

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

In the Matter of)	
)	
T S)	OAH No. 16-0395-CSS
_____)	Agency No. 001061041

REVISED DECISION AND ORDER

I. Introduction

L N appealed a decision by the Child Support Services Division (CSSD) to vacate a default administrative child support order, which had set non-custodial parent T S’s child support at \$196 per month, effective June 1, 2001, with arrears dating back to December 1, 1997. He also appealed the new Administrative Child Support and Medical Support Order that CSSD issued on March 1, 2016, which set Ms. S’s arrears at the state-minimum of \$50 per month for December 1997 through December 2009, and at \$144 per month from January 2010 through May 2011.

The Office of Administrative Hearings issued a proposed decision on June 7, 2016. The decision affirmed CSSD’s action vacating the 2001 default administrative child support order and its calculation of the revised support amount. A proposal for action was received, and the Deputy Commissioner of Revenue remanded this matter for additional findings to clarify the child’s birthdate, so that Ms. S’s arrears could be correctly calculated. This revised order is issued following remand.

CSSD properly vacated the 2001 administrative child support order, since it was based on a default income figure that did not reflect Ms. S’s actual income. CSSD also correctly set Ms. S’s child support arrears at \$50 per month for the period December 1997 through December 2009, and at \$144 per month starting January 1, 2010. However, CSSD’s decision is adjusted to reflect the finding that the child emancipated in 00/00/10, so that is the last month in which Ms. S is obligated to pay child support.

II. Facts¹

A. Material Facts

This is an arrears-only case. Ms. S and Mr. N are the parents of one daughter, D, who was born on 00/00/92.² D turned 18 on 00/00/10, and she is now an adult. Accordingly, Ms. S has no ongoing child support obligation. This case addresses Ms. S’s support obligation beginning

¹ Except where noted otherwise, the material facts are based on the testimonies of T S and L N.
² CSSD post-hearing submission dated 6/27/16 (DMV license information showing birthdate).

December 1, 1997 and continuing through May 2010, when Ms. S's legal obligation to support her daughter terminated.³ Mr. N had primary physical custody throughout this time period.

For the entire time period relevant to this case, Ms. S was addicted to crack cocaine. She had no permanent residence and was considered homeless. To support her addiction, she earned some illicit income from prostitution. Due to her lifestyle, Ms. S spent many years cycling between homelessness, jail, and residential treatment centers to address her drug-dependency.⁴ Between August 1998 and February 2010, Ms. S was incarcerated 19 different times, for periods ranging from one day to approximately five and a half months at a time.⁵ In total, she spent about 30 months in jail during this time. She lived in residential treatment centers five different times, spending a total of approximately 21 months in treatment.⁶ Her treatment records include the notation that, as of 2001, Ms. S had no sober place to live or stay, and she "does not have the necessary education or skills to obtain a meaningful job."⁷

Over the thirteen years from 1997 through 2009, Ms. S's reported income never exceeded \$2443 in any one year.⁸ For 10 of those years, her reported earnings were \$0. For the other three, her earnings were \$2443 (2006), \$356 (2007), and \$279 (2009). Starting in 2010, she held a steadier job, doing customer service and making sandwiches, and she earned income of \$7980 that year.⁹ Ms. S typically did not apply for or receive an Alaska PFD during this time period, because she believed her criminal record made her ineligible.

There is no verifiable or significant evidence in the record regarding Ms. S's illicit income from prostitution. Mr. N provided limited anecdotes, including an allegation that she had made up to \$1000 in a day. However, he acknowledged that this was not always the case. Ms. S agreed that she did have some cash income from illegal activity. However, the vast majority of any cash income was lost to her drug addiction. When she was not in jail or in treatment, she was homeless and living day-to-day.

