

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

IN THE MATTER OF )  
T M. C )

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) OAH No. 13-1667-CSS  
) CSSD No. 001153122  
)

**DECISION AND ORDER**

**I. Introduction**

This case is T M. C' appeal of the Division's decision denying his request to adjust his arrears and ongoing child support for his child, N. Hearings were held to consider the appeal. Mr. C, the obligor in this case, participated in the hearings. He was represented by his attorney, Ann DeArmound. M Q is the custodial parent. She also participated in the hearings. Ms. Q was represented by her attorney, Keith Cassidy. There is one child covered by this order. The Division was represented by Andrew Rawls, Child Support Services Specialist. The record closed on May 24, 2014.

Because Mr. C did not provide a reliable estimate of his income during the period covered by this order, and because the limited evidence in the record indicated that the default income amounts that the Division originally used to set Mr. C child support amounts were the best estimates of his income and earning capacity in the record, the Division's order reducing Mr. C' arrears and ongoing child support, the Division denied Mr. C request to adjust his default arrears. Mr. C asked for a formal hearing to appeal that denial.

Because the evidence presented at that hearing shows that Mr. C has now provided adequate documentation for his income during the periods covered by this order, and through his attorney has made a good faith effort to make a reasonable estimates for his income for child support purposes, his request to adjust his default income based child support order is granted.

**II. Facts**

Mr. C asked the Division to adjust his Administrative Child and Medical Support Order issued on October 8, 2008.<sup>1</sup> That 2008 order set ongoing child support at \$1667 per month, which was based on statistical wage data for management positions plus a PFD.<sup>2</sup>

Mr. C had not provided income information as ordered before his child support was established. The arrears went back to April 1, 2008, the month that an application for services

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1 Exhibit 5.

was filed for N. Mr. C did not appeal this order. After this order was issued, Mr. C made intermittent contacts with the Division, but often failed to respond to the Division's attempts to contact him.<sup>3</sup>

In 2010 Mr. C filed a request to modify his ongoing child support.<sup>4</sup> The Division denied this request.<sup>5</sup> In March of 2010 Mr. C made a child support payment to the Division in the amount of \$37,975.<sup>6</sup>

Mr. C then filed a motion to vacate his child support order and reset the monthly amounts based on his actual income.<sup>7</sup> The Division denied this and other requests for modification that were filed through 2013.<sup>8</sup>

Mr. C latest request for an adjustment to his arrears and ongoing child support, which is the subject of this appeal, was denied in an Administrative Review Decision issued on October 14, 2013.

The Division concedes that the monthly child support amounts set for Mr. C were based on default income amounts. The basis of the Division's repeated denials of the relief that Mr. C has repeatedly requested, including one denial of modification that was upheld after a formal hearing, is Mr. C's failure to provide complete documentation of his income and the conflicting information that he has provided.<sup>9</sup>

Prior to the hearings in this appeal, Mr. C's attorney, Ann DeArmound, provided more documentation and took the time to work through that extensive documentation to estimate what Mr. C was receiving from his business activities during the periods covered by this order. The Division, as requested, made calculations based on these estimates, even though the Division was not convinced that these estimates reliably reflected what Mr. C actually earned.<sup>10</sup>

At the hearing, the parties were given an opportunity to question Mr. C and respond to the documents submitted by Mr. C and his attorney's estimates.

The evidence in the record shows that it is more likely than not that Mr. C's estimated

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2 Exhibit 5, page 7.  
3 Exhibits 2 -13.  
4 Exhibit 14.  
5 Exhibit 18.  
6 Exhibit 15.  
7 Exhibit 24.  
8 Exhibits 25-46.  
9 Exhibits 5-46.  
10 Exhibits 49-55.

income, which the Division used to set Mr. C' child support in its latest calculations, is the best estimate of his actual earnings during the periods covered by his default order.

### **III. Discussion**

#### *Relief under AS 25.27.195(b)*

This case is Mr. C' appeal of the Division's order granting relief under Alaska Statute 25.27.195(b).<sup>11</sup> This law gives CSSD limited authority to vacate administrative support orders and retroactively modify child support. It gives CSSD authority to retroactively adjust support during periods of time when the amount of monthly child support was based on a default income figure rather than actual income. A default income figure is an amount arrived at in the absence of any specific information about an obligor's income and earning ability during the relevant time frames.<sup>12</sup>

#### *Mr. C Met His Burden of Proof*

At the hearing, the Division and Ms. Q argued that it would not be appropriate to reduce Mr. C' child support because the evidence indicates that Mr. C was earning significant amounts of money that he did not report to the Division or the IRS.

