

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

In the Matter of	)	
	)	OAH No. 14-2327-CSS
M Q. G	)	Agency No. 001141844
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**DECISION**

**I. Introduction**

The Child Support Services Division (CSSD) vacated a prior child support order and issued a new order establishing M G’s support obligation beginning in 2006. Mr. G appealed that new order.

The child in this matter is K G. The custodial parent is X F. A hearing was held on March 24, 2015.<sup>1</sup> Based on the evidence presented, CSSD’s November 13, 2014 Administrative Child Support and Medical Support Order is affirmed with some modifications.

**II. Facts**

**A. Relevant Procedural History**

CSSD issued an Administrative Child Support and Medical Support Order on August 3, 2006.<sup>2</sup> This order established Mr. G’s support obligation at \$280 per month for one child.<sup>3</sup> This order included credit for child support actually paid on behalf of an older child or older children.<sup>4</sup>

On November 13, 2014, CSSD granted Mr. G’s request to vacate the prior support order.<sup>5</sup> CSSD then issued a new Administrative Child Support and Medical Support Order covering the years 2006 through 2014, with an ongoing support set at \$369 per month for one child.<sup>6</sup>

**B. Material Facts**

Mr. G’s child K was born in 00/00/2006. In 00/00/2006, Mr. G was a victim of a drunk driver who caused a serious motor vehicle accident. Mr. G was injured, along with other

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<sup>1</sup> The hearing was held before Administrative Law Judge Kay L. Howard. This case was reassigned to ALJ Jeffrey A. Friedman, who has reviewed the entire written record and listened to the audio recordings.

<sup>2</sup> Exhibit 2.

<sup>3</sup> Exhibit 2, page 1.

<sup>4</sup> Exhibit 2, pages 4 & 7.

<sup>5</sup> Exhibit 32.

<sup>6</sup> Exhibit 33.

passengers of the vehicle he was in. The driver of the other vehicle was charged with murder, manslaughter, and assault.<sup>7</sup>

Mr. G suffered one stroke shortly after the accident and a second stroke within six months of the accident.<sup>8</sup> His doctor told him not to work, and did not release him back to work until 2012.<sup>9</sup>

Mr. G is the father of another child who was born in 00/00/2011. She had severe medical problems, and Mr. G traveled to No Name Country to help take care of this child. He was a caregiver from her birth until sometime in January of 2012.<sup>10</sup> He did not have a work visa, so he was unable to legally work in No Name Country.<sup>11</sup>

### III. Discussion

#### 1. Vacating Prior Order

CSSD may vacate a prior administrative order if the prior order was based on a default amount rather than on the obligor's ability to pay.<sup>12</sup> An administrative support order will be vacated if the support order is based on a default income figure, the default income figure is not an accurate reflection of the obligor's income, and "granting the request will not cause undue hardship to a party because of the party's reasonable reliance on the support order."<sup>13</sup>

CSSD vacated the 2006 order because it was based on a default income amount.<sup>14</sup> CSSD's decision did not directly address whether vacating the prior order would cause undue hardship to Ms. F, but the evidence at the hearing shows that Mr. G has not been making regular child support payments. If payments were not being made, Ms. F could not have reasonably relied on receiving those payments. Accordingly, CSSD's implicit finding that granting the request would not cause undue hardship is upheld.<sup>15</sup>

At the close of the hearing, CSSD suggested that the 2006 order was based on actual information and therefore its decision to vacate that order should be reversed. Because CSSD

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<sup>7</sup> Exhibit 15.

<sup>8</sup> G testimony; medical records submitted by Mr. G.

<sup>9</sup> G testimony.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* See Exhibit 23, pages 3 – 6.

<sup>12</sup> AS 25.27.195(b).

<sup>13</sup> 15 AAC 125.121(a) & (c).

<sup>14</sup> Exhibit 32.