³ In 2001, CSSD records incorrectly indicated that D's birthdate was 00/00/93. Exhibit 1. As a result, CSSD's records erroneously calculated Ms. S's support obligation through 00/00/11. Exhibit 5 at 17. On remand, it has been established that D was born in 00/00/92. Therefore, she turned 18 in 00/00/10, and that is when Ms. S's support obligation ended. While this case was on remand, the parties were provided an opportunity to present evidence that Ms. S's support obligation nonetheless continued through 00/00/11. OAH did not receive any submissions from the parents on this issue. CSSD asserted that the support obligation ended in 00/00/10, upon D's emancipation at age 18. CSSD post-hearing submission dated 7/1/16; Exhibit 5 at 24.

⁴ Exhibit 2.

⁵ Exhibit 2 at 15.

⁶ Exhibit 2 at 1-8.

⁷ Exhibit 2 at 6 (made readable in CSSD's May 13, 2016, post-hearing submission to the record).

⁸ See Exhibit 2 at 19 (Social Security Administration earnings record).

⁹ *Id.*; Exhibit 2 at 74-79.

Ms. S overcame her drug addiction in 2014, and she has lived drug-free since that time. She currently holds a stable job, and she is making payments toward her child support arrears.¹⁰

B. Procedural History

In 2001, CSSD issued the Child Support and Medical Support Order that set Ms. S's support amount for D at \$196 per month, effective June 1, 2001.¹¹ The support order also set total arrears of \$8102 for the period from December 1997 through May 2001.¹² When it issued that order, CSSD did not have any actual income or employment information for Ms. S, because she had no job history. CSSD imputed income to her based on the minimum wage at the time, \$5.65 per hour, for a full-time position of 2080 hours per year.¹³ This resulted in imputed annual income of \$11,752 per year.¹⁴ After allowable deductions, this income resulted in an ongoing support amount of \$196 per month.

In January 2016, Ms. S submitted a Motion to Vacate Default Order, along with supporting documentation regarding her income from 1997 through 2011. She also submitted information to verify the dates of her incarceration and residential treatment programs.¹⁵ CSSD sent the parties a Notification of Request for Relief of a Default Administrative Child Support Order.¹⁶ Mr. N opposed the motion to vacate Ms. S's prior child support order.¹⁷ He argued that Ms. S intentionally quit jobs and chose not to file for PFD's in an effort to avoid paying child support. He asserted that he had made sacrifices to raise the parties' daughter, and it was unfair to reduce Ms. S's support obligation based on her choice not to work.

On March 1, 2016, CSSD issued an Administrative Review Decision and a new Administrative Child Support and Medical Support Order.¹⁸ It granted Ms. S's motion to vacate the 2001 order, because that order was based on a default income figure under 15 AAC 125.121(j)(1). It further found that Ms. S had provided sufficient information to show that she actually had earned little to no income during the relevant time period.¹⁹ Therefore, the new support order set Ms. S's child support obligation at \$50 per month for the years from 1997 through 2009, the minimum allowed by state law. For January 2010 through May 2011, CSSD

¹⁰ Testimony of Ms. S; Exhibit 5 at 24-25.

¹¹ Exhibit 1 at 2.

¹² Exhibit 1 at 2, 10-11.

¹³ Exhibit 1 at 5, 7.

¹⁴ $\$5.65 \times 2080 \text{ hours} = \$11,752$.

¹⁵ Exhibit 2.

¹⁶ Exhibit 3.

¹⁷ Exhibit 4.

¹⁸ Exhibit 5 at 1-17.

¹⁹ Exhibit 5 at 1-3.

set a monthly obligation of \$144, based on Ms. S's 2010 earnings.²⁰

Mr. N appealed.²¹ The hearing took place on May 9, 2016. It was audio-recorded. Mr. N and Ms. S appeared in person and represented themselves. Child Support Specialist Joseph West also appeared in person and represented CSSD. The record remained open until May 23, 2016, to allow CSSD to supplement the record with additional information regarding Ms. S's income, if any, as well as to provide briefing on regulatory requirements for the new support calculation. Mr. N and Ms. S were provided an opportunity to respond to CSSD's post-hearing submission, but they did not do so.

A proposed decision issued on June 7, 2016; however, it incorrectly referenced D's birthdate as 00/00/93 rather than 00/00/92. Because of this error, it also incorrectly stated that Ms. S's support obligation continued through 00/00/11 rather than 00/00/10. This revised decision reflects D's birthdate of 00/00/92, and it terminates Ms. S's support obligation on 00/00/10, after D turned 18.

