

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

IN THE MATTER OF:	)	
	)	OAH No. 09-0324-CSS
T. P.	)	CSSD No. 001041521
_____	)	

**DECISION AND ORDER DISMISSING APPEAL**

**I. Introduction**

On June 18, 2009, CSSD filed a Motion to Dismiss the appeal in this child support case. Oral argument on the motion was held on July 2, 2009. Mr. P. appeared by telephone; the custodian, K. A. S., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on July 8, 2009, following the receipt of archived documents from Mr. P.'s prior appeal, OAH No. 06-0637-CSS.

Based on the record as a whole, and after careful consideration, CSSD's motion to dismiss the appeal is granted. CSSD's July 29, 2008, Modified Administrative Child Support and Medical Support Order that modified Mr. P.'s child support to \$50 per month, effective May 1, 2008, is affirmed.

**II. Facts**

**A. Procedural history**

Mr. P.'s child support obligation for A., DOB 00/00/93, was set at \$583 per month in a Decision and Order issued by the Office of Administrative Hearings (OAH) on November 1, 2006, and adopted as final on November 20, 2006.<sup>1</sup> On April 17, 2008, Mr. P. requested a modification review.<sup>2</sup> On April 30, 2008, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On July 29, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. P.'s child support to \$50 per month, effective May 1, 2008.<sup>4</sup> Mr. P. filed an appeal and requested a formal hearing on May 25, 2009,

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<sup>1</sup> *In the Matter of T. P.*, OAH No. 06-0637-CSS. Exh. 1. Hereinafter, this document will be referenced by its adoption date of November 20, 2006.

<sup>2</sup> Exh. 2.

<sup>3</sup> Exh. 3.

<sup>4</sup> Exh. 4.

a period of approximately ten months after the modified order was issued.<sup>5</sup> CSSD filed the Motion to Dismiss on June 18, 2009.

**B. Material facts**

Mr. P. is currently incarcerated. At the time of the hearing, Mr. P. was located at the Anchorage Correctional Center East, which was formerly known as Anchorage Jail. The following chart,<sup>6</sup> reproduced from CSSD’s affidavit, shows Mr. P.’s dates of incarceration and location:

<b>DATES</b>	<b>LOCATION</b>
8/1/02-5/13/03	Absconded
5/13/03-5/16/03	Anchorage Jail
5/16/03-5/20/03	Cook Inlet Pretrial
5/20/03-12/29/03	Out of system
12/29/03-3/7/04	Anchorage Jail
3/7/04-3/9/04	Palmer Medium Security Correctional Center
3/9/04-10/13/04	Point Mackenzie Correctional Facility
10/13/04-10/14/04	MatSu Pretrial
10/14/04-3/4/05	Glennwood Center
3/4/05-12/20/05	Anchorage Electronic Monitoring
12/20/05-1/19/07	Anchorage Probation
1/19/07-2/20/07	Absconded
2/20/07-3/4/07	Anchorage Jail
3/4/07-3/9/07	Cook Inlet Pretrial
3/9/07-8/20/07	Anchorage Probation
8/20/07-1/5/08	Absconded
1/5/08-1/21/08	Anchorage Jail
1/21/08-3/2/08	Cook Inlet Pretrial
3/2/08-3/30/08	Wildwood Pretrial
3/30/08-4/10/08	Palmer-Medium Correctional Center
4/10/08-5/6/08	Palmer-Minimum Correctional Center
5/6/08-6/16/08	Anchorage Jail
6/16/08-6/17/08	Palmer-Medium Correctional Center
6/17/08-7/22/08	Anchorage Jail
7/22/08-7/24/08	Palmer-Medium Correctional Center
7/24/08-8/6/08	Palmer-Minimum Correctional Center
8/6/08-8/14/08	Palmer-Medium Correctional Center
8/14/08-8/16/08	Anchorage Jail
8/16/08	Anchorage Jail, Hold- U.S. Marshal

<sup>5</sup> Exh. 5.

<sup>6</sup> See July 6, 2009, Affidavit of Andrew Rawls, CSSD’s representative at the hearing in this matter.

### III. Discussion

According to CSSD's regulations, when the agency issues a Modified Administrative Child Support and Medical Support Order, the parties have 30 days to file an appeal.<sup>7</sup> If one of the parties does not request a formal hearing within this 30-day time frame, his or her appeal rights expire, and the underlying order remains in effect unless and until another modification is initiated.

In response to Mr. P.'s petition to modify his child support order, CSSD issued a Modified Administrative Child Support and Medical Support Order on July 29, 2008 that set his modified ongoing child support at \$50 per month, effective May 1, 2008. Mr. P. did not appeal CSSD's order until May 25, 2009, a period of nearly ten months after the modification was issued or, nine months after his 30-day appeal time expired.

