

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

In the Matter of:)	
)	OAH No. 13-0842-CSS
K R. J)	CSSD No. 001049912
_____)	

DECISION AND ORDER

I. Introduction

The obligor, K R. J, has appealed an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on May 9, 2013. CSSD’s decision denied his request for relief of a default administrative child support order issued in 1995. The obligee child in this case is K, Jr. The other party is D K. E.

The hearing was held on July 17, 2013. Mr. J appeared by telephone; Ms. E did not participate – a telephone call to her contact number was not answered and it was not possible to leave her a voicemail message. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after careful consideration, CSSD’s Administrative Review Decision is reversed. Mr. J proved by a preponderance of the evidence that the child support order issued in 1995 was a default order because it was not based on his actual income. Mr. J’s child support has been recalculated based on his actual annual income in 1994, and accordingly is set at \$123 per month, effective August 1994.

II. Facts

CSSD issued a Notice and Finding of Financial Responsibility (NFFR) to Mr. J on September 14, 1995.¹ The order set his child support at \$165 per month for one child, effective August 1, 1994.² Mr. J did not appeal that order, and K, Jr. emancipated in December 2005. On May 2, 2013, Mr. J filed a Motion to Vacate Default Order.³ On May 9, 2013, CSSD issued the Administrative Review Decision that denied his motion because “the child support amount was

¹ Exh. 1.
² Exh. 1 at pg. 5.
³ Exh. 5.

based on your ability to pay which was calculated from the information you provided.”⁴ Mr. J appealed on May 20, 2013 and submitted copies of extracts of his federal income tax returns from 2004 through 2011.⁵

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.⁶

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.⁷ 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.⁸ 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.⁹

After the hearing, CSSD was able to access Alaska Department of Labor and Workforce Development records going back to 1994. The records indicate Mr. J worked the following quarters in 1994-1995 and earned the wages listed during each quarter:¹⁰

Year	Qtr.	Employer	Qtr. Wages	Year Total
1994	2	No Name Station	\$3,200.65	\$7,300.65
“	2	No Name	\$ 315.00	----
“	3	No Name Station	\$3,785.00	----
1995	2	No Name Service	\$ 35.75	\$ 35.75

CSSD issued a Notice and Finding of Financial Responsibility (NFFR) in Mr. J’s case on September 14, 1995.¹¹ The order included two child support calculations, one for 1994 and the

⁴ Exh. 3.
⁵ Exh. 4.
⁶ 15 AAC 05.030(h).
⁷ AS 25.27.195(b).
⁸ 15 AAC 125.121(j)(1).
⁹ 15 AAC 125.121(j)(2).
¹⁰ Exh. 5 at pg. 1.
¹¹ Exh. 1.

other for 1995.¹² The comment line on the bottom of the 1994 calculation reads “94 SUPPORT BASED ON 94 DEPT OF LABOR AND PFD DATA.”¹³ The comment line on the bottom of the 1995 calculation reads “95 SUPPORT BASED ON 94 DEPT OF LABOR/ EXTRAPOLATED.”¹⁴

The calculations for 1994 and 1995 used the same annual income figure of \$10,501 to calculate Mr. J’s child support at \$165 per month for one child. However, it is impossible to determine how CSSD came up with that income amount. There is no way that the wages Mr. J received during the second and third quarters of 1994 can be combined, averaged, or computed that reaches an annual income figure of \$10,501, and there is no explanation of CSSD’s arithmetic in the text portion of the NFFR. Other than the comment lines on the two calculation pages, there is only one other reference to the actual calculation itself. At the bottom of page one of the NFFR is this sentence: “This determination is based on your ability to pay, calculated upon information provided.” Nothing else appears in the NFFR or on the calculation worksheets that explains how CSSD arrived at the annual income figure of \$10,501. The child support calculation of \$165 per month was not based on Mr. J’s actual income. Therefore, it was a default calculation and as a result, Mr. J has met his burden of proving that CSSD’s Administrative Review Decision dated May 9, 2013 was incorrect. Mr. J is entitled to have the 1995 default order vacated and to have his child support calculated based on his actual income.

As stated previously, the data on file with the Alaska Department of Labor and Workforce Development shows that Mr. J earned \$7,300.65 in 1994, the year his support obligation began. When that income figure is inserted into CSSD’s online child support calculator, it results in a child support amount of \$123 per month.¹⁵

IV. Conclusion

Mr. J met his burden of proving CSSD’s May 9, 2013 Administrative Review Decision is incorrect. The child support figure calculated in 1994 is a default amount and should be vacated. It should be replaced by the calculation of \$123 per month, which is based on Mr. J’s actual

¹² Ongoing child support started in August 1994, when Ms. E started receiving public assistance benefits for K, Jr. See Exh. 1 at pg. 5.

¹³ Exh. 1 at pg. 3.

¹⁴ Exh. 1 at pg. 4.

¹⁵ Attachment A.

income for 1994. This amount should be adopted as Mr. J's child support obligation effective August 1994.

V. Child Support Order

- The child support amount of \$165 per month set forth in CSSD's Notice and Finding of Financial Responsibility (NFFR) dated September 14, 1995 is vacated;
- Mr. J is liable for child support in the amount of \$123 per month for K, Jr., effective August 1, 1994;
- All other provisions of the September 14, 1995 Notice and Finding of Financial Responsibility remain in full force and effect.

DATED this 24th day of December, 2013.

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 10th day of January, 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.]