

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

In the Matter of)	
)	
H Z)	OAH No. 16-1367-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 0011008053

DECISION AND ORDER

I. Introduction

The Child Support Services Division issued an administrative child support order establishing H Z’s child support obligation for his child B N at \$665 a month. The order was based on need standards rather than Mr. Z’s actual income. Mr. Z requested that the division vacate that order. The division vacated the order and issued a new order based on Mr. Z’s actual income, which had the effect of reducing Mr. Z’s child support account balance to zero. F T, the custodial parent, appealed.

Because the original order was based on a default amount and Ms. T did not show that vacating the order would cause undue hardship, the division’s administrative review decision to vacate the 1987 order is upheld. Because the amounts in the October 21, 2016 administrative child support and medical support order were based on information about Mr. Z’s actual income and were calculated under Civil Rule 90.3(a), and Ms. T did not identify any errors in the calculations, the 2016 administrative child support and medical support order is upheld.

II. Facts

In 1987, the division ordered H Z to pay \$665 a month in child support for his child B N, plus arrears going back to 1983. The division calculated this monthly support obligation according to need standards for the Aid to Families with Dependent Children (AFDC) program.¹

Over the years, Mr. Z worked in a variety of seasonal and temporary jobs. He worked in construction, fire-fighting, building maintenance and at a gold mine. He worked as a day laborer, taxi driver, bartender, baker, and backhoe operator. He was not steadily employed, and his ability to find work was constrained by limited job opportunities in the village where he lived as

¹ Exhibit 2 at 1 (“The amount determined is based on Alaska Aid to Families with Dependent Children (AFDC) need standards.”)

well as by his use of alcohol. He received dividends from No Name 1 Corporation and No Name 2 Corporation. He had several brief periods of incarceration.²

In 2013, Mr. Z requested that the 1987 order based on the default AFDC need standard be vacated. He submitted information to the division about his actual income between the year his child was born and the year the child turned 18. He completed division forms to show that his income was below poverty level for each of 18 years, from 1983 through 2001. He submitted documentation from No Name 1 Corporation, No Name 2 Corporation, the Internal Revenue Service, and the Social Security Administration of his income.³ The division concluded that the 1987 order did not accurately reflect Mr. Z's actual earnings. It vacated the 1987 order and issued a new order based on the financial information that Mr. Z had supplied.⁴ The division also adjusted Mr. Z's child support account, bringing the balance due down to zero.⁵ F T, the custodial parent, appealed.⁶

A telephonic hearing was held on December 19, 2016. Mr. Z represented himself. Ms. T participated. Child Support Specialist Brandi Estes represented the division. The record closed on December 30, 2016.

III. Discussion

The division issued two separate orders in this case: an administrative review decision vacating the 1987 child support order, and a new administrative child support and medical support order based on actual income information provided by Mr. Z.⁷ Each order is discussed below.

A. Vacating the 1987 administrative child support order

The division is authorized to vacate an administrative support order established based on a default amount rather than the obligor's actual ability to pay.⁸ The division based the 1987 order establishing Mr. Z's support obligation on need standards from the Aid to Families with Dependent Children program rather than Mr. Z's actual ability to pay. Therefore, the 1987 order setting Mr. Z's child support obligation falls within the category of orders that the division may vacate under AS 25.27.195(b).

² Exhibit 8.

³ Exhibit 8.

⁴ Exhibit 5 at 37.

⁵ Exhibit 6 at 12.

⁶ Exhibit 7 at 1.

⁷ Exhibit 5, pages 1 - 5, 37 - 40.

⁸ AS 25.27.195(b).

Before the division may vacate an order, the division must notify the obligor and the custodian and give them an adequate opportunity to be heard on the issue.⁹ According to the division, it notified Mr. Z and Ms. T by mail of Mr. Z's request for relief from the default administrative child support order.¹⁰ Although Ms. T did not respond to this notice, she did appeal the division's decision to vacate the 1987 order.

