

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

In the Matter of)	
)	
Q C. T, JR.)	OAH No. 16-0484-CSS
_____)	Agency No. 001048859

DECISION AND ORDER

I. Introduction

Q C. T, Jr. sought relief from his child support arrears. He filed a motion to vacate a child support order that the Child Support Services Division (CSSD) issued in his case in 1994. That order set his support obligation for one child at \$228 per month. CSSD denied his request, and Mr. T appealed.

The 1994 child support order was based on Mr. T’s actual income, not a default income figure or a default amount. Therefore, it was not a default child support order, and the relief Mr. T seeks is not permitted as a matter of law. Accordingly, CSSD’s decision is affirmed.

II. Facts¹

A. Material Facts

This is an arrears-only case. Mr. T and D H are the parents of B, who was born in 1993.² Ms. H had primary physical custody of B for all times relevant to this appeal. B is now an adult, and Mr. T has no ongoing support obligation for her. He has two other children, who are both younger than B.

In 1994, CSSD issued a child support order, called a “Notice and Finding of Financial Responsibility,” that established Mr. T’s support obligation for B at \$228 per month.³ CSSD calculated this amount based on Mr. T’s wage earnings in 1993, as reported by his employers to the Alaska Department of Labor.⁴ In 1993, Mr. T earned total wages of \$14,585.59 from three different employers. He earned \$6851.75 doing remodeling work for the Employer A in City A. He earned \$7483.84 from processing and maintenance work for Employer B., and he earned \$250 from Employer C. Mr. T agrees that he earned this income.

When it calculated his support obligation in 1994, CSSD started with Mr. T’s gross wage income of \$14,585.59. It then applied deductions of \$824, for matters such as taxes and Social

¹ Unless otherwise noted, the material facts are based on the testimony of Q C. T, Jr.

² CSSD Pre-hearing brief, p. 1.

³ Ex. 1. CSSD was at that time known as the Child Support Enforcement Division, or CSED. The support order was effective July 1, 1994, with arrears based on the same support amount dating back to May 1, 1994.

⁴ Ex. 1, p.3.

Security, as required by Civil Rule 90.3(a)(1). Lastly, it multiplied the adjusted income amount by 20%, pursuant to Civil Rule 90.3(a)(2), for one child. This resulted in an ongoing support obligation of \$228 per month.⁵

Department of Labor records indicate that Mr. T worked and earned wage income regularly between 1988 and 2001, with exceptions in 1997 and 1999, when he did not earn any income.⁶ His income varied from year to year. In 1993, he earned substantially more than he had in each of the five preceding years.⁷ However, his 1993 income reasonably represents his wage income for each of the 6 subsequent years in which he earned income. That income ranged from a low of \$8314.74 in 1998 to a high of \$24,982.10 in 2000.⁸

For varying periods of time between 1998 and 2015, Mr. T also received temporary assistance and food stamp benefits to make ends meet for his household.⁹ It appears that he received temporary assistance benefits from 1998 to 2000, and again from 2002 to 2005.¹⁰ He received food stamps from 2012 to 2015.¹¹

At the hearing, Mr. T stated that he has struggled with chronic alcoholism and mental health issues for many years.¹² In 1995, he was convicted of driving without a license, and he spent some time in jail.¹³ Between 1998 and 2007, Mr. T was charged more than 10 times with criminal offenses.¹⁴ He submitted a summary that identified eight misdemeanor convictions between 1999 and 2006, for crimes including driving while intoxicated, driving while license suspended or revoked, criminal trespass, driving without a license, and misconduct involving weapons.¹⁵ He spent some time in jail for these offenses.¹⁶

In 2001, Mr. T suffered significant physical injuries to his neck and back. Because of his

⁵ These calculations are evident from CSSD's receipt tape at Exhibit 1, p. 3, which shows total income of \$14,585.59, and deductions totaling \$824. This resulted in adjusted income of \$13,761.59. Twenty percent of this amount would be \$2752.32, or \$229 per month. The 1994 support order was set at \$228 per month, however.

⁶ See Exhibit 4.

⁷ His income from 1988-1992 was: \$6442.64 (1988); \$4446.25 (1989); \$7270.52 (1990); \$424.88 (1991); and \$6510.84 (1992). Exhibit 4, p. 5.

⁸ See Exhibit 4, p. 5. Mr. T's earnings from 1994 to 2001 were: \$9201.80 (1994); \$20,742.05 (1995); \$12,143 (1996); \$0 (1997); \$8314.74 (1998); \$0 (1999); \$24,982.10 (2000); and \$15,537.28 (2001).

