within \$6 of the amount already calculated.⁸

III. Discussion

Mr. U filed an appeal and requested a formal hearing, but he failed to appear for the hearing. Therefore, 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.

A parent is obligated both by statute and at common law to support his or her children.⁹ Child support orders may be modified upon a showing of “good cause and material change in

⁶ Exh. 6.

⁷ “If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department.” 15 AAC 05.010(c).

⁸ Exh. 7.

⁹ *Matthews v. Matthews*, 739 P.2d, 1298, 1299 (Alaska 1987) & AS 25.20.030.

circumstances.”¹⁰ 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 month after the parties are served with notice that a modification has been requested.¹¹

Mr. U did not provide his income information, as requested by CSSD for the modification. He then appealed CSSD’s Modified Administrative Child Support and Medical Support Order, but he did not appear at the hearing to present any evidence regarding his appeal. Ms. U testified that Mr. U has not been eligible for a PFD in the past, but she did not know about 2008. As to the claim of shared custody, Ms. U’s testimony that the children live with her and Mr. U does not have them enough time to constitute shared custody is credible.

In the absence of any additional evidence from Mr. U – other than the assertions he made in his appeal, CSSD’s Modified Administrative Child Support and Medical Support Order should be affirmed.¹²

IV. Conclusion

CSSD modified Mr. U’s child support order by adding the child Q to his previous order for Z and setting the ongoing obligation at \$393 per month for two children. Mr. U did not appear at the hearing to provide any evidence. As a result, Mr. U 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). Therefore, CSSD’s order should be affirmed.

V. Child Support Order

- CSSD’s July 23, 2008, Modified Administrative Child Support and Medical Support Order is affirmed.

DATED this 29th day of September, 2008.

By: Signed _____
Kay L. Howard
Administrative Law Judge

¹⁰ AS 25.27.190E.

¹¹ 15 AAC 125.321(d).

¹² The final draft calculation CSSD prepared for the administrative law judge’s consideration reached nearly the same child support figure, but it should not be adopted because Mr. U has not had notice of the specific amount.

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 21st day of October, 2008.

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

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