

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

IN THE MATTER OF:)

N A. S)

) OAH No. 08-0444-CSS

) CSSD No. 001124832

DECISION AND ORDER

I. Introduction

The obligor, N A. S, appealed a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in his case on August 13, 2008. The Obligee children are A and B.

The formal hearing was held on September 10, 2008. Neither Mr. S nor the custodian, C L. X, participated in the hearing.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 20, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record as a whole and after due deliberation, CSSD's Notice of Denial of Modification Review is affirmed.

II. Facts

Mr. S's child support previously was set at \$341 per month.² On April 2, 2008, Mr. S requested a modification.³ On April 19, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.⁴ Mr. S provided his income information.⁵ On August 13, 2008, CSSD issued a Notice of Denial of Modification Review, which Mr. S appealed on August 20, 2008.⁶

The Office of Administrative Hearings ("OAH") sent the parties a notice of the date and time for the hearing by certified mail. Ms. X received and signed for her notice. Mr. S did not provide an address on his appeal form, so his notice was sent to his address on record with CSSD. The "green card" was not returned to the OAH, and Mr. S did not call the office to

¹ Ms. X provided a telephone number to be called for the hearing, but when the call was made just before the hearing, it went to an answering machine. Mr. S did not provide a telephone number where he could be reached, nor does CSSD have one on record for him.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

⁶ Exhs. 5-7.

provide a telephone number where he could be reached for the hearing. Because Mr. S's notice was sent to the last 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. S's request for modification had been denied because a calculation based on the income information he provided did not result in a 15% reduction in his child support obligation.⁸ As to the claim in Mr. S's appeal that this case involves welfare fraud, CSSD indicated a copy of his appeal form was sent to the Department of Health and Social Services fraud unit, which is the agency responsible for investigating fraud allegations. CSSD said it is not a part of a fraud investigation and is not informed of the results of one.

III. Discussion

Mr. S 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 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. S did provide some income information, as requested by CSSD for the modification, but it did not result in a 15% reduction in his support obligation, so CSSD denied the modification request. Mr. S then appealed CSSD's Notice of Denial of Modification Review, but he did not appear at the hearing to present any evidence regarding his appeal. In the absence of any additional evidence from Mr. S – other than the assertions he made in his appeal, CSSD's Modified Administrative Child Support and Medical Support Order should be affirmed.

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 See Exh. 6. This calculation resulted in a child support amount of \$294, which is \$4 above a 15% reduction.

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

¹⁰ AS 25.27.190(e).

¹¹ 15 AAC 125.321(d).

IV. Conclusion

Mr. S did not meet his burden of proving by a preponderance of the evidence that CSSD’s Notice of Denial of Modification Review was issued in error, as required by 15 AAC 05.030(h). Therefore, CSSD’s order should be affirmed.

V. Child Support Order

- CSSD’s August 13, 2008, Notice of Denial of Modification Review is affirmed;
- Mr. S remains liable for support in the amount of \$341 per month for A and B.

DATED this 3rd day of October, 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 28th day of October, 2008.

By: Signed _____
 Signature
Jerry Burnett _____
 Name
Deputy Commissioner _____
 Title

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