

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

IN THE MATTER OF: )

J. L. P. )

---

) OAH No. 09-0695-CSS

) CSSD No. 001043176

**DECISION AND ORDER GRANTING  
MOTION FOR SUMMARY ADJUDICATION**

**I. Introduction**

On January 7, 2010, CSSD filed a Motion for Summary Adjudication in this child support case. Oral argument on the motion was held on January 19, 2010. The obligor parent, J. L. P., had filed the appeal and appeared by telephone. The child in this case is N., who is currently 19 years of age. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on February 2, 2010.

Based on the record as a whole, and after due deliberation, CSSD's motion for summary adjudication is granted.

**II. Facts and Procedural History**

On November 25, 1996, CSSD served a Notice and Finding of Financial Responsibility on Ms. P. that set her ongoing child support obligation for N., who was born in 1990, at \$222 per month, with arrears of \$9,255 back to June 1993.<sup>1</sup> On October 4, 2004, the court issued a final custody order granting custody of N. to her father and ordering Ms. P. to pay child support of \$50 per month, effective October 1, 2004.<sup>2</sup>

On April 3, 2009, Ms. P. filed a Motion to Vacate a Default Order with CSSD.<sup>3</sup> On September 29, 2009, CSSD granted the motion and issued an Administrative Child Support and Medical Support Order. The new order set Ms. P.'s arrears at \$12,118.83 for the period from June 1, 1993 through September 30, 2004.<sup>4</sup> Later time periods were not adjusted because a default review was no longer available to Ms. P. as of October 1, 2004, the effective date of the court order for her to pay support for N.

---

<sup>1</sup> Exh. 1.

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

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

<sup>4</sup> Exhs. 8, 9 & 10.

Ms. P. filed an appeal and requested a formal hearing on December 10, 2009.<sup>5</sup> CSSD filed the Motion for Summary Adjudication and oral argument on the motion was convened on January 19, 2010.

### **III. Discussion**

In her appeal, Ms. P. claims that she is disabled and cannot pay her child support arrears. In addition, Ms. P. argues that the obligee N. and her two year-old son have been living in Ms. P.'s home since 2005, a full three years before N. was emancipated. As a result, Ms. P. requests that CSSD vacate her child support arrears and cease collections in her case.

In response, CSSD's motion asserts that it should be granted summary adjudication because there are no material issues of fact necessitating a hearing, and it is entitled to judgment as a matter of law. According to CSSD, it has calculated Ms. P.'s child support from her actual income figures for the period from 1993 through 2003 and that the support amount for almost every year is the minimum allowed by law, \$50 per month.<sup>6</sup> The motion states that Ms. P.'s child support has been set at the lowest amount possible pursuant to Civil Rule 90.3, so there is no more relief available to her.

Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated from his or her "total income from all sources." When an obligor parent requests that CSSD conduct a review of an administrative child support order that was based on a default income amount, Alaska law allows the agency to adjust the order based on the parent's actual income figures.<sup>7</sup> There is no provision in the law for CSSD to vacate a child support order during a default review. Nor may CSSD adjust the support amount for any time periods covered by a court order.

In this case, CSSD has reviewed and adjusted Ms. P.'s child support order based on her actual income figures for each year from 1993 through 2003. The result is a \$50 per month amount for all but two years. However, as of October 1, 2004 forward, Ms. P.'s child support obligation is controlled by the court order and may not be disturbed by CSSD. Ms. P. asserted that N. has been in her custody since 2005, but CSSD has no authority to adjust the support amount due to a change in custody after the court order was issued. She would have had to

---

<sup>5</sup> Exh. 11.

<sup>6</sup> Ms. P.'s child support was set at \$63 per month for 2000 and \$85 per month for 2001. *See* Exh. 10 at pgs. 14 & 15.

notify the court of the change in custody and request that her ongoing child support obligation be suspended or vacated *by the court*, not by CSSD.

Neither may CSSD vacate Ms. P.'s child support obligation for the time period before the court order. The Alaska Supreme Court has stated that a child support obligation may not be excused, even for an indigent parent.<sup>8</sup> Thus, a formal hearing would not provide any relief to Ms. P. because CSSD's enforcement actions in her case cannot be terminated. However deserving as Ms. P. may be, CSSD may only adjust her arrears based on her actual income – the agency may not vacate any of her arrears.

#### **IV. Conclusion**

Ms. P. did not meet her burden of proving CSSD's revised Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). CSSD does not have the authority to vacate her child support arrears or adjust the arrears for any time period covered by a court order. Therefore, CSSD's Amended Administrative Child Support and Medical Support Order should be affirmed.

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

- CSSD's January 7, 2010, Motion for Summary Adjudication is GRANTED;
- The September 29, 2009, Administrative Child Support and Medical Support Order is AFFIRMED.

DATED this 22<sup>nd</sup> day of February 2010.

By: Signed  
Kay L. Howard  
Administrative Law Judge

---

<sup>7</sup> AS 25.27.195(b).

<sup>8</sup> *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

**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 12th day of March, 2010.

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

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