

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

|                  |   |                      |
|------------------|---|----------------------|
| In the Matter of | ) |                      |
|                  | ) |                      |
| B B. B           | ) | OAH No. 15-0669-CSS  |
| _____            | ) | Agency No. 001110346 |

**DECISION**

**I. Introduction**

In 2002, the Child Support Services Division issued an Administrative Child Support and Medical Support Order establishing B B’s monthly child support for his son K, then eight years old. Neither Mr. B nor K’s mother ever requested the Division modify the 2002 Order, nor did the Division ever elect to modify the Order on its own accord, even after Mr. B began a 99-year prison term in 2009. Mr. B, now facing more than \$70,000 in interest-accruing child support arrears, seeks relief in the form of a “default review.” After a review of the record and careful consideration, this decision concludes that the relief sought by Mr. B is not permitted by the applicable law. Accordingly, the May 2015 Administrative Review Decision challenged by Mr. B is affirmed.

**II. Facts**

B B and S Q have a son, K, born in April 1994. In February 2002, CSSD issued an Administrative Child Support and Medical Support Order establishing Mr. B’s child support obligation for K at \$424.68 per month.<sup>1</sup> The Order reflects that the support amount owed for 2001 was calculated based on Mr. B’s earnings as reported by the Department of Labor,<sup>2</sup> and that the amount for 2002 was based on Mr. B’s “demonstrated ability to earn.”<sup>3</sup>

The second paragraph of the 8-page order advises both parties of their right to challenge the order, and the 30-day timeframe for doing so.<sup>4</sup> Neither party challenged the order.

In the years that followed, CSSD mailed both parties numerous notices regarding their right to request a modification.<sup>5</sup> These mailings included blank forms that a party need

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<sup>1</sup> Ex. 1, p. 1. The Order also found that Mr. B owed past-due arrears for the period of July 1, 2001 through March 31, 2002. Ex. 1, p. 2.

<sup>2</sup> Ex. 1, pp. 4, 7.

<sup>3</sup> Ex. 1, pp. 4, 8.

<sup>4</sup> Ex. 1, p. 1.

only sign and mail back in order to initiate a modification review.<sup>6</sup> Neither party requested modification of the child support order.

It appears that Mr. B rarely made payments towards his child support obligation.<sup>7</sup> Other than two large payments nine years apart -- \$1,530.76 in October 2002, and \$6,259.60 in December 2011 – his payments were sporadic and always for amounts far smaller than the monthly support amount.<sup>8</sup> Between November 2002 and February 2008, Mr. B’s total child support payments were two payments for \$198.40 made in the summer of 2003.<sup>9</sup> In 2008, he made three payments ranging from \$3.00 to \$42.00.<sup>10</sup> He then made no payments until February 2011.<sup>11</sup> Neither the case parties nor CSSD sought to modify the support order during this time.

In January 2006, the Department of Corrections notified CSSD that Mr. B was in DOC custody.<sup>12</sup> In April 2007, DOC notified CSSD that Mr. B had left DOC custody.<sup>13</sup> During the times that Mr. B was in DOC custody, CSSD mailed its notices to him – including notices regarding the process for requesting a modification review – at the addresses provided by DOC.<sup>14</sup> CSSD did not, however, initiate a modification proceeding to lower Mr. B’s monthly support amount in light of his incarceration.

Mr. B was in and out of custody throughout 2007 and 2008.<sup>15</sup> In February 2009, he was again arrested on a bench warrant and remanded into custody.<sup>16</sup> He has remained in custody since that time, and is currently serving a 99-year sentence.<sup>17</sup> Even after Mr. B began serving this sentence, CSSD did not take action to modify his child support award to reflect these changed circumstances.

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<sup>5</sup> See Ex. 2, 3, 4, 5, 13, 18.

<sup>6</sup> Ex. 18.

<sup>7</sup> See Ex. 13.

<sup>8</sup> Ex. 13.

