

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

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| IN THE MATTER OF: |) | |
| |) | OAH No. 09-0331-CSS |
| R. B. D. |) | CSSD No. 001146356 |
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DECISION AND ORDER

I. Introduction

This case involves the obligor R. B. D.’ appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on May 12, 2009. The obligee child is M., a 7 year-old.

The hearing was held on September 24, 2009. Mr. D. did not appear; the custodian, B. M. D., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 5, 2009.

Based on the record as a whole and after careful consideration, CSSD’s May 12, 2009, Amended Administrative Child Support and Medical Support Order is affirmed.

II. Facts

In November 2006, Ms. D. requested child support services on M.’s behalf, and their state of residence submitted a request for child support establishment on February 26, 2007.¹ On February 17, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. D.² He requested an administrative review, but it was the petitioning state that provided Mr. D.’ financial information.³ On May 12, 2009, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. D.’ ongoing child support at \$813 per month, with arrears of \$17,354 for the period from November 2006 through May 2009.⁴ Mr. D. filed an appeal on June 12, 2009. It states he does not receive the PFD because he is a Washington resident, CSSD used incorrect annual income amounts, CSSD cannot charge him for support back to 2006, and Ms. D. agrees with him.⁵

¹ Exhs. 1 & 2.
² Exh. 3 at pgs. 13 & 14.
³ Exhs. 4-9.
⁴ Exh. 10.
⁵ Exh. 11.

Mr. D.' appeal was referred to the Office of Administrative Hearings (OAH) on June 17, 2009. Mr. D. had requested and CSSD did not oppose a delay in the hearing due to Mr. D.' employment in the fishing industry. By certified notice dated June 19, 2009 and signed for by an individual at Mr. D.' address on June 22, 2009, the hearing was calendared for September 24, 2009. At the time of the hearing, telephone calls were placed to two different numbers on record for Mr. D., but neither got through to the obligor. A voicemail message was placed on each answering machine directing Mr. D. to contact the OAH, but as of the date of this decision, the OAH has not heard from him.

Because Mr. D. received his notice of the date and time for the hearing, service of the notice was found to be effective and the hearing was conducted without his participation.⁶

III. Discussion

Mr. D. filed an appeal of a child support order and he received the notice of the date and time set for the hearing. In fact, the date of the hearing was delayed significantly at his request due to the demands of his employment in the fishing industry. However, he 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.⁷ 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 Mr. D.' child support for each year at issue, beginning in November 2006, from his actual income as reported to the Alaska Department of Labor and Workforce Development:

- For 2006, CSSD calculated Mr. D.' child support at \$449 per month, based on earnings of \$45,624 plus the PFD.⁸
- For 2007, CSSD calculated the child support amount at \$700 per month from January through July, based on earnings of \$67,060, plus the PFD.⁹

⁶ "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).

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ Exh. 10 at pg. 7.

⁹ Exh. 10 at pg. 8.

- As of August 2007, the calculated amount increased to \$813 per month because one of Mr. D.' older children emancipated and he lost the deduction from income for supporting that child.¹⁰
- For 2008, CSSD calculated Mr. D.' child support at \$704 per month, based on earnings of \$55,317.50, plus the PFD.¹¹
- For 2009, CSSD calculated Mr. D.' child support at \$775 per month, based on estimated earnings for the year of \$62,652, plus the PFD.¹²

At the hearing, CSSD indicated the 2008, 2009 and ongoing child support amount should be \$813 per month, as determined for the second half of 2007. The division explained this is because the calculations for the later years do not meet the threshold 15% change from \$813 per month necessary to warrant modification.¹³

Mr. D.' appeal stated he is a Washington resident and does not qualify for Alaska's permanent fund dividend.¹⁴ In response, CSSD indicated in its pre-hearing brief that the records available to it show Mr. D. applied for PFDs in 2008 and 2009. The division did not file documentary proof of this, but it is not necessary since Mr. D. failed to appear for the hearing. In any event, Mr. D.' employer reported him as having an Alaska address in its Employment Verification Questionnaire.¹⁵ Also, the Seattle address Mr. D. used in his appeal appears to be his employer's address.¹⁶

Finally, Mr. D.' appeal said he had made direct payments to Ms. D. When asked about these payments at the hearing, CSSD indicated he has been given credit for those payments to Ms. D. in his account statement.

Mr. D. appealed CSSD's order but he did not file income information, nor did he appear for the hearing, even after the date was changed at his request to accommodate his work schedule. He also did not contact the OAH in response to the two voicemail messages left for him at the time of the hearing. Thus in the absence of any additional evidence from Mr. D. --

¹⁰ Exh. 10 at pg. 9.

¹¹ Exh. 13 at pg. 1.

¹² Exh. 13 at pg. 2.

¹³ See 15 AAC 125.105(e).

¹⁴ See Exh. 11.

¹⁵ Exh. 2 at pg. 16.

¹⁶ See Exh. 11 at pg 1 and Exh. 9 at pg. 2.

other than the assertions he made in his appeal, CSSD's Amended Administrative Child and Medical Support Order should be affirmed.

IV. Conclusion

Mr. D. did not meet his 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 May 12, 2009, Amended Administrative Child and Medical Support Order is affirmed.

DATED this 9th day of October, 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 27th day of October, 2009.

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

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