<sup>15</sup> This does not mean that the lack of child support payments did not create a hardship. It almost certainly did. Instead, the hardship finding in question here is whether retroactively changing the amount of the unpaid support would create additional hardship. Nothing in the record suggests that changing the amount of unpaid support will cause undue hardship based on Ms. F's reasonable reliance on the prior support order.

did not contest the validity of its decision until after Mr. G testified, he did not have an adequate opportunity to address that issue.

## 2. *Deduction for Prior Child Support Obligation*

Because the 2006 order has been vacated, it is necessary to recalculate the proper child support obligation for each year. In doing so, one issue applicable for the entire time period is considered first. Mr. G has two other children older than K.<sup>16</sup> He argued that CSSD failed to adjust his child support obligation in this case to account for his child support obligation for his older children.

In calculating a parent's child support obligation, the parent's income is reduced by the amount of child support paid on behalf of prior children if that amount is established by a court order and if that amount is actually paid.<sup>17</sup> In the 2006 order, Mr. G was allowed a monthly deduction of \$124.76 for child support paid for prior children.<sup>18</sup> Presumably CSSD had evidence to support that deduction when the 2006 order was issued, and it should have included that deduction in its new calculation after vacating the 2006 order. However, that deduction is only allowed for 2006. Mr. G acknowledged that he was not paying child support for those children from 2007 through 2012.<sup>19</sup> Mr. G did not say whether he resumed making child support payments for those children after 2012. It was his burden to establish that CSSD's calculations were incorrect.<sup>20</sup> He did not establish that CSSD erred in not giving him a deduction for those subsequent years.<sup>21</sup>

## 3. *2006 Calculation*

CSSD's new calculation for 2006 was based on total income of \$7847.<sup>22</sup> This is the amount listed in Mr. G's Child Support Guidelines Affidavit.<sup>23</sup> Mr. G did not argue that this figure was incorrect. He should, however, receive a deduction from that amount for child support paid on behalf of his two older children. When that amount is inserted in CSSD's online calculator, Mr. G's 2006 child support obligation should be set at \$95 per month for one child.<sup>24</sup>

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<sup>16</sup> G testimony.

<sup>17</sup> Civil Rule 90.3(a)(1)(C).

<sup>18</sup> Exhibit 2, page 7.

<sup>19</sup> G testimony.

<sup>20</sup> 15 AAC 05.040(h).

<sup>21</sup> Once he starts making those payments, he can request a modification of his ongoing support obligation. Modifications are not retroactive, however.

<sup>22</sup> Exhibit 33, page 8.

<sup>23</sup> Exhibit 16, page 1.

<sup>24</sup> Attachment A.

#### 4. 2007 Calculation

CSSD's calculation for 2007 was based on income reported by Mr. G in his Child Support Guidelines Affidavit, plus a Permanent Fund Dividend.<sup>25</sup> Mr. G did not provide any testimony or evidence to dispute this calculation. CSSD's calculation for 2007 is affirmed.

#### 5. 2008 Calculation

CSSD's calculation was based on income reported by Mr. G plus a Permanent Fund Dividend.<sup>26</sup> Mr. G testified that he also received a cash settlement from a lawsuit filed over the motor vehicle accident. After paying his share of fees and costs, he received \$22,000. Had the family been intact, that income would have been available to support the family, including K. The child support calculation for 2008 must be adjusted to include this income. Using CSSD's online child support calculator, Mr. G's child support obligation should be \$414.<sup>27</sup>

#### 6. 2009 Calculation

Mr. G reported no income for 2009.<sup>28</sup> Rather than accept his Child Support Guidelines Affidavit, CSSD concluded that Mr. G could have earned \$7.25 per hour working 40 hours every week, earning \$15,080 in wages and an additional PFD.<sup>29</sup> CSSD's order states that for this year, as well as for 2011 and 2013, Mr. G did not submit any income information.<sup>30</sup> In fact, he had submitted the same information he submitted for each of the prior years: signed but un-notarized Child Support Guidelines Affidavits and IRS Wage and Income Transcripts.

