

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

|                   |   |                     |
|-------------------|---|---------------------|
| In the Matter of: | ) |                     |
|                   | ) | OAH No. 14-0140-CSS |
| M C. C            | ) | CSSD No. 001057419  |
| _____             | ) |                     |

**ORDER REMANDING CASE TO CSSD**

**I. Introduction**

The obligor, M C. C, has appealed an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on December 6, 2013. CSSD's decision denied his request for a default review. The obligee child in this case is A, who was born in 1995 and is emancipated. The other party is L M. X.

The hearing was held on February 12, 2014. Both Mr. C and Ms. X appeared by telephone. Andrew Rawls, 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 vacated and remanded to CSSD to conduct a default review of the Modified Administrative Child Support and Medical Support Order issued on April 1, 2013. Mr. C is not entitled to a default review of any prior time periods, as discussed below.

**II. Facts**

The following findings of fact, based almost entirely on the documentary record, are established by a preponderance of the evidence. For convenience, they are organized into groups of years:

1999- 2000: The Superior Court issued an order establishing Mr. C's paternity of A on May 19, 1999.<sup>1</sup> On September 14, 1999, CSSD issued a Notice and Finding of Financial Responsibility (NFFR) that established his obligation to pay support effective November 1995 based on public assistance benefits paid on A's behalf. The child support was calculated using the Alaska minimum wage in effect for the time period from 1995 through 2000, plus the PFD.<sup>2</sup>

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.

Mr. C requested an administrative review of CSSD's NFFR.<sup>3</sup> On September 13, 2000, CSSD issued an Administrative Review Decision that did not change the agency's initial child support order, but merely affirmed the Notice and Finding of Financial Responsibility.<sup>4</sup>

Mr. C did not appeal the administrative review decision.

2004- 2005: On December 21, 2004, Mr. C filed a Motion to Vacate Default Order.<sup>5</sup> On May 24, 2005, CSSD issued an Administrative Review Decision that granted his motion. CSSD vacated the 1999 Notice and Finding of Financial Responsibility and issued a new administrative order for the time periods from 1995 through 2004.<sup>6</sup> Mr. C's arrears were reduced to \$4,348.18 for the prior nine years, all of which consisted of child support amounts of \$50 per month. For the 2005 and ongoing amount, CSSD set Mr. C's child support obligation at \$229 per month, calculated based on the Alaska minimum wage.<sup>7</sup>

Mr. C did not appeal CSSD's vacate order or the new administrative order.

2009- 2010: Four years later, on August 19, 2009, the custodian requested a modification of the ongoing child support amount.<sup>8</sup> On February 10, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. C's ongoing child support to \$379 per month, effective October 1, 2009. The support amount was calculated based on Mr. C's actual income – the previous four quarters of income data that Mr. C's employer(s) reported to the Alaska Department of Labor and Workforce Development.<sup>9</sup>

Mr. C did not appeal the February 2010 modification order.

2013- 2014: Three years later, on February 13, 2013, Mr. C filed an Inquiry for Default Review of an Alaska Administrative Child Support Order and a Request of Modification on the same day.<sup>10</sup> CSSD denied the petition for default review on February 20, 2013.<sup>11</sup> CSSD's denial informed Mr. C that he was not entitled to a default review because his child support was based on findings of fact that he was voluntarily and unreasonably unemployed, and also that his

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

<sup>4</sup> Exhs. 4-5.

<sup>5</sup> Exh. 6.

<sup>6</sup> Exhs. 8-10.

<sup>7</sup> Exh. 10.

<sup>8</sup> Exhs. 11-12.

<sup>9</sup> Exh. 13.

<sup>10</sup> Exhs. 14-15.

<sup>11</sup> Exh. 16.

child support was based on actual income, including employer reported wages.<sup>12</sup> Mr. C did not appeal the administrative review decision denying his request for a default review.

Because Mr. C filed a petition for modification at the same time he filed the default review paperwork, CSSD also processed the modification request. On April 1, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order modifying Mr. Bentsen's ongoing child support to \$254 per month, effective March 1, 2013. This calculation was based on the Alaska minimum wage and included the permanent fund dividend.<sup>13</sup>

Mr. C did not appeal the April 2013 modification order.

On December 3, 2013, Mr. C filed a Motion to Vacate Default Order, requesting that his child support be adjusted back to 1989.<sup>14</sup> On December 6, 2013, CSSD issued an Administrative Review Decision denying Mr. Bentsen's request for a default review. CSSD's denial stated that the obligor does not qualify for a default review because his child support was based on his actual income, which included employer reported wages.<sup>15</sup>

Mr. C filed an appeal of CSSD's administrative review decision on January 6, 2014. The formal hearing was held on February 12, 2014, followed by a status conference on April 17, 2014. The parties were asked to file supplemental briefing no later than April 24, 2013. Mr. C filed a timely response, but CSSD did not respond to the request.

### **III. Discussion**

As the person who filed the appeal, Mr. C 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>16</sup>

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.<sup>17</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>18</sup>

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<sup>12</sup> *Id.*  
<sup>13</sup> Exh. 18.  
<sup>14</sup> Exh. 19.  
<sup>15</sup> Exh. 20.  
<sup>16</sup> 15 AAC 05.030(h).  
<sup>17</sup> AS 25.27.195(b).  
<sup>18</sup> 15 AAC 125.121(j)(1).

