

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

IN THE MATTER OF:)
)
S. A. W.) OAH No. 09-0226-CSS
) CSSD No. 001155242
_____)

DECISION AND ORDER

I. Introduction

This case involves the obligor S. A. W.’ appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on March 10, 2009. The obligee child is Q., DOB 00/00/91.

The hearing was held on May 5, 2009. Ms. W. did not appear;¹ the custodian, T. E. X., did not participate. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on May 15, 2009.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record as a whole and after careful consideration, CSSD’s March 10, 2009, Amended Administrative Child Support and Medical Support Order is affirmed.

II. Facts

A. History

Public assistance benefits began to be paid for Q. in March 2008.² On January 15, 2009, CSSD served an Administrative Child Support and Medical Support Order on Ms. W.³ She requested an administrative review and provided supplemental information.⁴ On March 10, 2009, CSSD issued an Amended Administrative Child and Medical Support Order that set Ms. W.’ ongoing child support at \$241 per month, with arrears of \$2,033 for the period from March 2008 through March 2009.⁵ Ms. W. filed an appeal on April 10, 2009. It states her son was

¹ Telephone calls were placed to three different numbers on record for Ms. W. None of them were answered and a message left for her was not returned.

² Pre-hearing Brief; Exh. 1 at pg. 9.

³ Exh. 1 at pg. 10.

⁴ Exhs. 2-4.

⁵ Exh. 5.

murdered in 2005 and since then her income has been below the federal poverty level and she has been on and off public assistance.⁶

The Office of Administrative Hearings (“OAH”) sent the parties a notice of the date and time for the hearing by certified mail. Ms. W. received and signed for her notice but she did not call the OAH to provide a number in order to participate by telephone. At the beginning of the hearing the administrative law judge placed three calls to the telephone numbers on record for Ms. W., but none of the calls were answered. Ms. W. also did not return a call placed on her answering machine. Because Ms. W. received her notice of the date and time for the hearing, service of the notice was found to be effective and the hearing was conducted without her participation.⁷

At the hearing, CSSD stated the agency used Ms. W.’ actual income for 2008 in order to calculate her arrears for March 2008 through December 2008 at \$131 per month.⁸ For the 2009 calculation CSSD estimated her income at \$14,248 from the minimum wage; this resulted in a child support amount of \$241 per month for 2009 and ongoing.⁹ CSSD explained it used the minimum wage to calculate Ms. W.’ 2009 child support amount because it appears that she is working in Georgia.

B. Findings

1. Ms. W. did not meet her burden of proving by a preponderance of the evidence that CSSD’s Amended Administrative Child and Medical Support Order was incorrect, as required by 15 AAC 05.030(h);
2. Notice of the date and time for the hearing was sent by certified mail to Ms. W. at her last-known address, and she signed for the notice on April 24, 2009;
3. Ms. W. did not appear for the hearing;
4. CSSD correctly calculated Ms. W.’ 2008 and 2009 child support amounts, based on the agency’s most current information.

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 Exh. 5 at pg. 8.

⁹ Exh. 5 at pg. 7.

III. Discussion

Ms. W. filed an appeal of a child support order and she received the notice of the date and time set for the hearing. However, she 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 person requesting the hearing fails to appear.

A parent is obligated both by statute and at common law to support his or her children.¹⁰ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." CSSD calculated Ms. W.' child support at \$131 per month for 2008, based on her actual income, and \$241 per month for 2009, based on the minimum wage and the Alaska Permanent Fund Dividend (PFD).¹¹

Ms. W. appealed CSSD's order but she only filed 2008 income information and copies of bills. She did not appear at the hearing to present testimony or make herself available for questions. Thus in the absence of any additional evidence from Ms. W. -- other than the assertions she made in her appeal, CSSD's Amended Administrative Child and Medical Support Order should be affirmed.

IV. Conclusion

Ms. W. did not meet her burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order is incorrect. The order should be affirmed.

V. Child Support Order

- CSSD's March 10, 2009, Amended Administrative Child and Medical Support Order is affirmed.

DATED this 1st day of June, 2009.

By: Signed
Kay L. Howard
Administrative Law Judge

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

¹¹ CSSD included the PFD in Ms. W.' income because she apparently splits her time between Alaska and Georgia. See Exh. 2 at pg. 1.

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 19th day of June, 2009.

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

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