

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

In the Matter of:	)	
	)	OAH No. 13-0787-CSS
G J	)	CSSD No. 001028242
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**DECISION AND ORDER**

**I. Introduction**

The obligor, G J, has appealed an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on April 27, 2013. CSSD's decision denied his request for relief of a default administrative child support order issued in 1995. The obligee children in this case are T and X, both of whom have emancipated. The other party is Y Z.

After Mr. J filed the appeal, CSSD filed a Motion for Summary Adjudication. The hearing consisted of several sessions and ended on December 24, 2013. Mr. J appeared in person and through counsel, Henry Tashjian. Ms. Z could not be located, so she did not participate.<sup>1</sup> Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The hearing record closed on January 3, 2014.

Based on the record as a whole and after careful consideration, CSSD's Administrative Review Decision is reversed. Mr. J is entitled to two adjustments of the Notice and Finding of Financial Responsibility dated August 9, 1995: the 1994 child support amount contained therein is changed to \$167 per month for two children, and the 1995 child support amount is changed to \$105 per month for two children. No other adjustments are warranted, and the subsequent modifications to Mr. J's child support obligation remain as issued. Mr. J's challenge regarding service of the NFFR is denied.

**II. Facts**

CSSD served Mr. J with a paternity complaint for T on November 7, 1992.<sup>2</sup> Mr. J answered the complaint on November 10, 1992, giving his address as the No Name.<sup>3</sup> The

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<sup>1</sup> The case referral from CSSD had two telephone numbers listed for Ms. Z, but both were out of service at the time of the hearing.

<sup>2</sup> Exh. 24, p. 2.

<sup>3</sup> Exh. 25.

Superior Court adjudicated Mr. J’s paternity of T and X on May 11, 1993.<sup>4</sup> Mr. J subsequently signed paternity affidavits for both children on August 23, 1994.<sup>5</sup> CSSD sent a Notice and Finding of Financial Responsibility (NFFR) to Mr. J sometime prior to March 21, 1995, but the exact date cannot be verified.<sup>6</sup> The NFFR was returned to CSSD as “unclaimed” on April 18, 1995.<sup>7</sup> CSSD sent another NFFR to Mr. J on August 9, 1995,<sup>8</sup> but it was returned unserved on September 7, 1995.<sup>9</sup>

Over the next two months, CSSD made several attempts to get a current address for Mr. J. Either through the jail or the postal service, CSSD obtained three separate addresses for Mr. J – on No Name Street, No Name Avenue, and No Name Ave., the location of No Name and the No Name.<sup>10</sup> CSSD sent NFFR packets to Mr. J at all three locations.<sup>11</sup> The notices sent to him at the No Name and No Name Avenue addresses were returned to CSSD, either because there was no such number or the obligor had moved and left no forwarding address.<sup>12</sup> The NFFR sent to Mr. J at the No Name was returned “unclaimed.”<sup>13</sup>

On November 28, 1995, CSSD gave the NFFR to Todd Severson, a process server, in order to serve Mr. J at the No Name.<sup>14</sup> Mr. Severson went to the No Name on December 3, 1995 at 2:53 p.m., but Mr. J was not there at the time, so the process server left the NFFR with S B, a staff member there.<sup>15</sup> It was subsequently learned that later that same day, Mr. J was arrested for theft and remanded to the Anchorage Jail at 7:55 p.m.<sup>16</sup> It is not known whether Mr. B actually gave the NFFR packet to Mr. J during the time period prior to the obligor’s arrest and incarceration, but Mr. J denies he ever received the NFFR. Mr. J was transferred to a halfway

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<sup>4</sup> Exh. 27.

<sup>5</sup> Exh. 28, Affidavit of Andrew Rawls, Child Support Specialist.

<sup>6</sup> During the hearing process, CSSD was directed to file a copy of the diary entries from its case management system. The first entry is dated March 21, 1995. Exh. 30, p. 1. CSSD’s earlier records were not able to be retrieved, possibly because of a system changeover .

<sup>7</sup> Exh. 30, p. 1.

<sup>8</sup> Exh. 1.

<sup>9</sup> Exh. 30, p. 3.

<sup>10</sup> Exh. 30, p. 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Exh. 1, p. 10.

<sup>16</sup> Exh. 22, p. 1.

house on December 5, 1995, then released from custody on December 10, 1995 at 7:55 p.m., exactly seven days after his admission to the jail.<sup>17</sup>

The next contact CSSD had from Mr. J occurred on August 3, 1996, when he sent the agency a letter with the return address of No Name Ave. in Anchorage, the street address for the No Name.<sup>18</sup> The contents of the letter are unknown. A few days later, on August 29, 1996, Mr. J called CSSD requesting information about where to send payments so he could see the children.<sup>19</sup> CSSD staff informed Mr. J that they could not help with visitation issues, but that they would forward a letter to Ms. Z from him.<sup>20</sup> On September 17, 1996, Mr. J called CSSD and stated he was at the No Name.<sup>21</sup>