III. Discussion

In a child support hearing, the person who filed the appeal has the burden of providing by a preponderance of the evidence that CSSD's decision was incorrect.²² In this case, Mr. N filed the appeal, so he must show that CSSD made a mistake. He did not meet that burden.

A. *CSSD correctly vacated the 2001 Child Support Order, since it was based on a "Default Income Figure."*

A parent is obligated both by statute and at common law to support his or her children.²³ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. An obligor may request modification of an existing child support order, which may be granted upon a showing of "good cause and material change in circumstances."²⁴ When a modification is granted, it becomes effective beginning the first of the month after the parties are served with notice of the modification request.²⁵ Beyond that, however, retroactive modification generally is not permitted. Likewise, retroactive modification of child support arrears is not permitted.²⁶

²⁰ Exhibit 5 at 3.

²¹ Exhibit 6.

²² 15 AAC 05.030(h).

²³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

²⁴ AS 25.27.190(e).

²⁵ 15 AAC 125.321(d).

²⁶ Alaska Civil Rule 90.3(h).

There is a very narrow exception to the rule barring retroactive modification. That exception is restricted to cases where the support order was set based on a “default amount” or a “default income figure,” rather than the obligor’s actual ability to pay.²⁷ When a support order was based on a default amount, an obligor may later seek review of that “Default Administrative Child Support Order.” This appeal arises out of Ms. S’s request for such a review.

Department of Revenue regulations are quite specific about what does and does not qualify as a “default income figure.”²⁸ Among other specified exceptions, the regulations explain that a support order is based on a default income figure if CSSD imputed the parent’s annual adjusted income based on the federal minimum wage or minimum wage where the parent resided.²⁹ That is precisely the case in this appeal. CSSD imputed Ms. S’s income based on minimum wage over the course of a full-time job. In 2001, Ms. S’s child support obligation was set based on an imputed or default income figure.

B. CSSD correctly recalculated Ms. S’s support amount based on her verified income.

The law requires CSSD to vacate a default administrative support order if the order was based on a default income figure *and* the agency determines that the default income figure “is not an accurate reflection of the obligor’s income for purposes of calculating the obligor’s child support obligation.”³⁰ In 2001, CSSD imputed Ms. S’s annual income at \$11,752. In reviewing the default support order, CSSD concluded that this figure did not accurately reflect her actual income. It therefore issued a new order based on Ms. S’s verifiable income from sources such as IRS statements, Social Security statements, and the Alaska Department of Labor.³¹

Social Security and IRS records indicate that Ms. S had no reported income of any kind between 1997 and 2005. Her verified income in 2006 was \$2443; in 2007, it was \$356; in 2008, it was \$0; and in 2009, it was \$279.³² Given these totals, CSSD properly concluded that the 2001 default income figure was not accurate. It also properly recalculated Ms. S’s child support obligation based on the information available to it, which resulted in the state-minimum support amount of \$50 per month for the years from 1997 through 2009. Even if Ms. S had received an Alaska PFD every year, this fact would not have altered the support awarded in any of those years. For 2010 and ongoing, CSSD correctly set Ms. S’s support obligation based on her actual

²⁷ See A.S. 25.27.195(b); 15 AAC 125.121(a).

²⁸ 15 AAC 125.121(j)

²⁹ 15 AAC 125.121(j)(1)(C).

³⁰ 15 AAC 125.121(a).

³¹ Exhibit 5 at 3, 7.

³² Exhibit 2 at 19, 47-48, 52-54, 58-60, 64-65, 69-71.

2010 income of \$7980, also as verified by IRS and Social Security documentation.³³ This resulted in a support amount of \$144 per month.

Mr. N argued that Ms. S chose not to work and she should not be released from a more substantial obligation to financially assist with the cost of raising a child. He asserted that \$50 per month is inadequate, and Ms. S's obligation should be increased because she was an able-bodied adult who should have been working. Therefore, it was appropriate to impute income based on a minimum wage job. Mr. N also argued that Ms. S received significant income from illicit activity during the time period in question. He asserted that this income should be included in setting Ms. S's new support amount; however, he could not provide specific evidence or propose a method to guide such an endeavor.

