

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

IN THE MATTER OF:)	
)	OAH No. 04-0146-CSS
R. W. R.)	CSSD NO. 001009575
_____)	DOR NO. 040744

DECISION AND ORDER

I. Introduction

This matter involves the Obligor R. W. R.'s appeal of Administrative Review Decision that the Child Support Services Division (CSSD) issued on September 29, 2004, in response to his request to vacate the default arrears in his case. The Obligee children are D., DOB 00/00/80, and M., DOB 00/00/85.

The formal hearing was held on December 16, 2004. Mr. R. appeared telephonically; the Custodian, A. D. B., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on January 18, 2005, which was extended to February 10, 2005, upon Mr. R.'s request.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, was appointed to hear this appeal by the Chief Administrative Law Judge, Terry L. Thurbon. Having reviewed the record in this case and after due deliberation, I have concluded Mr. R.'s appeal should be denied and CSSD's Administrative Review Decision should be affirmed.

II. Facts

A. History

On August 23, 1988, CSSD set Mr. R.'s child support at \$40 per month for two children based on his income.¹ In a subsequent modification proceeding, CSSD modified Mr. R.'s child support order to \$689 per month on June 20, 1996. The child support amount was calculated from the Alaska average wage for men in his age bracket.² On March 26, 2004, Mr. R. filed a Motion to Vacate Default Order.³ On September 29, 2004, CSSD found Mr. R. voluntarily

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

unemployed or underemployed and issued an Administrative Review Decision denying his request to vacate the default order.⁴ Mr. R. filed an appeal and requested a formal hearing on October 12, 2004.⁵

At the formal hearing, Mr. R. raised two issues for the appeal, the first being that he was in a motorcycle accident in the 1970's, and while in the hospital, contracted a chronic liver infection that persists to this day. The second issue concerns the direct payment of \$13,000 in child support he made on behalf of the Obligees D. and M.

Mr. R. testified as a result of his health condition, he cannot hold a job because he is sick all of the time. Mr. R. acknowledged he has not seen a doctor lately, but he said he cannot afford to see one at this time. Mr. R. said he is not currently being treated for his liver condition, but his doctor wants him to start taking Interferon, which he stated he cannot afford. In addition to his chronic liver condition, Mr. R. testified he had a hernia operation in 2003 and needs a second surgery, but he cannot afford one. Mr. R. stated he would provide a statement from his doctor regarding his ability to work.

Mr. R. also testified he has paid child support directly to Ms. B. of approximately \$13,000 in the last several years. Mr. R. asserted he has copies of the money order receipts for the payments and he agreed to provide those copies after the hearing.

During cross examination, Mr. R. was asked to describe his financial circumstances and to discuss the employment or income producing activities he has been involved in over the years. Mr. R. testified he does not have any income of his own and his girlfriend supports him from her self-employment income as a graphic artist. Mr. R. stated they got together about two or three years after he and Ms. B. split up. He said his girlfriend has a 14-year-old child who lives in the home.

Mr. R. stated his monthly expenses include \$200-\$300 for food; \$200 for electricity; \$200 for heating oil (during the winter only); \$40 for the telephone; \$39 for cable service; \$120 for gasoline; \$100-\$200 for vehicle expenses; \$97 for auto insurance; \$100 for entertainment; \$100 for personal-care items; and \$30 for cigarettes. Mr. R. said he has an agreement with the out-of-state owner of his residence for Mr. R. to maintain the home in exchange for rent. Mr. R.

⁴ Exh. 16.

⁵ Exh. 17.

stated he owes the hospital approximately \$4000 for his hernia operation and \$17,000 for his motorcycle accident.

Mr. R. was questioned about R. Properties and asked whether he has any ownership interest in the business. Mr. R. responded that it was his father's company which was left to his mother and three younger brothers after his father died in a drowning accident. He denied receiving any financial benefit from the business. Mr. R. acknowledged he was self-employed as recently as 2002, but said he shut down his business doing odd jobs because he could not afford the licensing fees. He said he worked part-time as late as 2002 in an effort to get his driver's license back, but he has not worked since then.

At the close of testimony, Mr. R. agreed to provide, no later than January 18, 2005, a statement or other evidence from his physician regarding his ability to work. He also agreed to provide copies of the money order receipts he used to send child support directly to Ms. B.

Ms. B. did not appear at the hearing, but CSSD filed a copy of case management notes CSSD staff entered in this case on December 7, 2004. The notes indicate Ms. B. contacted CSSD and reported that she received only \$1900 of all the money orders that Mr. R. sent. She asserted he sent most of the money orders directly to the children, which they cashed and spent on non-essential items. Ms. B. indicated Mr. R. submitted receipts totaling \$16,780, but she claimed \$14,880 should be considered gifts because the money orders were addressed to and used by the children.⁶

On January 18, 2005, Mr. R. contacted the Office of Administrative Hearings and stated he could not get to the doctor until the first part of February. He was granted an extension of time until February 10, 2005, to provide his additional evidence. No documents were ever received from Mr. R.

