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

IN THE MATTER OF:)	
)	
R. R. T.)	
)	OAH No. 08-0641-CSS
)	CSSD Case No. 001040454

DECISION and ORDER

I. Introduction

This case concerns the child support obligation of R. K. T. for D. L. S. (DOB 00/00/1992). The custodian of record is T. L. S.

On May 26, 1995, the Child Support Services Division issued an order setting child support at \$50 per month.¹ On July 15, 2008, Mr. T. filed a request for modification of the order.² The Child Support Services Division declined to conduct a modification review.³ Mr. T. filed an appeal and the Division referred the matter to the Office of Administrative Hearings.⁴ The assigned administrative law judge conducted a hearing on December 18, 2008. Mr. T. was not available at his telephone number of record and did not participate. Ms. S. participated, and Andrew Rawls represented the Division.

The case is remanded to the Division to conduct modification review.

II. Facts

Mr. T.'s request for modification was supported by documents asserting that D. S. was not living with the custodian of record. At the hearing, Ms. S. testified that D. was living with her. She testified that at the end of June, 2008, D. went first to No Name Village, with her mother's permission, and then, against her mother's wishes, to Another No Name Village. Ms. S. also testified that beginning in August, 2008, her daughter participated in a residential program at Ms. S.'s request. The record includes a written statement by D. S. confirming the substance of her mother's testimony, and stating that she wishes to continue to live with her mother.

Ex. 1.
Ex. 2
Ex. 2
Ex. 4.

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. <u>Signed</u>

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).