

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

IN THE MATTER OF:)

N. S. E.)

) OAH No. 08-0467-CSS

) CSSD No. 001132802

DECISION AND ORDER

I. Introduction

The obligor, N. S. E., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on August 25, 2008. The children are N., DOB 00/00/03, and D., DOB 00/00/07.

The formal hearing was held on September 18, 2008, and October 15, 2008. Neither Mr. E. nor the Custodian, D. J. D., appeared at or participated in either proceeding. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 25, 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. E.’s child support obligation for N. was set at \$595 per month in 2004.¹ On March 12, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order so as to add the child D. to the order.² Mr. E. did not respond to the request for income information.³ On July 15, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that added D. and set Mr. E.’s modified ongoing child support at \$644 per month for two children, effective April 1, 2008.⁴ The order also charged Mr. E. with additional arrears for D. of \$1,069 for the period from September 2007 through March 2008, for

¹ Exh. 1.

² Exh. 2.

³ Pre-hearing brief at pg. 1.

⁴ Exh. 3.

public assistance reimbursement.⁵ Mr. E. filed an appeal on August 26, 2008, asserting he only works in summer construction and he is filing a petition in state court to disestablish paternity.⁶

The Office of Administrative Hearings (“OAH”) sent the parties a notice of the date and time for the hearing by certified mail. Ms. D. received and signed for her notice. Mr. E.’s notice was sent to the address CSSD provided with the referral, but the U.S. Postal Service returned the notice as undeliverable. Mr. E. had provided a different address with his appeal, so a certified notice of the date and time for the hearing was sent to Mr. E. at that address. The notice was returned also and he did not call the OAH to provide a number in order to participate by telephone. Telephone calls were placed to the telephone numbers of record for both parties at each hearing, but they were not answered and a message to call the OAH was left on each answering machine. Neither party contacted the OAH after the hearings. Because Mr. E.’s notice was sent to two addresses 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 the agency used Mr. E.’s actual income for 2007 in order to calculate his arrears for September 2007 through March 2008, the period of time D. was on public assistance prior to the effective date of the modification. This results in additional child support owing of \$142 per month, the difference between the two-child and one-child amounts.⁸ As to the 2008 modified calculation, CSSD indicated the agency used an average of Mr. E.’s income from 2005 through 2007 to calculate his modified child support at \$644 per month for two children.⁹

III. Discussion

Mr. E. 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.¹⁰ Child support orders may be modified upon a showing of “good cause and material change in

⁵ Exh. 4 at pg. 1.

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 See Exh. 3 at pg. 6.

⁹ Exh. 3 at pg. 7.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

circumstances.”¹¹ 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. Child support obligations may also be modified to add another child to an obligor’s child support order.¹² A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹³

Mr. E. 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.

CSSD used Mr. E.’s actual income information for the 2007 arrears calculation and an average of his income from 2005-2007 for the modified ongoing child support calculation. These are reasonable calculations.

IV. Conclusion

CSSD modified Mr. E.’s child support order by adding the child D. to his previous order for N. and setting the ongoing obligation at \$644 per month for two children. Mr. E. did not appear at the hearing to provide any evidence. As a result, Mr. E. 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 15, 2008, Modified Administrative Child Support and Medical Support Order is affirmed.

DATED this 24th day of November, 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

¹¹ AS 25.27.190(e).

¹² 15 AAC 125.340(b).

¹³ 15 AAC 125.321(d).

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 12th day of December, 2008.

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

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