At the hearing, Mr. G testified that he could not work because his doctor had not released him to work. CSSD argued that Mr. G's testimony is not credible because he had previously failed to disclose the \$22,000 civil settlement. Many parents would not know that civil settlements are income for child support purposes, so Mr. G's failure to report that amount does not make his testimony about other years less credible.

Mr. G's wages were less than \$4,000 in 2007, 2008, and 2010. It is unlikely that his earning capacity would jump to \$15,000 in 2009. Since he was not living in Alaska that year, he also would not have been eligible to receive a PFD. It is more likely true than not true that he

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<sup>25</sup> Exhibit 15, page 2; Exhibit 33, page 9.

<sup>26</sup> Exhibit 16, page 3; Exhibit 33, page 10.

<sup>27</sup> Attachment B.

<sup>28</sup> Exhibit 16, page 4.

<sup>29</sup> Exhibit 33, page 11.

<sup>30</sup> Exhibit 33, page 5.

had no earnings that year, and that his unemployment was not voluntary. Mr. G's support obligation should be set at the minimum allowable amount of \$50 per month for 2009.

*7. 2010 Calculation*

CSSD's calculation was based on the income amount reported by Mr. G.<sup>31</sup> Mr. G did not dispute earning this amount during 2010. CSSD's calculation remains unchanged.

*8. 2011 Calculation*

Mr. G reported earning no wages during 2011.<sup>32</sup> His IRS Wage and Income Transcript also showed no income for that year.<sup>33</sup> CSSD assumed he could earn Alaska's minimum wage of \$7.75 per hour, and based his child support obligation on earnings of \$16,120.<sup>34</sup>

During most of 2011, Mr. G was helping care for his young daughter. A parent may not be considered voluntarily unemployed or underemployed if the parent "is caring for a child under two years of age to whom the parents owe a joint legal responsibility."<sup>35</sup> While he was available to work for the first three months of the year, prior to the child's birth, Mr. G's doctor had not yet released him to work.<sup>36</sup> Mr. G's support obligation should be set at the minimum amount of \$50 per month.

*9. 2012 Calculation*

CSSD's calculation was based on the income amount reported by Mr. G.<sup>37</sup> Mr. G did not dispute these amounts. CSSD's calculation remains unchanged.

*10. 2013 Calculation*

Mr. G reported earning \$658 in 2013.<sup>38</sup> CSSD determined that he was able to earn minimum wage and based its support calculation on earnings of \$16,120.<sup>39</sup> Mr. G had been released to work and had been employed full time in No Name State for a few months in 2012,

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<sup>31</sup> Exhibit 16, page 5; Exhibit 33, page 12.

<sup>32</sup> Exhibit 16, page 6.

<sup>33</sup> Exhibit 17, page 21.

<sup>34</sup> Exhibit 33, page 13.

<sup>35</sup> 15 AAC 125.060(b).

<sup>36</sup> He had worked at Facility X for about three months in 2010. G testimony; Exhibit 1, page 19. When Facility X found out about his prior stroke, he was terminated and told he could not come back to work until he had a release from his doctor. G testimony.

<sup>37</sup> Exhibit 16, page 7; Exhibit 33, page 14.

<sup>38</sup> Exhibit 16, page 8.

<sup>39</sup> Exhibit 33, page 15.

earning \$10 an hour.<sup>40</sup> In 2013, he worked for Facility Y in Alaska and applied for other work through a temp agency.<sup>41</sup> CSSD may

after considering the relevant circumstances, including the parent’s education, training, occupation, health, employment opportunities, and the extent to which the parent is participating in a reasonably diligent work search

determine that the parent is voluntarily unemployed or underemployed.<sup>42</sup>

In explaining why he did not work more in 2013, Mr. G stated, “Child support had warrants out and was working to resolve this issue so I could work.”<sup>43</sup> At the hearing, Mr. G testified that he could not get a job at Facility Z because of his child support debt. According to Mr. G, Facility Z will hire him once that debt is cleared and he is no longer a credit risk. Mr. G did not, however, explain why he could not obtain other work. CSSD reasonably concluded that Mr. G was voluntarily unemployed or underemployed.

