

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

IN THE MATTER OF:)	
)	OAH No. 09-0297-CSS
J. A. E.)	CSSD No. 001024950
_____)	

ORDER DISMISSING APPEAL

I. Introduction

The Child Support Services Division (CSSD) has moved to dismiss the untimely appeal filed by the Obligor, J. A. E. Oral argument on CSSD’s Motion for Dismissal was held on June 11, 2009. Mr. E. participated by phone. The Custodian, G. F., contacted the Office of Administrative Hearings prior to hearing and stated she did not want to participate. Andrew Rawls, Child Support Specialist, represented CSSD. The obligee children are: X. E. (DOB 00/00/1991) and Y. E. (DOB 00/00/1992). The record closed at the hearing’s conclusion. Because Mr. E.’s appeal is untimely and because he has not shown how strict adherence to the deadline would work an injustice, CSSD’s motion is granted and Mr. E.’s appeal is dismissed.

II. Facts

On October 12, 1995, CSSD issued a support order directing Mr. E. to pay ongoing child support in the amount of \$50 for three children.¹ CSSD initiated a modification review of the 1995 order. It served Notices of Petition for Modification of Administrative Support Order on the Obligor and Custodian on October 2, 2008 requesting the parties provide current income information.² Mr. E. did not provide the requested information and CSSD issued a Modified Administrative Child Support and Medical Support Order dated March 11, 2009. This order set Mr. E.’s monthly child support obligation at \$305 per month commencing November 2008 and ongoing.³ CSSD calculated the support obligation based on a total gross income of \$14,143.27.⁴ Total gross income was derived using 2008 Department of Labor wages, unemployment insurance payments, and the 2008 PFD.

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3.
⁴ Exhbit 3 at 6.

On May 19, 2009, CSSD received Mr. E.'s appeal dated May 17, 2009. The reason given for the appeal was that he had not held a job for the past year, his unemployment ran out and he has no physical address.⁵ CSSD then filed a Motion for Dismissal. Prior to hearing Mr. E. submitted certain financial information including W-2 forms for 2007 and his 2008 tax return.⁶ In 2008, Mr. E. reported an adjusted total gross income of \$16,967.⁷

At the hearing Mr. E. argued that he did not receive the paperwork from CSSD because he was denied access to his post office box and he presently has no physical address. He testified that he is unemployed and looking for work but finds it difficult because of his criminal history.

III. Discussion

CSSD's Motion for Dismissal requests that Mr. E.'s appeal be dismissed because it is untimely. Under Department of Revenue regulations, when CSSD issues a Modified Administrative Child Support and Medial Support Order, the parties have 30 days to file an appeal.⁸ If a party does not request a formal hearing within this time period, his or her appeal rights expire, and the underlying order remains in effect unless and until another modification action is initiated.

CSSD issued the Modified Administrative Child Support and Medial Support Order on March 11, 2009, but Mr. E. did not receive his appeal CSSD's order until May 19, 2009, 39 days after the time to file an appeal expired. His appeal is untimely, so Mr. E. should not be entitled to a review of the merits of the case because he did not comply with the requirements for requesting a hearing.

Even if the appeal is untimely, the administrative law judge has the authority, pursuant to 15 AAC 05.030(k), to determine whether requiring strict adherence to CSSD's deadlines will work an injustice in a particular case. Requiring strict adherence to the timeliness deadlines will not work an injustice in Mr. E.'s appeal because he is entitled at any time to file a petition and request a prospective modification in his case. Moreover, based on the information provided regarding his 2008 actual income, it appears that his actual income for 2008 exceeded the total

⁵ Exhibit 5.

⁶ Exhibit 6.

⁷ Exhibit 6 at 16.

⁸ 15 AAC 05.010(b)(6).

income utilized by CSSD in its calculation. Therefore, there is a potential that should Mr. E. request a modification his child support obligation could increase rather than decrease or remain at its present rate.

THEREFORE IT IS ORDERED:

CSSD's Motion to Dismiss is GRANTED; Mr. E.'s appeal dated May 17, 2009 and received by the department May 19, 2009, is dismissed. This decision does not preclude Mr. E. from petitioning for modification in the future.

DATED this 11th day of June, 2009.

By: Signed
Rebecca Pauli
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 29th day of June, 2009.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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