On November 30, 2001, Mr. J requested a modification, but CSSD denied it.<sup>22</sup> Mr. J appealed and attended a formal hearing before Revenue Hearing Examiner Mark T. Handley. Mr. Handley issued a Child Support Decision on April 18, 2002 that set Mr. J's modified ongoing child support at \$216 per month, effective January 1, 2002, based on his income.<sup>23</sup> Mr. J requested another modification review in January 2008.<sup>24</sup> CSSD granted his petition and subsequently issued a Modified Administrative Child Support and Medical Support Order on May 8, 2008.<sup>25</sup>

T emancipated in 2009 and X emancipated in 2010. Between March 2011 and January 2013, Mr. J entered into six separate payment agreements with CSSD regarding his child support arrears.<sup>26</sup> On March 15, 2013, Mr. J requested a settlement agreement with CSSD, which the agency denied in a letter dated April 26, 2013.<sup>27</sup> CSSD treated Mr. J's request for a settlement agreement as a Motion to Vacate Default Order: on April 27, 2013, CSSD issued an Administrative Review Decision that denied his request for a default review because "the child

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17 Exh. 22, p. 1. Mr. J was in and out of jail numerous times from 1993 through 2001. *See also* Exhs. B-D.

18 Exh. 29.

19 Exh. 30, p.11.

20 *Id.*

21 Exh. 30, p. 11.

22 Exh. 2.

23 Exh. 3.

24 Exh. 4.

25 Exh. 5.

26 Exhs. 6-15.

27 Exhs. 16-17.

support amount was based on your actual income, which include[s] employer reported wages and [a] minimum order of \$50.00.”<sup>28</sup> Mr. J appealed on May 7, 2013.<sup>29</sup>

### III. Discussion

As the person who filed the appeal, Mr. J has the burden of proving by a preponderance of the evidence that CSSD’s Administrative Review Decision denying his request to vacate a default order is incorrect.<sup>30</sup>

#### A. *The 1994 and 1995 Calculations are Based on Default Income Amounts*

An obligor parent may request that CSSD vacate and reissue a child support order previously calculated from a default income amount, not the person’s actual income and ability to pay.<sup>31</sup> A default income amount is one that was based on the former AFDC needs standards; gender-based average annual wage statistics or other group wage statistics; or the federal or state minimum wage in effect at the time.<sup>32</sup> A calculation is *not* based on a default income amount if it was based on the obligor’s actual income information; an estimated or projected income based on the obligor’s actual but incomplete information; or imputed potential income based on a finding of voluntary unemployment or underemployment.<sup>33</sup> According to the Alaska Department of Labor and Workforce Development (DOL), Mr. J had the following income:<sup>34</sup>

Year	Type of Income	Indiv. Total	Year Total
1991	UIB	\$5752.00	
“	Wages recv’d from one employer	\$1012.00	
“	PFD	\$ 931.34	\$ 7695.34
1992	UIB	\$2841.00	
“	Wages recv’d from ten employers	\$6874.49	
“	PFD	\$ 915.84	\$10,631.33
1993	UIB	\$ 3066.00	
“	Wages recv’d from two employers	\$15773.80	
“	PFD	\$ 949.46	\$19,789.26

<sup>28</sup> Exh. 18.

<sup>29</sup> Exh. 4.

<sup>30</sup> 15 AAC 05.030(h).

<sup>31</sup> AS 25.27.195(b).

<sup>32</sup> 15 AAC 125.121(j)(1).

<sup>33</sup> 15 AAC 125.121(j)(2).

<sup>34</sup> Exh. 22, pp. 2-5.

1994	UIB	\$ 3294.00	
“	Wages recv’d from one employer	\$ 3686.51	
“	PFD	\$ 983.90	\$ 7964.41
1995	UIB	\$ 3680.00	
“	Wages recv’d from any employers	\$ 0.00	
“	PFD	\$ 990.30	\$ 4670.30

CSSD used the exact income figures listed above for 1991, 1992 and 1993 to calculate his child support at \$50 per month in 1991; \$157 per month for one child in 1992; and \$372 per month for two children in 1993.<sup>35</sup> Thus, those calculations are correct on their face and are not derived from default income amounts. The calculations for those three years must remain undisturbed.

However, CSSD’s calculations for 1994 (\$360 per month for two children) and 1995 (\$367 per month for two children), are not based on Mr. J’s actual income, so they require further analysis. CSSD performed these calculations in August 1995. In 1994, as can be seen from the table above, Mr. J received a total of \$7964.41 from a combination of UIB, wages and the PFD. CSSD used the actual UIB and PFD amounts in its calculation for that year, but the agency multiplied the wages he received during the third quarter times four to reach an annual wages figure of \$14,706.04.<sup>36</sup> While CSSD’s regulation 15 AAC 125.121(j)(2) permits the agency to estimate or project an obligor’s income from actual or incomplete information, it is essentially a forward-looking projection. But it is not proper under the regulation, absent a finding of voluntary unemployment or underemployment, to “estimate” or “project” an obligor’s income into the past, when in fact, CSSD already knows what the obligor’s income was. To do that for a past year amounts to “making up” income when there is no possible way the obligor could earn that amount. That is a type of default income amount, and as a result, the calculation for 1994 should be based on Mr. J’s actual 1994 income. Inserting the figures from the table above into CSSD’s online child support calculator<sup>37</sup> yields a child support amount of \$167 per month for two children.<sup>38</sup>

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<sup>35</sup> Exh. 1, pp. 5-7.

