

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

IN THE MATTER OF: )

R. T. F. )

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) OAH No. 09-0330-CSS

) CSSD No. 001119814

**DECISION AND ORDER**

**I. Introduction**

The obligor, R. T. F., appealed a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in her case on May 13, 2009. The Obligee children are Y., DOB 00/00/91, and Z., DOB 00/00/93.

The formal hearing was held on July 2, 2009. Ms. F. did not participate; the custodian, B. L. F., appeared by telephone in the hearing.<sup>1</sup> Erinn Brian., Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on July 2, 2009, as discussed below.

Based on the record as a whole and after due deliberation, CSSD's Notice of Denial of Modification Review is affirmed.

**II. Facts**

Ms. F.'s child support previously was set at \$352 per month for two children and \$261 per month for one child in 2007.<sup>2</sup> On December 1, 2008, Ms. F. requested a modification.<sup>3</sup> On December 3, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>4</sup> Ms. F. did not respond but instead filed another request for modification on February 23, 2009.<sup>5</sup> On May 13, 2009, CSSD issued a Notice of Denial of Modification Review for the reason that Ms. F. did not provide the income documentation necessary for CSSD to perform a modification review.<sup>6</sup> Ms. F. filed an appeal on June 2, 2009.<sup>7</sup>

The Office of Administrative Hearings ("OAH") sent each party a notice of the date and time for the hearing by certified mail. Inexplicably, each party's notice was sent to the other

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<sup>1</sup> Two telephone calls were placed to Ms. F. to facilitate her participation in the hearing. Her home phone has been disconnected and the cell phone number Mr. F. provided as a possible alternative was not answered.

<sup>2</sup> Exh. 1 at pg. 4; pre-hearing brief at pg. 1.

<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 3.

<sup>5</sup> Exh. 4.

<sup>6</sup> Exh. 5.

person, possibly because the addresses on the envelopes were switched. In any event, both parties received the notice. Ms. F.'s signature is on one of the green cards and the signature of E. J. F. is on the other. Mr. F. reports that E. F. is his mother and lives with him.

Ms. F. did not call the OAH to provide a telephone number where she could be reached for the hearing, so before the hearing started a call was placed to her home number on record. That number has been disconnected. In the hope of contacting Ms. F., Mr. F. provided a cell phone number that apparently belongs to Ms. F.'s boyfriend. A call placed to that number was unanswered. Because Ms. F. received and signed for a notice of the hearing, service was found to be effective and the hearing was conducted without her participation.<sup>8</sup>

At the hearing, CSSD stated Ms. F.'s request for modification had been denied because she did not provide the income information that is necessary to conduct a modification review. CSSD also checked the Alaska Department of Labor and Workforce Development database, but there have been no earnings reported for Ms. F. since 2005. Mr. F. reported that the obligor supports herself primarily on Native corporation dividends, which also provide the bulk of her child support payments to the obligees Y. and Z. The custodian also stated that Y. graduated from high school this year, so the child support payments have gone down from \$352 per month for two children to \$261 per month for one child.

### **III. Discussion**

#### **A. Failure to appear**

Ms. F. filed an appeal and requested a formal hearing, but 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 requesting party fails to appear. Typically the record should not be closed and a decision issued until at least 10 days after the hearing so as to provide the requesting party the opportunity to show "reasonable cause" for his or her failure to appear. But 15 AAC 05.030(k) gives the administrative law judge authority to waive that deadline "if it appears to the officer that strict adherence to the deadline . . . would work an injustice . . . ." In this case, waiting 10 days to issue the decision would set the record closure date as July 12, 2009, with a decision to follow. However, the undersigned administrative law

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<sup>7</sup> Exh. 6.

<sup>8</sup> "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).

judge will be on extended leave as of July 10, 2009, so if the decision is not issued before that date, the parties would have to wait up to 2 months for a decision. Ms. F. should receive a timely decision in her appeal.

#### **B. Denial of modification**

A parent is obligated both by statute and at common law to support his or her children.<sup>9</sup> Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>10</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>11</sup>

Ms. F. did not provide any income information, as required by CSSD for the modification review, so CSSD denied the modification request. Ms. F. then appealed CSSD’s Notice of Denial of Modification Review, but she did not appear at the hearing to present any evidence regarding her appeal. In the absence of any additional evidence from Ms. F. – other than the assertions she made in her appeal that she cannot afford the child support amount, CSSD’s Modified Administrative Child Support and Medical Support Order should be affirmed.

#### **IV. Conclusion**

Ms. F. did not meet her burden of proving by a preponderance of the evidence that CSSD’s Notice of Denial of Modification Review was issued in error, as required by 15 AAC 05.030(h). Therefore, CSSD’s order should be affirmed.

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

- CSSD’s May 13, 2009, Notice of Denial of Modification Review is affirmed;
- Ms. F. remains liable for support as set forth in OAH 07-0279-CSS, decision and order adopted on October 11, 2007.

DATED this 2<sup>nd</sup> day of July, 2009.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>9</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> 15 AAC 125.321(d).

**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 20<sup>th</sup> day of July, 2009.

By: Signed \_\_\_\_\_  
Signature  
Christopher Kennedy \_\_\_\_\_  
Name  
Deputy Chief Administrative Law Judge  
Title

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