

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

IN THE MATTER OF:)

B. P. M.)

OAH No. 06-0643-CSS

CSSD No. 001067587

DECISION AND ORDER

I. Introduction

On September 21, 2006, CSSD filed a Motion for Summary Adjudication in this child support case. Oral argument on the motion was held on September 28, 2006. Mr. M. appeared in person; the Custodian, J. L. S., participated by telephone. The Obligee child is C., DOB 00/00/97. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 27, 2006.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Based on the record in this case and after due deliberation, CSSD's Administrative Review Decision is affirmed. Mr. M.'s child support shall remain as determined by CSSD in its 2004 Administrative Child Support and Medical Support Order (and two subsequent clerical corrections).

II. Facts

The Obligee child C. was born on 00/00/97, and began receiving public assistance benefits that month.¹ On April 8, 2004, CSSD issued an Administrative Child Support and Medical Support Order that was served on Mr. M. on April 24, 2004.² The order contained a finding of fact that Mr. M. was voluntarily unemployed or underemployed. It explained Mr. M. did not provide income information and there were no indications he was unable to work because of a medical or physical condition.³

Mr. M. did not request an administrative review of the order or otherwise participate in his child support case until two years later. On June 22, 2006, Mr. M. filed a Motion to Vacate

¹ Exh. 5 at pg. 6.

² Exh. 5 at pg. 3; Exh. 7.

³ Exh. 8 at pg. 4.

Default Order.⁴ On July 10, 2006, CSSD issued an Administrative Review Decision that denied the motion to vacate.⁵ CSSD stated the reason for the denial was that the original Administrative Child Support and Medical Support Order found Mr. M. to be voluntarily unemployed or underemployed, so as a result, he is not eligible for a default order review pursuant to CSSD's regulations.

At the hearing, Mr. M. acknowledged he was served with the Administrative Child Support and Medical Support Order, although he did not remember the date. He testified he was in Oklahoma at the time, where he had gone in 2001 in an attempt to avoid criminal prosecution and jail time. Upon his voluntary return to Alaska, Mr. M. testified he was sentenced to 36 months in jail, with 33 months suspended, so he ended up serving three months of his sentence. After that he got a GED in 2005 and began to get his life together because he had a second child to support. Mr. M. is not currently working, in part, according to him, because his criminal history makes potential employers wary of him.

Mr. M.'s support obligation for C. arose in 1997. Mr. M. said he was in jail for seven months in 1997 and 1998, then after that lived with Ms. S. and C. for a short period of time. He and Ms. S. separated in April 1998. Mr. M. said his second child, a son, was ill after being born in 1999, so Mr. M. stayed home and took care of him while his then-girlfriend worked. They were married in 2006 and remain an intact family.

III. Discussion

At the hearing, CSSD's representative argued that the division does not have the authority to vacate Mr. M.'s prior child support order, so that is why the division filed a motion for summary adjudication.

Alaska Statute 25.27.195(b) permits obligor parents to file a motion, at any time, for CSSD to vacate a prior support order "that was based on a default amount rather than the obligor's actual ability to pay." A default income amount might be generated from such sources as the minimum hourly wage or average annual wage figures for individuals in the obligor's gender and age brackets.⁶ Under 15 AAC 125.121(a), when a proper motion to vacate default has been made, the agency must vacate the prior order if it determines "that the default income

⁴ Exh. 1.

⁵ Exh. 6.

⁶ 15 AAC 125.050(a).

figure is not an accurate reflection of the obligor's income for purposes of calculating [child support].”

