

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

In the Matter of:)	
)	OAH No. 13-0828-CSS
E P)	CSSD No. 001134175
_____)	

DECISION AND ORDER

I. Introduction

The custodian, T L, appealed CSSD’s Administrative Review Decision and Vacate Administrative Child Support and Medical Support Order that the agency issued in Mr. P’s case on March 14, 2013. CSSD’s jointly-issued decisions granted Mr. P’s request for relief of a default administrative child support order issued in 2005, and recalculated his child support obligation based on his actual income. The child in this case is A, age 9.

Three hearings were held in this matter, the last occurring on August 22, 2013. Ms. L appeared by telephone for each session; Mr. P appeared only at the second hearing. Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD. The hearings were recorded.

Based on the record as a whole and after careful consideration, CSSD’s Vacate Administrative Child Support and Medical Support Order is affirmed because Mr. P’s child support was based on a default child support amount. CSSD’s Administrative Review Decision is also affirmed, with adjustments to the child support calculations in some of the years at issue.

II. Facts

CSSD issued an Amended Administrative Child and Medical Support Order on May 27, 2005 that set Mr. P’s ongoing child support at \$245 per month, with arrears of \$1,545 beginning in November 2004.¹ Mr. P did not appeal. He later requested modifications in April 2006 and September 2010, but both were denied because Mr. P did not submit sufficient income information to determine whether his child support obligation should be modified.²

On July 29, 2011, Mr. P’s mother contacted CSSD and requested assistance with her son’s case, specifically, in getting the order reduced because of Mr. P’s circumstances. CSSD provided forms for Mr. P to complete, and on May 14, 2012, he submitted a Motion to Vacate

¹ Exh. 1.
² Exhs. 2-7.

Default Order.³ CSSD subsequently granted his motion and issued an Administrative Review Decision that recalculated his child support obligation.⁴

CSSD's replacement Administrative Child Support and Medical Support Order set Mr. P's child support, based on his actual income for the years in question, in the following amounts:⁵

2004	\$ 50	2009	\$241
2005	\$ 69	2010	\$ 61
2006	\$203	2011	\$ 50
2007	\$281	2012	\$ 50
2008	\$124	2013	\$ 50

During the hearing it became apparent that CSSD had imputed income to Mr. P for some of the years at issue, but not for other years. As a result, CSSD was asked to recalculate the yearly support amounts using his actual income figures for all years. CSSD complied and filed the new calculations. From the information submitted, it is more likely than not that Mr. P's actual income yields the following child support amounts:⁶

2004	\$ 50	2009	\$241
2005	\$ 56	2010	\$ 61
2006	\$195	2011	\$ 50
2007	\$304	2012	\$ 50
2008	\$108	2013	\$ 50

Thus, when comparing the two tables, it can be seen that only the calculations for 2005-2008 have changed from the amounts set forth in CSSD's replacement Administrative Child Support and Medical Support Order. Ms. L appealed on May 22, 2013.⁷

³ Exhs. 8-11.

⁴ Exhs. 12-15.

⁵ Exh. 15. CSSD did not do a calculation for 2013, but just set ongoing support at \$50, effective March 2013.

⁶ Exhs. 18-32. CSSD filed additional calculations for some years, but the amounts not specifically identified above are rejected.

⁷ Exh. 16.

III. Discussion

As the person who filed the appeal, Ms. L has the burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision granting Mr. P's request to vacate a default order is incorrect.⁸

Under Alaska law, 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.⁹ 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.¹⁰ 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.¹¹

In this case, CSSD calculated Mr. P's child support in 2005 using an income amount of \$16,061.76.¹² The comment line on the bottom of the worksheet indicates that figure was derived from the Alaska minimum wage in effect at the time, \$7.15 per hour, to which CSSD added an estimate for tips of 8% of the total income.¹³ Under 15 AAC 125.121(j)(1), this calculation method is by definition a default income amount, so Mr. P is entitled to have the 2005 default order vacated and to have his child support calculated based on his actual income. CSSD's latest calculations are found at the bottom of page 2, above. These amounts are now correct, and reflect Mr. P's ability to pay support based on his actual income figures.

Ms. L objects to having Mr. P's child support order from 2005 replaced. She relies on 15 AAC 125.121(e), which states, in part,

The agency will grant the request to vacate the support order if the agency finds that the support order was based on a default income figure and that granting the request will not cause undue hardship to a party because of the party's reasonable reliance on the support order.^[14]

During the final hearing session, Ms. L testified that she had to live with her mother when A was born, and that they were on public assistance for several years. She added that her

⁸ 15 AAC 05.030(h).

⁹ AS 25.27.195(b).

¹⁰ 15 AAC 125.121(j)(1).

¹¹ 15 AAC 125.121(j)(2).

¹² Exh. 16 at pg. 11.

¹³ *Id.*

¹⁴ 15 AAC 125.121(e) (emphasis added).

husband is employed, but A still needs dental work and has no college funds because Ms. L has had to pay for everything, without help from Mr. P. The custodian added that in two years she hopes to obtain her degree in Business Administration and a minor in Economics, but she already has student loan debt of \$50,000.

Based on the record as a whole, Ms. L has not shown that it was incorrect for CSSD to grant Mr. P's Motion to Vacate Default Order and issue a replacement Administrative Child Support and Medical Support Order. The original child support order CSSD issued in 2005 was a default order on its face because it was based on income figures derived from the minimum wage, not his actual income. During the hearing process, the support calculations for 2005-2008 were adjusted, as reflected in the final calculations filed by CSSD after the hearing. Finally, Ms. L did not show that granting the motion would create "undue hardship." The replacement child support order did not extinguish Mr. P's support obligation; rather, the amounts were properly corrected based on his ability.

IV. Conclusion

Ms. L did not show that it was incorrect for CSSD to grant Mr. P's Motion to Vacate Default Order and issue a replacement Administrative Child Support and Medical Support Order. The original child support order CSSD issued in 2005 was a default order, and it has been corrected based on Mr. P's ability to pay support. The calculations should be adopted.

V. Child Support Order

- CSSD's Administrative Child Support and Medical Support Order dated March 14, 2013 is affirmed, with specific monthly adjustments set forth below;
- Mr. P is liable for paying support for A in the following monthly amounts:

2004	\$ 50	2009	\$241
2005	\$ 56	2010	\$ 61
2006	\$195	2011	\$ 50
2007	\$304	2012	\$ 50
2008	\$108	2013	\$ 50

- All other provisions of the Administrative Child Support and Medical Support Order dated March 14, 2013, remain in full force and effect.

DATED this 7th day of February, 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 24th 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.]