B. Findings

Based on the evidence in the record and after due consideration, I hereby find:

1. Mr. R. did not meet his burden of proving by a preponderance of the evidence that CSSD's denial of his motion to vacate default order was incorrect, as required by 15 AAC 05.030(h);
2. Mr. R. has a chronic liver condition, but he did not establish he is disabled for child support purposes;

⁶ Exh. 18.

3. CSSD correctly denied Mr. R.'s motion to vacate default order;
4. Mr. R. paid \$1900 in direct child support to Ms. B. on behalf of the Obligees D.

and M. prior to M.'s emancipation.

III. Discussion

A. Obligor's Disability

A parent is obligated both by statute and at common law to support his or her children.⁷ 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."

The Obligor has the burden of proving his or her earning capacity.⁸ An Obligor who claims he or she cannot work, or pay child support, because of a disability, or similar impairment, must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.⁹

Mr. R. testified his medical problems have prevented him from working, but he failed to provide the documents he agreed to provide from his physician regarding his ability to work. There is no question that Mr. R. has a chronic liver condition. One of the bills he submitted as evidence of his financial circumstances lists his specific diagnosis.¹⁰ This confirms that he has the disease, but the larger, and answered, question involves whether Mr. R. is able to work and earn income. There is no evidence of this issue in the record other than Mr. R.'s testimony that he is sick all of the time and cannot work. However, the testimony Mr. R. offered in this regard contradicts other testimony he gave at the hearing to the effect that he has worked and earned self-employment income as recently as 2002.

Therefore, I find Mr. R. is not disabled for child support purposes, and conclude CSSD's denial of his motion to vacate default order was reasonable, and should be affirmed.

B. Credit for Direct Payments

Mr. R. requested credit against his child support obligation for financial contributions he made to Ms. B.'s household while the children were still minors. Ms. B. conceded Mr. R. gave her approximately \$1900 in direct support.

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

⁹ *Id.* at 1371.

¹⁰ Exh. 5 at pg. 1.

CSSD's regulations state that the agency will give credit for direct payments against a child support obligation only if the obligor provides "clear and convincing evidence" that the payment was made to the custodial parent.¹¹ Evidence of direct payments must include items such as copies of canceled checks, bank statements showing deposits and receipts signed by the custodial parent.¹²

Ms. B. verified in a letter to CSSD that of the money orders totaling \$16,780 that Mr. R. provided, he sent all but \$14,880 to the children, which they used for non-essential items. Ms. B. verified she received \$1900 that he sent, so I find this constitutes "clear and convincing evidence" of direct support under amount 15 AAC 125.465(a). Mr. R. is entitled to a credit for providing direct child support to Ms. B. in the amount of \$1900 for the period ending December 2002, just prior to M.'s emancipation. In the absence of receipts or other types of documentation, however, Mr. R. is not entitled to a credit for any additional funds he claims to have given Ms. B. for direct support of the children.¹³

IV. Conclusion

Mr. R. did not meet his burden of proving CSSD's Administrative Review Decision denying his motion to vacate default order was incorrect. Although he has chronic medical problems, Mr. R. did not establish he is unable to work. Therefore, he is not disabled for child support purposes and CSSD correctly denied Mr. R.' motion to vacate the default order. CSSD's Administrative Review Decision should be affirmed.

V. Child Support Order

1. CSSD's September 29, 2004, Administrative Review Decision is affirmed;
2. Mr. R. remains liable for the child support obligation set forth in CSSD's June 20, 1996, Informal Conference Decision on Modification;

¹¹ 15 AAC 125.465(a).

¹² *Id.*

¹³ Neither Mr. R. nor CSSD provided copies of any of the money order receipts he submitted, but the record contains other evidence sufficient to substantiate the findings regarding direct support.

3. Mr. R. is entitled to a credit for direct child support of \$1900 he paid to Ms. B. on or before December 2002.

DATED this 12th day of July, 2005.

By: Signed
Kay L. Howard
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry L. Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of R. W. R. be adopted as of this date and entered in the file as the final administrative determination in this appeal.

Under AS 25.27.062 and AS 25.27.250 the Obligor's income and property are subject to an order to withhold. Without further notice, a withholding order may be served on any person, political subdivision, department of the State or other entity.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

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 of the date of this decision.

DATED this 12th day of July, 2005.

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

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