<sup>9</sup> Ex. 13, pp. 3-5.

<sup>10</sup> Ex. 13, p. 3.

<sup>11</sup> Ex. 13, p. 2.

<sup>12</sup> Ex. 16.

<sup>13</sup> Ex. 17.

<sup>14</sup> See Ex. 19.

<sup>15</sup> Ex. 15.

<sup>16</sup> Ex. 15, p. 1.

<sup>17</sup> Ex. 6, 7, 8, 13.

In January 2014, Mr. B wrote to CSSD about his child support arrears.<sup>18</sup> He indicated that, at the time the child support Order was first issued, he was disabled and unable to work.<sup>19</sup> He also expressed doubts about ever being able to repay the large arrearage reflected in his monthly statements from CSSD in light of his life sentence and earning ability limited to \$0.50 per hour.<sup>20</sup> Mr. B wrote to CSSD again in February 2015, expressing the same concerns.<sup>21</sup>

In April 2015, the Child Support Specialist assigned to Mr. B's case responded to him by letter, indicating that she had requested CSSD initiate a "default review" on his case.<sup>22</sup> A default review is a procedure whereby CSSD recalculates child support obligations when the obligation has been established based on statistical data rather than on the obligor's ability to pay.<sup>23</sup> On May 15, 2015, CSSD issued an Administrative Review Decision denying the request for a default review on Mr. B's case.<sup>24</sup>

Mr. B filed an appeal on May 26, 2015, stating "I am not able to make the payment each month and I can't make the full interest payment on what I owe.... I have no other income and I don't know what I can do about this."<sup>25</sup> A hearing was held on June 29, 2015. Mr. B participated telephonically; Ms. Q did not participate;<sup>26</sup> Andrew Rawls represented CSSD. Following the hearing, the record was held open so that CSSD could submit additional evidence regarding the history of this case, and, specifically, the content of notices sent to Mr. B since the issuance of the 2002 Order.<sup>27</sup>

### III. Discussion

#### A. Applicable Law

A parent is obligated both by statute and at common law to support his or her children.<sup>28</sup> Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be

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<sup>18</sup> Ex. 6.

<sup>19</sup> Ex. 6.

<sup>20</sup> Ex. 6.

<sup>21</sup> Ex. 7, Ex. 8.

<sup>22</sup> Ex. 9.

<sup>23</sup> Division case presentation; AS 25.27.195(b).

<sup>24</sup> Ex. 10.

<sup>25</sup> Ex. 11.

<sup>26</sup> The notice of hearing sent via certified mail to Ms. Q at her address of record was returned to the Office of Administrative Hearings as "Refused," and Ms. Q was unable to be reached to participate telephonically.

<sup>27</sup> See July 13, 2015 Submission to Record and Exhibits 13, 14, 15, 16, 17, 18, 19.

<sup>28</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

calculated based on his or her “total income from all sources,” minus mandatory deductions such as taxes and Social Security. Either party may request modification of an existing child support order, and such orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>29</sup> A modification becomes effective beginning the first of the month after the parties are served with notice that a modification has been requested.<sup>30</sup> Beyond that, retroactive modification is not permitted. Likewise, retroactive modification of child support arrears is not permitted.<sup>31</sup>

However, the Division “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.”<sup>32</sup> In such a case, referred to as a “default review,” the department “may adjust the obligor’s account to reflect the support amounts established in the new order.”<sup>33</sup> The agency’s regulations clarify that a support order is not “based on a default income figure” if the support order was based on the obligor’s actual income, or on estimated or protected actual income, or imputed actual income based on a finding of voluntary un/underemployment, including where such estimates or projections are “based on incomplete but actual information.”<sup>34</sup>

### *B. Discussion*

K, the subject of the support order in this case, is now 21 years old.<sup>35</sup> The first record of Mr. B contacting CSSD is dated January 2014, two years after K reached the age of majority and after Mr. B ceased accruing additional monthly support obligations.<sup>36</sup> Because there is no ongoing child support order in place here, the only issue is Mr. B’s child support arrearage. At the time of the hearing, Mr. B owed more than \$70,000 in child support arrears.<sup>37</sup> He earns \$0.50 per hour, and has no reasonable chance of even meeting his monthly interest payments on the arrears.