Mr. P. does not challenge CSSD's claim that his appeal of the July 29, 2008, modification order was untimely. In fact, he testified that he is not concerned with this latest order, understandably because it lowered his child support at \$50 per month, the minimum child support amount allowed. Rather, Mr. P. asserts that he is appealing the Decision and Order issued by the OAH on November 20, 2006, that set his child support at \$583 per month for J. and H. Mr. P. claims he did not receive the Notice of Hearing that informed him of the date and time for the hearing in that appeal, and furthermore, that he did not receive the Decision and Order when it was issued. He requests the opportunity to view the "green card" proving that he received and signed for both the notice of hearing and the decision in that appeal.

CSSD opposes any consideration of the November 20, 2006, Decision and Order in this appeal. The division argues that the Decision and Order became final over 2 ½ years ago so the administrative law judge may not disturb it now.

CSSD is correct, for reasons that will be discussed below. The November 20, 2006, Decision and Order issued in Mr. P.'s former appeal is a final order and cannot be disturbed by the administrative law judge.<sup>8</sup> To help Mr. P. preserve the record for further appeal, if he desires to pursue it, the OAH documents he requested have been recalled from archives and attached to this decision as Attachments A through C.

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<sup>7</sup> 15 AAC 05.010(b)(6).

<sup>8</sup> AS 44.64.060(f); 15 AAC 05.030(i).

Attachment A is a copy of the Notice of Hearing that was sent to Mr. P. at the address CSSD provided with the referral form. In this copy, the green cards have been folded back to show that the notice was sent to Mr. P. by certified mail on September 8, 2006 that a hearing had been calendared in his case for September 28, 2006. Attachment B is a copy of the same notice, but with the green cards bent back into their original position stapled to the notice on the side opposite the certified mail receipts. The green card with Mr. P.'s name on it indicates his notice of the hearing was signed for by "B. K.," on September 16, 2006. Attachment C is a copy of the first page of the final Decision and Order issued in Mr. P.'s case.<sup>9</sup> It was sent to the parties by certified mail on November 20, 2006. As indicated by the green card, Mr. P.'s copy was signed for on November 21, 2006, by "B. K.," the same individual who signed for his Notice of Hearing two months earlier. Significantly, B. K. checked the box marked "Agent" next to his or her signature.

Mr. P. claims that he did not receive either the Notice of Hearing or the Decision and Order issued in his 2006 appeal. He argues several people lived at his residence during the time in question, suggesting that any of them could have signed for his documents and not told him about them or given them to him. Moreover, Mr. P. maintains that he has been moved so many times during his incarceration that not all of his mail catches up with him.

The green cards discussed above were not available for the hearing in Mr. P.'s most recent appeal. It was thus not possible to inquire of the obligor whether he knows the identity of the person named B. K. It is unlikely that Mr. P. doesn't know who that person is, given that the individual signed both green cards. Just as important, B. K. signed for the final Decision and Order as the obligor's agent, thereby suggesting he or she felt a close enough association with Mr. P. to sign in that manner.

Attachments A through C indicate that it is more likely than not that Mr. P. received the Notice of Hearing and the Decision and Order in his 2006 appeal. Even if he did not, service of the documents on him was effective because they were sent to his last-known address.<sup>10</sup> As a party to a child support case, Mr. P. was and is required to keep CSSD apprised of his current address.

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<sup>9</sup> A complete copy of the Decision and Order is at Exh. 1.

<sup>10</sup> 15 AAC 05.010(c).

Finally, Mr. P. seems to suggest that he did not receive the Notice of Hearing and the Decision and Order in his 2006 appeal because of the amount of time he has been incarcerated in the last few years and the difficulty in receiving his mail. An examination of the obligor's incarceration history shows that this should not have been a problem for him during the time at issue in 2006. From December 20, 2005, through January 19, 2007, the chart indicates Mr. P. was not incarcerated in a facility, but in fact was on probation in Anchorage. This means he would have been out of jail and capable of receiving his mail.

#### **IV. Conclusion**

In summary, Mr. P.'s appeal of the July 29, 2008, Modified Administrative Child Support and Medical Support Order was untimely and should be dismissed. He did not present any evidence that warrants accepting an untimely appeal and in fact, he does not oppose CSSD's modification order. As to the real reason for his appeal, an attempt to revisit the November 20, 2006, Decision and Order in OAH 06-0637-CSS, Mr. P. also cannot prevail. That order is final by operation of law. Even so, in the event Mr. P. wishes to further appeal this decision, which includes the discussion of his earlier matter before the OAH, the green cards from his 2006 appeal have been obtained from archives so as to preserve the documentary record. An examination of those documents does not present evidence sufficient to warrant reopening the record in that appeal. CSSD's Motion to Dismiss should be granted and Mr. P.'s appeal should be dismissed.

#### **V. Child Support Order**

- CSSD's June 18, 2009, Motion to Dismiss is granted and Mr. P.'s May 25, 2009, appeal is dismissed;
- CSSD's July 29, 2008, Modified Administrative Child Support and Medical Support Order stands as issued.

DATED this 9<sup>th</sup> day of July, 2009.

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 28<sup>th</sup> day of July, 2009.

By: Signed \_\_\_\_\_  
Signature  
Jerry Burnett \_\_\_\_\_  
Name  
Deputy Commissioner \_\_\_\_\_  
Title

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