

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

IN THE MATTER OF:)

W. J. G. II)

OAH No. 08-0472-CSS

CSSD No. 001048753

DECISION AND ORDER

I. Introduction

The obligor, W. J. G. II, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on July 30, 2008. The children are M., DOB 00/00/94, and W., DOB 00/00/95.

The formal hearing was held on September 29, 2008. Mr. G. did not appear; the Custodian, H. E. S., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 9, 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. G.'s child support obligation for M. and W. was set at \$50 per month in 2002.¹ On April 4, 2008, Ms. S. requested a modification review.² On April 24, 2008, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. G. did not respond to the request for income information.⁴ On July 30, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. G.'s modified ongoing child support at \$728 per month for two children, effective May 1, 2008.⁵ Mr. G. filed an appeal on August 29, 2008, asserting he no longer works for his previous employer and he shares custody of M. and W.⁶

¹ Exh. 1.

² Exh. 3.

³ Exh. 4.

⁴ Pre-hearing brief at pg. 1.

⁵ Exh. 5.

⁶ Exh. 7.

The Office of Administrative Hearings (“OAH”) sent both parties a notice of the date and time for the hearing by certified mail. Mr. G.’s notice was received and the signed “green card” was returned. At the beginning of the hearing, a call was placed to Mr. G. at his telephone number of record, but Mr. G. was not there at the time. The man who answered the telephone identified himself as Mr. G.’s father-in-law, and he said that he believed Mr. G. was on his way to Anchorage for the hearing. However, Mr. G. did not appear for the hearing, nor has he contacted the OAH since then about it. Because Mr. G.’s notice was sent to the address he provided, and it was received, service of the notice was found to be effective and the hearing was conducted without his participation.⁷

Ms. S.’s notice was sent to her address of record, but the “green card” was not returned to the OAH, and she did not call the office and provide a number in order to participate by telephone. A call placed to her telephone number of record resulted in a message that the call could not be completed and there was no opportunity to leave a message.

During the hearing, CSSD stated the agency used Mr. G.’s income information as reported to the Alaska Department of Labor and Workforce Development for the first two quarters of 2008 to estimate his income at \$37,976.32, which yields a child support amount of \$728 per month.⁸

III. Discussion

Mr. G. 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.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”⁹ 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.¹⁰

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 at pg. 1, and Pre-hearing brief at pg. 1.

⁹ AS 25.27.190(e).

¹⁰ 15 AAC 125.321(d).

Mr. G. 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. G.'s most recent income information for the child support calculation, which appears to have been correctly calculated at \$728 per month for two children. Mr. G. claimed he no longer works for his previous employer, but he did not provide any evidence about his current employer so his estimated annual income could be adjusted.

Mr. G.'s claim of shared custody appear to be credible, as it was supported by the written statements of two witnesses, but the information was not specific enough to make an adjustment to the child support calculation. In the event either party requests another modification in the future, they should be prepared to submit specific evidence regarding Mr. G.'s time with the children.

IV. Conclusion

CSSD modified Mr. G.'s child support order according to his most recent income information. Mr. G. did not appear at the hearing to provide any evidence. As a result, he 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 30, 2008, Modified Administrative Child Support and Medical Support Order is affirmed.

DATED this 28th 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 14th day of November, 2008.

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

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