A calculation is *not* based on a default income amount if it is 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>19</sup>

Mr. C has filed at least three requests for a default review in his case. CSSD granted his initial request in May 2005. The agency reduced his arrears to \$4,348.18 for all of the time periods going back to the initial order establishment in 1995. However, CSSD set his ongoing amount in that vacate decision at \$229 per month, based on the Alaska minimum wage. Therefore, Mr. C's child support *may* have been subject to being vacated for the time period beginning in May 2005, but Mr. C did not appeal the new administrative order.

The May 2005 replacement administrative order remained in place until it was subsequently modified by CSSD in February 2010. At that time, the agency modified Mr. C's child support to \$379 per month, effective October 1, 1009. It is significant to note that this child support amount was calculated based on the previous four quarters of the obligor's income information as reported to the Alaska Department of Labor and Workforce Development. This was his actual income for the previous one year period, and therefore the child support modification was correctly calculated. Thus, the 2010 modification was not subject to a default review, pursuant to AS 25.27.195(b).

Mr. C's second request for a default review was filed in February 2013. CSSD correctly denied the request because his previous order, the 2010 modification, was based on his actual information. However, even though CSSD correctly denied his request, the agency gave the wrong reason for the denial. The Administrative Review Decision stated that Mr. C was not entitled to a default review because his child support was based on findings that he was voluntarily and unreasonably unemployed and further that the support amount was based on actual income information.<sup>20</sup> CSSD was correct that he was not entitled to a default review, but there was no finding of voluntary and unreasonable unemployment in the modification order issued in February 2010. The 2010 modification was, in fact, calculated from Mr. C's actual income, so his February 2013 request for a default review was correctly denied by the agency *only* for that reason.

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<sup>19</sup> 15 AAC 125.121(j)(2).

<sup>20</sup> See Exh. 16.

Mr. C's ongoing child support amount was modified again in April 2013 in response to his petition that was filed at the same time as the default review. CSSD calculated the modification order at \$254 per month, effective March 1, 2013, based on the Alaska minimum wage and the permanent fund dividend. Because that support calculation meets the definition of a default order, it was subject to a subsequent review. However, for unknown reasons, when Mr. C filed his third and latest request for default review, CSSD denied his petition for the reason that his child support was based on actual income including employer reported wages.<sup>21</sup> Again, this explanation is incorrect. Mr. C's April 2013 modification was based on the Alaska minimum wage, which, under 15 AAC 125.121(j)(1) is a default order. Thus, Mr. C is entitled to a default review of the April 2013 modification order.

Although the April 2013 modification is subject to a default review, Mr. C is not entitled to a default review of any time periods prior to April 2013. In its 2005 Administrative Review Decision granting his request for a default review, CSSD recalculated his support obligation for all of the time periods going back to 1995. Most of those years received a \$50 per month minimum order.<sup>22</sup> Only the ongoing child support amount in the replacement 2005 administrative order was based on the minimum wage, but Mr. C did not appeal CSSD's order, so he may not continue to re-litigate that time period.

The next order CSSD issued in Mr. C's case was the February 2010 modification.<sup>23</sup> Mr. C cannot obtain a default review of that modification order of \$379 per month because the child support amount was calculated based on his actual income for the preceding four quarters. Thus, that order does not qualify for a default review, and CSSD was therefore correct to deny his February 2013 petition for a default review.

The only CSSD order that is now subject to a default review is the April 2013 modification. That order set Mr. C's ongoing child support at \$254 per month, effective March 1, 2013, based on the minimum wage.<sup>24</sup> CSSD denied the obligor's request for a default review, but the modification meets the definition of a default order in 15 AAC 125.121(j)(1), so CSSD should conduct a default review of that order.<sup>25</sup>

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<sup>21</sup> Exh. 20.

<sup>22</sup> Exh. 10.

<sup>23</sup> See Exh. 13.

<sup>24</sup> Exh. 18.

<sup>25</sup> At the April 17, 2014 status conference, CSSD was asked to brief the issue whether AS 25.27.195(b), the default review statute that authorizes a default review of an order issued under AS 25.27.160, ("Initiation of

#### **IV. Conclusion**

Mr. C met his burden of proving that the Administrative Review Decision dated December 6, 2013 is incorrect. Because CSSD incorrectly denied Mr. C's request for default review, this appeal is being remanded to the agency with specific instructions to conduct a default review for the modification time period effective March 1, 2013, and ongoing. Mr. C is not entitled to a default review of any prior time periods.

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

- This case is REMANDED to CSSD to conduct a default review consistent with this order;
- CSSD's supplemental Administrative Review Decision should state that Mr. C has appeal rights from that order.

DATED this 6<sup>th</sup> day of May, 2014.

*Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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administrative action to establish support duty; required notice”), may be applied to modification orders issued under AS 25.27.190. CSSD’s failure to respond is taken as a waiver of any objection to a default review being order of the Modified Administrative Child Support and Medical Support Order issued in Mr. C’s case on April 1, 2013.

**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 23<sup>rd</sup> day of May, 2014.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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