⁹ Exhibit 8, pp. 3-7 (Q. T, Jr. food stamp and ATAP benefit history).

¹⁰ Exhibit 8, pp. 4-7 (ATAP benefit history).

¹¹ Exhibit 8, p. 3. (Food Stamp benefit history).

¹² Testimony of Q. T, Jr.; Exhibit 9 (Q. T presentation letter for administrative hearing).

¹³ Exhibit 8, p. 2 (prior convictions history); Exhibit 9 (Q. T presentation letter).

¹⁴ Exhibit 8, p. 1 (Q. T, Jr., court history summary).

¹⁵ Exhibit 8, p. 2 (11/28/2007 summary of prior convictions).

¹⁶ Exhibit 8, p. 2; Exhibit 9. His most recent period of incarceration ran from October 2007 to February 2008.

injuries, substance abuse and mental health issues, Mr. T did not earn wage income after 2001.¹⁷

In 2004, he was ordered to pay child support for his two younger children at the state-minimum of \$50 per month.¹⁸ He did not request a modification of his support obligation for B at that time.

B. Procedural History

In January 2015, after B had emancipated, Mr. T requested a recalculation of his support obligation for her. He requested a reduction that would reflect his lack of income, particularly after 2001 when he was not working and he was often in jail. This request took the form of a motion to vacate the 1994 order as a default child support order.¹⁹ Mr. T argued that he should not be required to pay \$228 per month for time periods when he had little or no income, when he had been in jail, and when he was receiving public assistance in order to get by. To support his motion, he submitted a summary of his wage history from 1987 to 2001, and a summary of his FICA earnings from 1980 to 2015.²⁰

On September 30, 2015, CSSD issued an Administrative Review Decision that denied Mr. T's request to vacate the 1994 support order.²¹ Mr. T did not appeal that decision administratively with CSSD. For reasons that are not clear in the record, Mr. T and CSSD ended up in superior court, where Mr. T again challenged his child support obligation. In that case, CSSD agreed to allow Mr. T to pursue a late-filed administrative appeal of the September 30th Administrative Review Decision. The Superior Court case was stayed on April 29, 2016, so that Mr. T could exhaust his administrative remedies, and Mr. T filed an administrative appeal letter the same day.²²

The administrative hearing took place on June 13, 2016. Mr. T appeared in person and represented himself. Child Support Specialist Joseph West also appeared in person and represented CSSD. Former custodial parent D H could not be reached at her contact number of record and did not participate. The hearing was audio-recorded. The record remained open after the hearing for three weeks, to provide Mr. T time to submit additional evidence, including a

¹⁷ Exhibit 4, p. 5.

¹⁸ Testimony of Q. T, Jr.; Exhibit 9.

¹⁹ Exhibit 3.

²⁰ Exhibit 4, p. 5.

²¹ Exhibit 5.

²² Exhibit 7 (Order Staying Motion to Reopen); Exhibit 6 (administrative appeal letter). On March 8, 2016, CSSD sent Mr. T a letter that set a March 26, 2016 deadline to file an administrative appeal. Exhibit 5. Mr. T filed his appeal on April 29, 2016. CSSD did not challenge this filing as untimely, and the Superior Court Order at Exhibit 7 contemplates the later filing date.

letter from B. However, he did not submit anything within the agreed schedule, and the record closed on July 7, 2016.

III. Discussion

A. *Mr. T's 1994 support order was not 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 a noncustodial parent'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. CSSD complied with this mandate in June 1994, when it issued Mr. T's support order for B based on his 1993 income.

After CSSD establishes a child support obligation, either parent may request that it be modified. Such requests will 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 Under this rule, modifications are effected prospectively, from the time that all parties have been put on notice that a modification may be made. This places the burden on parents to promptly apply for a modification of child support if a material change in circumstances occurs.²⁶

With very limited exceptions, the law generally prohibits retroactive modification of a parent's child support arrears.²⁷ One exception addresses situations in which the child support order was calculated based on a "default amount" or a "default income figure," rather than the obligor's actual ability to pay.²⁸ When a support order was based on a default amount, an obligor-parent may later seek review of that order, and a retroactive modification is possible. This appeal arises out of Mr. T's request for such a review.

Department of Revenue regulations are specific about what does and what does not qualify as a "default income figure."²⁹ A support order is based on a default income figure if, for instance, CSSD imputed annual income to the parent based on the Alaska Needs Standard, on group wage statistics provided by the Department of Labor, or on the minimum wage where the

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); Civil Rule 90.3(h)(2).