In 2005, the Department of Revenue adopted a regulation, 15 AAC 125.121(j)(2)(C), that removed certain child support orders from consideration in vacate requests. The regulation prohibits CSSD from vacating a prior child support order under AS 25.27.195(b), if the order was based on “an imputed potential income based on a finding of voluntary unemployment or underemployment.” In deciding whether to find an obligor parent is voluntarily unemployed or underemployed, CSSD must consider:

based on available information, the parent's past income, skills, work history, and education, and the job opportunities in the area where the parent physically resides.^[7]

CSSD's motion for summary adjudication argues because there is a finding in Mr. M.'s child support order that he is voluntarily unemployed or underemployed, the order may not be vacated, pursuant to 15 AAC 125.121. The underlying legal question in this appeal is whether CSSD's order in Mr. M.'s case was, in fact, a default order.⁸

CSSD's April 8, 2004, Administrative Child Support and Medical Support Order found Mr. M. to be voluntarily unemployed or underemployed and imputed income to him for 1999 through 2004. At the hearing, Mr. M. challenged that finding and presented considerable testimony regarding his circumstances during the period of time from 1997 forward.

When Mr. M.'s child support case was first established, CSSD sent him at least two requests for income information with which to calculate child support.⁹ Those requests were not answered, so CSSD issued his child support order using the best income information available to the agency at the time. For the years 1997 and 1998, Mr. M.'s earnings history from the Alaska Department of Labor and Workforce Development was available.¹⁰ For the years after that, CSSD imputed income to him based on average annual income figures or the federal minimum

⁷ 15 AAC 125.020(b).

⁸ CSSD's motion for summary adjudication asserts there are no material issues of fact in dispute that make a hearing in this appeal necessary and, as a result, the division is entitled to judgment as a matter of law. *See* Civil Rule 56; *see also Church v. State, Dep't of Revenue*, 973 P.2d 1125 (Alaska 1999). Since Mr. M. presented testimony on his circumstances for the years at issue in the underlying order, the question to be resolved here is whether CSSD properly found Mr. M. to be voluntarily unemployed. This is a contested issue of fact, so summary adjudication is not available to CSSD in this case.

⁹ Recording of hearing.

¹⁰ *See* Exh. 6 at pg. 1.

wage.¹¹ The factors CSSD considered were Mr. M.'s age, his earning history in Alaska, his residence at the time in Oklahoma, the federal minimum wage in that state, Mr. M.'s lack of response to CSSD's attempts to contact him, and the lack of any indication he had a disability or that he was unable to work.¹² Mr. M. was personally served with the Administrative Child Support and Medical Support Order on April 24, 2004. He had 30 days after the date of service to request an administrative review, but he did not.¹³ Mr. M. had two other chances to challenge the order because CSSD had to issue two notices of correction of the order on June 1, 2004, and July 6, 2004.¹⁴ The second notice gave Mr. M. another 30 days to contact CSSD, but he did not make any attempt to communicate with CSSD until he filed the Motion to Vacate Default Order on June 22, 2006.

Based on the record as a whole, I find CSSD considered all the factors for which it had information about Mr. M. in making its determination he was voluntarily unemployed or underemployed. Thus, CSSD's finding was reasonable. I therefore conclude the April 8, 2006, Administrative Child Support and Medical Support Order was not a default order as defined in 15 AAC 125.121(j)(2)(C), and as a result, it may not be vacated under AS 25.27.195(b).

IV. Conclusion

Mr. M. did not meet his burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision denying his Motion to Vacate Default Order was incorrect, as required by 15 AAC 05.030(h). CSSD's order should be affirmed.

V. Order

- CSSD's July 10, 2006, Administrative Review Decision denying Mr. M.'s June 22, 2006, Motion to Vacate Default Order is affirmed.

DATED this 16th day of November, 2006.

By: Signed
Kay L. Howard
Administrative Law Judge

¹¹ Exh. 5 at pgs. 11-16.

¹² Recording of hearing.

¹³ Exh. 8 at pg. 1; *see also* AS 25.27.160(b)(4).

¹⁴ Exh. 5 at pgs. 1 & 2.

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 December, 2006.

By: Signed
Signature
Tom Boutin
Name
Deputy Commissioner
Title

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