

In addition, at the hearing Mr. Rawls stated that on the basis of income information available to the Division, the Division had determined that modification review is appropriate. The Division asked that the case be remanded to conduct modification review.

III. Discussion

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.⁵

In this case, Mr. T. failed to submit income information to support his request for modification, and the Division initially exercised its discretion under 15 AAC 125.316(e) to decline to complete a modification review. However, prior to the hearing the Division reviewed income information available to it and determined that modification review should be conducted.

Because the Division has discretion to conduct modification review even if the person requesting modification has not submitted evidence to support the request, the Division may, if the party requesting modification has maintained an appeal, change its position on appeal and request a remand to conduct modification review.⁶

IV. Conclusion

The case should be remanded for modification review.

ORDER REMANDING APPEAL

1. This appeal is REMANDED pursuant to 2 AAC 64.340(d).
2. The Division shall conduct a modification review. A party dissatisfied with the Division's action on review may file an appeal.

DATED: January 21, 2009.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

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

⁴ Ex. 5.

⁵ 15 AAC 125.316(e).

⁶ See 2 AAC 64.270(b)(3).