When CSSD vacates an administrative child support order that was based on a default income figure, it is required to calculate the amount of a new support order pursuant to 15 AAC 125.010 - 125.090.³⁴ The regulation that allows CSSD to impute income to persons deemed voluntarily unemployed or underemployed falls within this regulatory range.³⁵ However, as CSSD pointed out in its post-hearing submission, it would make little sense to vacate one "default" administrative support order, only to replace it with a new default order. In addition, CSSD asserted that, although Ms. S typically was unemployed during the time periods in question, her unemployment was not voluntary. Rather, it was the result of her homelessness, combined with her ongoing cycles between incarceration and drug treatment programs.

These arguments are well-taken. There appear to be only three periods of time between August 1998 and February 2010 in which, for six consecutive months or longer, Ms. S was *not* in jail or in a treatment program.³⁶ This limited her ability to work and earn income. In addition, even if her decision to take drugs was voluntary, it does not necessarily follow that she was voluntarily unemployed or underemployed for purposes of her child support determination.³⁷

The regulatory framework supports the conclusion that Ms. S's recalculated support order should be based on her actual income, pursuant to 15 AAC 125.030(e), rather than on imputed

³³ Exhibit 2 at 19, 75-76.

³⁴ 15 AAC 125.121(g).

³⁵ See 15 AAC 125.060.

³⁶ See Exhibit 2.

³⁷ See, e.g., *In re Marriage of Atencio*, 47 P.3d 718, 720-21 (Colo. Ct. App. 2002) (parent's job loss and resulting loss of income due to drug use was not voluntary or deliberate); *Pace v. Pace*, 24 P.3d 66 (Idaho Ct. App. 2001) (addicted parent who lost job was not motivated by a desire to shed parental responsibilities and not voluntarily unemployed); *In re Marriage of Johnson*, 950 P.2d 267 (Kan. Ct. App. 1997) (voluntary drug use that results in an involuntary loss of income does not necessarily mean a parent is deliberately unemployed or underemployed).

income pursuant to 15 AAC 125.060. This income must be verifiable and supported by the evidence in the record. In this case, the only verifiable sources of evidence regarding Ms. S's income between 1997 and 2010 are found in the government databases previously discussed. Mr. N credibly testified that Ms. S also received unreported cash income, and this is certainly true. However, there is insufficient evidence in the record on which to make any specific findings regarding that income, year by year, for the period in question.

CSSD correctly vacated its May 15, 2001, default administrative child support order under 15 AAC 125.121. It also properly issued a new support order based on Ms. S's reported income, with one adjustment. The 2016 support order required her to pay arrears through 00/00/11. Since the child emancipated in 00/00/10, that is the last month for which Ms. S owes child support. Based on the evidence, CSSD correctly set Ms. S's arrears for child support at \$50 per month for the period from December 1997 through December 2009, and at \$144 per month starting in January 2010.

IV. Conclusion

CSSD did not make a mistake in vacating Ms. S's 2001 child support order, since it was based on a default income amount. It also did not err in setting a new support obligation based on her actual income. Ms. S no longer has an ongoing support obligation, so her case is an arrears-only matter. Based on the evidence, Ms. S's support obligation was properly set at \$50 per month for period from December 1997 through December 2009. It also was properly set at \$144 per month beginning January 2010, but the order is adjusted to reflect that Ms. S's obligation terminated when the parties' daughter emancipated in 00/00/10.

V. Child Support Order

•The Administrative Child Support and Medical Support Order dated May 14, 2001, is vacated;

•The Administrative Child Support and Medical Support Order dated March 1, 2016, is affirmed with one adjustment to reflect that Ms. S's support obligation terminated on 00/00/10.

DATED this 8th day of July, 2016.

By: Signed _____
Kathryn A. Swiderski
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 N be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision N 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 11th day of July, 2016.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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