

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

IN THE MATTER OF:)

D. A. D.)

) OAH No. 09-0472-CSS

) CSSD No. 001093958

DECISION AND ORDER

I. Introduction

The obligor, D. A. D., appeals a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in his case on August 10, 2009. The Oblige child is A., who is 11 years old.

The formal hearing was held on September 23, 2009. Mr. D. did not appear or otherwise participate. The Custodian, S. S. J., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on October 10, 2009.

Based on the record and after due deliberation, CSSD’s Notice of Denial of Modification Review is affirmed.

II. Facts

Mr. D.’ child support obligation for A. was set at \$340 per month in 2003.¹ On January 8, 2009, Mr. D. requested a modification review.² On January 26, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order and requested income information from Mr. D.³ He did not respond.⁴ On August 10, 2009, CSSD issued a Notice of Denial of Modification Review for the reason that Mr. D. did not provide income information.⁵ Mr. D. filed an appeal on August 11, 2009, asserting he is currently unemployed and searching for employment.⁶

On September 10, 2009, the Office of Administrative Hearings (“OAH”) sent both parties a notice of the date and time for the hearing by certified mail. Mr. D. received and signed for his

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Pre-hearing brief at pg. 1.

⁵ Exh. 4.

⁶ Exh. 5.

notice on September 15, 2009. He did not provide a telephone number to be reached for the hearing, nor does CSSD have a contact number on record for Mr. D. It was thus not possible to call him for the hearing. His address of record is a postal box in Anchorage, but there was an out of state address hand-written on the green card, so Mr. D. may have moved. Because his notice was sent to the address he provided, and he received and signed for it, service of the notice on Mr. D. was found to be effective and the hearing was conducted without his participation.⁷ Mr. D. has not contacted the OAH regarding his hearing.

During the hearing, CSSD stated the agency denied Mr. D.' petition for modification because he did not provide any information about his financial circumstances. Ms. J. stated Mr. D. is a disabled veteran who does not get disability benefits.

III. Discussion

Mr. D. filed an appeal and requested a formal hearing, but 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 requesting party fails to appear.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁸ 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 and the order may be modified. However, if the person who requests a review does not provide evidence sufficient to establish that the order should be modified, CSSD may decline the review.⁹

Mr. D. did not provide his income information, as requested by CSSD for both the modification and the appeal. He appealed CSSD's Notice of Denial of Modification Review, but he did not appear at the hearing to present any evidence regarding his appeal. CSSD therefore correctly denied his petition for modification.

In the absence of any evidence other than the statements Mr. D. made on his appeal form, CSSD's Notice of Denial of Modification Review should be affirmed. Mr. D. may file another petition for modification, but he should be prepared to present more evidence than he did in this appeal regarding his claimed unemployment.

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 AS 25.27.190(e).

IV. Conclusion

Mr. D. did not provide evidence that he has had a “material change in circumstances” sufficient to modify his child support obligation, nor did he appear at the hearing to provide any evidence. As a result, Mr. D. did not meet his burden of proving by a preponderance of the evidence that CSSD’s Notice of Denial of Modification Review was incorrect, as required by 15AAC 05.030(h). Therefore, CSSD’s order should be affirmed.

V. Child Support Order

- CSSD’s August 10, 2009, Notice of Denial of Modification Review is affirmed.

DATED this 12th 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 30th 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.]

⁹ 15 AAC 125.316(e).