²⁶ Civil Rule 90.3, Commentary X.B.

²⁷ Civil Rule 90.3(h)(2).

²⁸ AS 25.27.195(b); 15 AAC 125.121(a).

²⁹ 15 AAC 125.121(j).

party resides.³⁰ These are instances in which the obligor-parent's income determination was based on imputed data, without any personal connection to the parent's actual circumstances.

In contrast, a support order is *not* based on a default income figure if it was based on actual income information, or on estimated income derived from incomplete but actual income for the current or a prior year.³¹ Additionally, a support order is not based on a default income figure solely because the obligor-parent failed to respond to the notice and finding of financial responsibility, as long as the notice and finding of financial responsibility was based on actual income, or if it was estimated based on incomplete but actual income for the current or a prior year.³²

In this case, there is no dispute that, in 1994, CSSD set Mr. T's child support obligation based on his actual 1993 wage income. As a matter of law, therefore, that order was not based on a "default amount" or a "default income figure." Accordingly, it cannot be vacated as a default child support order. Doing so would result in an impermissible retroactive modification of his support obligation.

It is clear that Mr. T received CSSD's child support order in 1994, and he was aware of his ongoing obligation of \$228 per month.³³ Mr. T testified that he paid the ordered amount regularly, via automatic paycheck deductions, while he was working. It is highly unfortunate that he did not request a modification of his support obligation after he stopped working and his financial circumstances so dramatically changed. At that point, the 1994 order assessed a child support obligation based on an income that exceeded Mr. T's ability to pay. This makes Mr. T's request for relief from past-due child support understandable. However, the relief he seeks is not available in this forum.³⁴

Mr. T argued that his \$228 support obligation should be retroactively modified because it is inconsistent with the \$50 monthly obligation that was established for his two younger children in 2004. The 2004 support amount reflects a recognition that Mr. T's financial circumstances at that time justified a minimal support obligation. This suggests that, had he requested a

³⁰ 15 AAC 125.121(j)(1).

³¹ 15 AAC 125.121(j)(2)(A), (j)(2)(B).

³² 15 AAC 125.121(j)(4).

³³ Exhibit 1, p. 4. The certified mail return receipt indicates that Mr. T received the 1994 child support order on "6-13." CSSD's certificate of service clarifies that this date refers to June 13, 1994.

³⁴ At the hearing, the CSSD hearing representative encouraged Mr. T to explore other possible means of reducing his arrears, such as through a request to CSSD to waive the interest owed on past-due support owed to the state. Alternatively, he could explore a reduction of income withholding due to hardship, as set out at 15 AAC 125.550.

modification review at that time, Mr. T likely would have been successful in reducing his support amount for B. Unfortunately, he did not do so, and Mr. T's two child support orders are independent obligations. When one order is established or modified, it may make good sense to review the other. However, such action is not automatic.

B. There is no evidence that Mr. T's support obligation terminated early, or that it should be suspended for any period of time.

Mr. T also argued that he should not have to pay child support after B turned 15, because she did not live with her mother between the ages of 15 and 18. He indicated that she lived for some period of time in a behavioral health facility; Mr. T was not clear where else she resided. He confirmed that she did not live with him during this time.

To support this claim, Mr. T planned to submit a letter from B, who would explain her living circumstances and indicate whether she had legally emancipated before the age of 18. The record remained open for three weeks after the hearing, to allow Mr. T time to obtain and submit that evidence. However, the Office of Administrative Hearings did not receive anything from him within the allotted time. As a result, there is insufficient evidence in the record to establish that Mr. T's support obligation either terminated or should be suspended before B turned 18.

In general, however, a parent's duty to support his or her minor child exists regardless where the child lives. Moreover, Mr. T's support obligation could have terminated if B legally emancipated before she turned 18, for example, if she had gotten married or joined the military. However, Mr. T likely would be aware if such significant events were part of B's life.

IV. Conclusion

Mr. T no longer has an ongoing support obligation for B, who is now an adult, so his case is an arrears-only matter. Based on the evidence in the record, Mr. T's support obligation did not terminate before B emancipated at age 18. Further, because his 1994 child support order was based on his actual wage history, he cannot vacate that order through a default review. Therefore, CSSD properly denied this request, and its Administrative Review Decision, issued on September 30, 2015, is affirmed.

V. Child Support Order

- CSSD's Administrative Review Decision, issued on September 30, 2015, is affirmed;

- The Notice and Finding of Financial Responsibility (Support Order) issued on June 8, 1994, remains in full force and effect.

DATED: July 8, 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 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 22nd day of July, 2016.

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

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