The division's regulations provide that the division will grant a request to vacate a support order if it finds that the support order was based on a default income figure, and "granting the request will not cause undue hardship to a party because of the party's reasonable reliance on the support order."¹¹ At the hearing, the division asked Ms. T whether she had incurred debt or other obligations based on the expectation of receiving child support from Mr. Z. Ms. T testified that she had not. Ms. T did not argue that vacating the 1987 order would cause her hardship due to her reliance on that order.¹²

The division established that the 1987 order was based on a default income figure. Ms. T did not respond to the division's notice of Mr. Z's request to vacate the 1987 order, and at the hearing, her testimony indicated that vacating the order would not "cause undue hardship" due to reliance on her part on the 1987 order. The agency met the two requirements of 15 AAC 125.121(e) and correctly granted the request to vacate the 1987 order.

B. Challenge to the new child support order

Ms. T argued that the reduction of Mr. Z's outstanding balance to zero as a result of the division's new child support order based on actual earnings was incorrect. She did not identify any specific errors in the division's calculations. Instead, she argued generally that the result was not fair to her as the custodial parent. Specifically, she said it was "not right on [her] part because the child was raised,"¹³ and that Mr. Z should be "responsible for his part."¹⁴ However, Civil Rule 90.3(a) requires the division to calculate child support as a percentage of the obligor's income, not as a percentage of the cost of raising a child. The

⁹ AS 25.27.195(c).

¹⁰ Agency position statement at 1. The division did not include copies of the notices sent to the parties in the record.

¹¹ 15 AAC 125.121(e).

¹² Exhibit 7.

¹³ Testimony of T.

¹⁴ Exhibit 7; T's December 27, 2016 submission to record.

division used the correct methodology to calculate Mr. Z's income and child support obligation under Civil Rule 90.3(a).

The division requires an obligor requesting relief from a default order to provide the income information for each year for which relief is sought.¹⁵ Mr. Z provided this information. Mr. Z filled out a form affidavit for each of the years in question. Although he used the same form for each year, the information he provided was specific, and the details differed from year to year. More importantly, each affidavit was subscribed and sworn by Mr. Z, an indicator of reliability. Also, the division used information provided to Mr. Z by the Social Security Administration and the Internal Revenue Service, as well as the two corporations from which Mr. Z received dividends. These are generally reliable sources of information.

Ms. T argued that Mr. Z had other children and that he was paying for them somehow, implying that the income information Mr. Z provided was incorrect or incomplete. However, Ms. T did not point to any specific source of income that was understated or not included. Ms. T did not question the accuracy of any specific affidavit or of the Social Security Administration and the Internal Revenue Service information.

Finally, Ms. T pointed out that Mr. Z only made a few payments in the later years, suggesting that the division erred when it found that Mr. Z's outstanding balance should be reduced to zero.¹⁶ For each year between 1983 and 2002, the division used the information supplied by Mr. Z to identify monthly gross income, deducted expenses allowed under the rule, and calculated Mr. Z's child support obligation based on the result.¹⁷ For several years, the calculations resulted in the minimum child support amount that the division has authority to order, currently \$50 a month.¹⁸ This is considerably less than the \$665 a month in the 1987 order. However, given Mr. Z's income, it is consistent with Civil Rule 90.3(a). The division then computed Mr. Z's total obligation, arrears, and interest using new order. Taking Mr. Z's previous payments into account, the division concluded that the account

¹⁵ 15 AAC 125.040(b), 15 AAC 125.121(b).

¹⁶ T's December 27, 2016 submission to record.

¹⁷ Exhibit 5, pages 7 - 35.

¹⁸ Exhibit 5 at 7 - 35, *see* Civil Rule 90.3(c)(3).

balance was zero.¹⁹ The zero balance reflects the reduction in Mr. Z's child support obligation.

IV. Conclusion

Because the division correctly concluded that the 1987 order should be vacated, and because the new administrative child support order reflects Mr. Z's actual income, the orders should be upheld. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a), however, for some years Mr. Z's child support obligation was set at the minimum child support amount of \$50 under Civil Rule 90.3(c)(3).

V. Child Support Order

The division's October 21, 2016 Administrative Review Decision and Administrative Child Support and Medical Support Order are affirmed.

Dated: January 17, 2017.

Signed

Kathryn L. Kurtz

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 6th day of February, 2017.

By: *Signed*

Signature

Kathryn L. Kurtz

Name

Administrative Law Judge

Title

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

¹⁹ Exhibit 6.