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<sup>29</sup> AS 25.27.190(e).

<sup>30</sup> 15 AAC 125.321(d).

<sup>31</sup> Alaska Civil Rule 90.3(h).

<sup>32</sup> AS 25.27.195(b).

<sup>33</sup> AS 25.27.195(d).

<sup>34</sup> See 15 AAC 125.151(j)(2), (3), (4).

<sup>35</sup> See Ex. 1.

<sup>36</sup> See Ex. 6, Ex. 13, pp. 1-2.

<sup>37</sup> Ex. 13.

His request for some sort of assistance is understandable. However, the request Mr. B seeks is not available in this forum. Of note, Mr. B could have appealed the February 2002 Administrative Child Support and Medical Support Order based on the circumstances he described in the hearing. The Support Order notified him of his right to seek such relief.<sup>38</sup>

Likewise, at any time thereafter, Mr. B could have sought a modification of the order based on a material change in circumstances.<sup>39</sup> He certainly could have sought a modification once he began serving a life sentence. CSSD notified him, repeatedly, of his right to seek a modification.<sup>40</sup> For reasons known only to him, Mr. B never sought to modify the order.

The specific administrative action being appealed here is the May 15, 2015 denial of a request for a “default review.” As noted above, the default review mechanism is limited to scenarios in which a child support obligation is set based on statistical data, with no personal tie to the obligor. Here, however, Mr. B’s support obligation was based on his own wage history.<sup>41</sup> That this wage history may have been an unreasonable basis upon which to establish the support obligation, as Mr. B now suggests, may have been a basis for a 2002 appeal, but is not a basis for an AS 25.27.195(b) default review. Likewise, that this wage history is not a practical measure of Mr. B’s ability to pay now that he is incarcerated does not bring this case under the purview of the default review provisions. To conclude otherwise would ignore the plain language of the department’s own regulations,<sup>42</sup> and open too broad a door to untimely challenges to support obligations.

Because Mr. B’s child support order was not “based on a default income figure,” he is not entitled to a default review. Accordingly, his request for one was properly denied, and his appeal fails.

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<sup>38</sup> See Ex. 1, p. 1.

<sup>39</sup> See Alaska Civil Rule 90.3; AS 25.27.190.

<sup>40</sup> See Ex. 2, 3, 4, 5, 18. According to CSSD’s case presentation, CSSD was “aware of Mr. B’s long-term incarceration” by 2005. At that time, however, CSSD’s internal policies did not permit “state-initiated” reviews of child support orders on that basis, a policy which apparently changed in 2015.

<sup>41</sup> See Ex. 1, pp. 4, 7, 8.

<sup>42</sup> See 15 AAC 125.121(j).

**IV. Conclusion**

There is no doubt that for, at least ten years while it was in place, the 2002 Administrative Child Support and Medical Support Order did not accurately characterize Mr. B’s ability to pay, and therefore charged him child support based on an amount that far exceeded his actual ability to pay. But Mr. B took no timely action to remedy this issue, despite annual notices of his rights to do so. Mr. B’s then-available remedy was a request to modify the support order, a remedy he could have pursued at any time until K reached the age of majority. But the relief Mr. B now seeks – essentially a retroactive modification of his arrearage – is not a remedy that is legally available to him through the administrative hearing process. Because the 2002 Order does not constitute an award based on a default amount, Mr. B’s appeal of the request for default review is denied.

Dated: July 28, 2015

*Signed* \_\_\_\_\_  
Cheryl Mandala  
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 within 30 days after the date of this decision.

DATED this 24th day of August, 2015.

By: *Signed* \_\_\_\_\_  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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