<sup>36</sup> Exh. 1, p. 8.

<sup>37</sup> <http://www.childsupport.alaska.gov/>

<sup>38</sup> Attachment A.

The calculation for 1995 should be treated the same as the one for 1994. It is now known that Mr. J did not have any income from wages in 1995. In August of that year, CSSD would have known he did not have income in the first and second quarters, but the agency could have estimated his income for the third and fourth quarters. However, as with 1994, CSSD imputed income to Mr. J for all of 1995. Thus, this also is a type of default income amount, so Mr. J's 1995 child support should be calculated from his actual income for the year. Inserting the figures from the table above into CSSD's online child support calculator yields a child support amount of \$105 per month for two children.<sup>39</sup>

*B. Mr. J Was Served with the NFFR on December 3, 1995*

Alaska Statute 25.27.140(a) authorizes the administrative establishment of child support orders. It states in part that “[i]f no support order has been entered, the agency may establish a duty of support utilizing the procedures prescribed in AS 25.27.160 – [AS] 25.27.220 . . . .”

Alaska Statute 25.27.160(a) describes the procedure that CSSD must follow in order to initiate an administrative case:

(a) An action to establish a duty of support authorized under AS 25.27.140(a) is initiated by the agency serving on the alleged obligor a notice and finding of financial responsibility. The notice and finding served under this subsection shall be served personally or by registered, certified, or insured mail, return receipt requested, for restricted delivery only to the person to whom the notice and finding is directed or to the person authorized under federal regulation to receive that person's restricted delivery mail.

The statute does not specifically define the phrase “served personally,” so it is necessary to look at the Alaska Rules of Civil Procedure (Civil Rules) in order to determine what is required of CSSD in this instance. In general, CSSD is directed to serve documents according to AS 25.27.265(a), which provides for service pursuant to Civil Rule 5. Although there is no specific definition of personal service in Civil Rule 5, it states that whenever service of a document upon a person is required, it shall be made by “delivering a copy to the . . . party,” or by mailing, faxing or emailing the document.<sup>40</sup> The rule goes on to state that:

Delivery of a copy within this rule means: handing it to the . . . party; or leaving it at the . . . party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is

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<sup>39</sup> Attachment B.

<sup>40</sup> Civil Rule 5(b).

closed or the person to be served has no office, leaving it at the . . . party's dwelling house or *usual place of abode with some person of suitable age and discretion then residing therein.*<sup>41</sup>

In this case, CSSD had attempted to serve a NFFR on Mr. J on several occasions after his paternity of T and X was adjudicated by the Superior Court. CSSD used each address that was reported to it, but the agency could not accomplish service on Mr. J by mail. Finally, in late 1995, CSSD handed over the NFFR packet to a process server with instructions to serve Mr. J at the No Name, a location he had previously been reported to be living at. The process server left the NFFR packet with No Name staff member S B, who accepted it. It seems illogical to consider a temporary No Name as someone's "usual place of abode," but the No Name was the most consistent and reliable place that Mr. J was staying at the time, and it was reasonable to leave it there for him with a staff member, someone who would be of "suitable age and discretion" there.

#### **IV. Conclusion**

Mr. J met his burden of proving that CSSD's Administrative Review Decision was incorrect as to two items, and as a result, Mr. J is entitled to two adjustments of the Notice and Finding of Financial Responsibility dated August 9, 1995: the 1994 child support amount contained therein is changed to \$167 per month for two children, and the 1995 child support amount is changed to \$105 per month for two children. No other adjustments are warranted, and the subsequent modifications to Mr. J's child support obligation should remain as issued. Mr. J's challenge regarding service of the NFFR should be denied.

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

- The 1994 and 1995 child support amounts set forth in CSSD's Notice and Finding of Financial Responsibility (NFFR) dated August 9, 1995 are vacated;
- Mr. J is liable for child support in the amount of \$167 per month for two children during the months in 1994 that he is obligated to pay support;
- Mr. J is liable for child support in the amount of \$105 per month for two children during the months in 1995 and ongoing that he is obligated to pay support;
- All other provisions of the Notice and Finding of Financial Responsibility dated

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<sup>41</sup> *Id* (emphasis added).

August 9, 1995 remain in full force and effect;

- All subsequent modifications to Mr. J's child support obligation remain as issued.

DATED this 23<sup>rd</sup> day of January, 2014.

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 10<sup>th</sup> day of February, 2014.

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

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