When there is insufficient reliable evidence of actual income, child support may be set based on earning capacity, rather than on an estimate of actual income.<sup>13</sup> Mr. C, through his attorney, made a good faith effort to provide reliable information on actual income. An adjustment to his arrears or ongoing child support is appropriate. The evidence in the record indicates the default amount used by the Division is no longer the best estimate of Mr. C' income and earning capacity that can be made at this time.

The other parties' position is that Mr. C still has not provided a reliable estimate of his income. The evidence in the record shows that this position is probably not correct. Mr. C is entitled to have his arrears adjusted by vacating his child support order and adjusting his arrears and ongoing child support based on his reported income.

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11 See Alaska Statute 25.27.195(b) & Alaska Regulation 15 AAC 125.121(a).

12 See AS 25.27.195(b): "Upon the motion of an obligor, the agency may, at any time, vacate an administrative support order issued by the agency under AS 25.27.160 that was based on a default amount rather than on the obligor's actual ability to pay."

13 See for example *Laybourn v. Powell*, 55 P.3d 745, 747 (Alaska 2002). When a parent with a child support obligation makes an accurate determination of his or her income impossible, income must be imputed to calculate the child support obligation. The criteria used to estimate the proper amount of income to impute are the same as those used in a case where the noncustodial parent is voluntarily and unreasonably unemployed or underemployed. Rather than determining the parent's actual income, the parent's earning capacity is used to estimate the parent's potential income.

The record in this case is very voluminous for a child support case and includes several years of the tax records of Mr. C and his complex business interests. As the Division correctly pointed out at the hearing, even with this extensive record, it is difficult to determine what Mr. C' earnings were for the purposes of calculating his child support. The record indicates that this is probably more the result of the complexity of Mr. C business interest rather than any attempt on his part to hide his income. While Ms. Q and the Division may have been justified in inferring that from his prior history of limited production and low estimates of his income, he has now produced the documentation needed to produce a more rough estimate of his income that is probably more accurate than the default income information used to estimate his child support under his present order.

Furthermore, Mr. C' testimony at the hearing indicates that his business and tax records were primarily kept and generated by his partner. Mr. C does not appear to have a clear understanding of the bookkeeping and financial aspects of his business interests. He apparently provides more of the engineering and management expertise to the partnership and primarily works in the field rather than the office.

At the beginning of the hearing the parties were asked if a remand to the Division would be appropriate due to all the new income documentation that had been provided after the Division had made its determination to deny Mr. C' request to adjust his child support. The parties agreed to have request to adjust decided based on the record on appeal and to have the order adjusted at the formal hearing level if it was appropriate. While it is possible that Mr. C is hiding income and assets neither Ms. Q nor the Division asked for the production of Mr. C' personal bank records or requested additional time to investigate under-reporting.

Mr. C has finally provided the enough information to back up his rough estimate his actual income. One appropriate change to Mr. C' income estimates was an additional adjustment to his estimated 2010 income, which the Division used to recalculate his 2010 child support obligation at \$1,492 per month at exhibit 56. This adjustment is needed to account for Mr. C' share of his business' undistributed profit.

#### **IV. Conclusion**

Mr. C' ongoing child support and arrears should be adjusted to the amounts in the Division's latest calculations. Those amounts are based on a reasonable estimate of his earning

capacity and actual income given the limited evidence in the record and because Mr. C made a good faith effort to provide reliable evidence of his income. These child support amounts were calculated using the primary custody formula in Civil Rule 90.3(a).

**V. Child Support Order**

1. The Division's Administrative Review Decision issued on October 14, 2013 is overturned.
2. Mr. C' motion for default review is granted.
3. Mr. C' child support order is adjusted under Alaska Statute 25.27.195(b) and set in the monthly amounts of \$729 for the months of April through December of 2008; \$1,170 for each month of 2009; \$1,492 for each month of 2010; \$732 for each month of 2011; \$643 for each month of 2012; \$931 for each month of 2013; and \$931 the months of January through June of 2014
4. Mr. C' ongoing child support obligation for his child, N, is set at \$931 per month effective July 1, 2014.
5. All other provisions of the Division's Administrative Child and Medical Support Order issued on October 8, 2008, remains in effect.

DATED this 9<sup>th</sup> day of June, 2014.

By: Signed  
Mark T. Handley  
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 11<sup>th</sup> day of July, 2014.

By: Signed  
Signature  
Angela Rodell  
Name  
Commissioner  
Title

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