

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

In the Matter of:)	
)	OAH No. 13-0165-CSS
N A. T)	CSSD No. 001133934
_____)	

DECISION AND ORDER

I. Introduction

N T is the father and obligor parent of E. B U is E’s mother and custodial parent. The Child Support Services Division (CSSD) issued an Administrative Child Support and Medical Support Order on December 6, 2004, that ordered N T to pay \$418 in monthly child support for E.¹ Mr. T moved to vacate that child support order on December 27, 2012.² CSSD issued an Administrative Review Decision on January 17, 2013 that denied Mr. T’s motion.³ He appealed.⁴

The hearing was held on February 28, 2013. Mr. T and Ms. U appeared telephonically. Mr. T’s mother, C T, appeared in person. Russell Crisp, Child Support Specialist, who represented CSSD, participated in person.

The record was held open after the hearing to allow Mr. T and CSSD to submit additional information.⁵

Based on the evidence and after careful consideration, Mr. T is not entitled to have the December 6, 2004 Child Support and Medical Support Order vacated. However, this matter is remanded to CSSD to determine whether the support order should be modified, based on Mr. T’s November 22, 2010 response to a “Notice of Withholding,” which informed CSSD that he was not employed.

¹ Ex. 1.

² Ex. 2.

³ Ex. 3.

⁴ Ex. 4.

⁵ Mr. T’s post-hearing submissions are marked as Exhibits A – E. CSSD’s post-hearing submission is marked as Exhibit 5.

II. Facts

A. Procedural Background

E is the child of Mr. T and Ms. U. He was born on 00/00/03. On December 6, 2004, CSSD issued an Administrative Child Support and Medical Support Order that ordered N T to pay \$418 in monthly child support for E from January 1, 2005 forward.⁶ This child support amount was based upon his PFD and wages of \$29,584.⁷ CSSD arrived at the wage figure of \$29,584 by taking Mr. T's wages for the first three quarters of 2004, as shown in Department of Labor and Workforce Development reports, and extrapolating those wages through the end of 2004.⁸ Mr. T's actual wages for 2004 were \$29,559.38.⁹

This CSSD case was closed in late 2005, when Ms. U withdrew from CSSD services. She reapplied for CSSD services on June 2, 2010, which reopened the case. Ms. U sent CSSD a letter on August 3, 2011, that stated she and Mr. T had resided together from June 2005 through December 2008.¹⁰ CSSD processed that as an adjustment and reduced Mr. T's child support arrearages on June 26, 2012.¹¹

CSSD sent Mr. T a "Notice of Withholding" dated June 29, 2010. He returned that "Notice" to CSSD on or about November 22, 2010, stating "I do not have a job."¹² On September 8, 2011, CSSD sent Mr. T another "Notice of Withholding." He returned that "Notice" also, on or about October 12, 2011, stating "I am unemployed at this time."¹³ CSSD has no record of Mr. T requesting a modification.¹⁴

Mr. T moved to vacate the December 6, 2004 child support order on December 27, 2012.¹⁵ CSSD issued an Administrative Review Decision on January 17, 2013, that denied Mr. T's motion.¹⁶

⁶ Ex. 1.
⁷ Ex. 1, p. 8.
⁸ Ex. 1, p. 8.
⁹ Ex. 4, p. 3.
¹⁰ Ex. 5. A copy of the letter is not in the record.
¹¹ Exs. 5, A.
¹² Ex. E.
¹³ Ex. C.
¹⁴ Ex. 5.
¹⁵ Ex. 2.
¹⁶ Ex. 3.

B. Material Facts

Mr. T was employed in 2004 and earned a total of \$29,559.38. His wages in 2005 were slightly less: \$28,252.19.¹⁷ Although he testified he had not worked since 2005, Social Security records shows he earned wages of \$15,674.34 in 2006.¹⁸ He has been intermittently incarcerated or subject to electronic monitoring since early 2010, and is currently incarcerated for a 270 day sentence that began on February 22, 2013.¹⁹

III. Discussion

This case raises two issues. The first is whether Mr. T is entitled to having his December 6, 2004 child support order vacated. The second issue is whether Mr. T's communication with CSSD in either November 2010 or October 2011 constitutes a request for CSSD to modify his child support order.

A. Motion to Vacate

Alaska Statute 25.27.195(b) permits obligor parents to file a motion for CSSD to vacate a prior support order "that was based on a default amount rather than the obligor's actual ability to pay." A default income amount might be generated from such sources as the minimum hourly wage or average annual wage figures for individuals in the obligor's gender and age brackets.²⁰ Under 15 AAC 125.121(a), when a proper motion to vacate a default order has been made, the agency must vacate the prior order if it determines "that the default income figure is not an accurate reflection of the obligor's income for purposes of calculating [child support]."

The facts, however, show that the December 6, 2004 child support order was based on Mr. T's actual income, not an estimate of his income. CSSD extrapolated Mr. T's 2004 income from his actual wage income during the first three quarters of that year. The figure CSSD arrived at was \$29,584, a difference of \$25 from his actual 2004 wages of \$29,559.38. Because CSSD's December 6, 2004 child support order was based on Mr. T's actual wages, he is not entitled to having that order vacated.

¹⁷ Ex. 4, p. 3.

¹⁸ Ex. 4, p. 3.

¹⁹ N T testimony; C T testimony; Ex. 4, p. 2.

²⁰ 15 AAC 125.050(d).

B. Earlier Modification Requests

A parent may request that CSSD modify future child support payments based upon a showing of good cause and a material change in circumstances.²¹ Although CSSD has no record of modification requests, Mr. T sent CSSD two separate responses to the agency's "Notices of Withholding" in November 2010 and October 2011. Each informed CSSD that he did not have a job. While these responses did not specifically request a review of the child support order or state that there had been a change in circumstances,²² the language in each of Mr. T's responses should have placed CSSD on notice that he was not employed and was objecting to his child support amount.²³ Becoming unemployed after the 2004 child support order was issued could have constituted a change in circumstances, so CSSD should therefore have treated Mr. T's responses as a request to modify his child support obligation. The appropriate remedy is to remand the matter to CSSD for a modification review, using the earlier date of November 2010 as the date of the request.

IV. Conclusion

Mr. T is not entitled to having his December 6, 2004 child support order vacated because it was based upon his actual income. However, this case should be remanded to CSSD to determine whether that child support order should be modified based upon his November 2010 request.

V. Child Support Order

- The Administrative Child Support and Medical Support Order dated December 6, 2004 is not vacated and remains in full force and effect;
- This case is remanded to CSSD to determine whether the order dated December 6, 2004 should be modified based upon Mr. T's November 2010 modification request.

DATED this 3rd day of April, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

²¹ AS 25.27.190.

²² See Ex. D for a copy of CSSD form 04-1686A entitled "Request for Modification of a Child Support Order."

²³ Both Mr. T and Ms. T testified that Mr. T responded to CSSD notices on numerous occasions informing it that he was unemployed.

Non-Adoption Options

B. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as set forth below, and adopts the proposed decision as revised:

This child support order is revised to state the Administrative Child Support and Medical Support Order dated December 6, 2004 is not vacated and remains in full force and effect and will not be remanded to CSSD for further consideration.

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 6th day of May, 2013.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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