Mr. G’s support obligation for 2013 should be based on his ability to earn the \$7.75 per hour minimum wage. Minimum wage workers frequently do not hold full time jobs, and are not paid for holidays when a business is closed. The support calculation should assume he was able to work an average of 30 hours a week, for total earnings of \$11,310. Using CSSD’s online calculator, Mr. G’s support obligation for 2013 should be set at \$171 per month.<sup>44</sup>

#### *11. 2014 Calculation*

For 2014, CSSD used the wages reported to the Department of Labor for the third quarter, and expanded that amount over the entire year.<sup>45</sup> CSSD did not make a finding that Mr. G was voluntarily unemployed or underemployed for any portion of 2014.<sup>46</sup> Thus, his support obligation should be based on his actual earnings for that year, plus the receipt of a PFD. In 2014, Mr. G earned a total of \$12,925 from his work at Facility A and Facility B.<sup>47</sup> Using CSSD’s online child support calculator, Mr. G’s support obligation should be set at \$221 per month.<sup>48</sup>

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<sup>40</sup> G testimony.

<sup>41</sup> *Id.*

<sup>42</sup> 15 AAC 125.060(a).

<sup>43</sup> Exhibit 19, page 15.

<sup>44</sup> Attachment C.

<sup>45</sup> Exhibit 33, page 16.

<sup>46</sup> Exhibit 33, page 5.

<sup>47</sup> Exhibit 35, page 1.

<sup>48</sup> Attachment D.

## 12. 2015 Calculation

Mr. G's job with Facility A was part of a special program that provided jobs to Facility A residents. That job ended after six months.<sup>49</sup> Mr. G now works part time at Facility B. He earns \$11.72 per hour.<sup>50</sup> He works between 20 and 30 hours a week, but works full time when the store is busy.<sup>51</sup> Over the course of a year, Mr. G is likely to average 30 hours per week. His child support calculation should be based on annual income of \$18,283.<sup>52</sup> Using CSSD's online calculator, his 2015 and ongoing child support obligation should be set at \$294 per month for one child.<sup>53</sup>

## IV. Conclusion

After setting aside the order based on default income information, Mr. G's support obligation for one child was recalculated. Some of CSSD's calculations are accepted here, and some are modified. All of the calculations are based on the child support guidelines set out in Civil Rule 90.3.

## V. Order

- Mr. G's child support obligation is set at \$95 per month effective March 1, 2006 through December 31, 2006;
- Mr. G's child support obligation is set at \$108 per month effective January 1, 2007 through December 31, 2007;
- Mr. G's child support obligation is set at \$414 per month effective January 1, 2008 through December 31, 2008;
- Mr. G's child support obligation is set at \$50 per month effective January 1, 2009 through December 31, 2011;
- Mr. G's child support obligation is set at \$80 per month effective January 1, 2012 through December 31, 2012;
- Mr. G's child support obligation is set at \$171 per month effective January 1, 2013 through December 31, 2013;

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<sup>49</sup> G Testimony.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> 30 hours a week times 52 weeks times \$117.72 per hour.

<sup>53</sup> Attachment E.

- Mr. G’s child support obligation is set at \$221 per month effective January 1, 2014 through December 31, 2014;
- Mr. G’s ongoing child support obligation is set at \$294 per month effective January 1, 2015
- All other provisions of the November 13, 2014 Administrative Child Support and Medical Support Order remain in full force and effect.

Dated this 24<sup>th</sup> day of September, 2015.

Signed  
 \_\_\_\_\_  
 Jeffrey A. Friedman  
 Administrative Law Judge

**Adoption**

13. 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 8<sup>th</sup> day of October, 2015.

By: Signed  
 \_\_\_\_\_  
 Signature  
Cheryl Mandala  
 \_\_\_\_\_  
 Name  
Administrative Law Judge  
 \_\_\_\_\_  
 Title

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