

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

IN THE MATTER OF: )

D. L. W. )

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) OAH No. 07-0065-CSS

) CSSD No. 001013850

**DECISION AND ORDER**

**I. Introduction**

This matter involves the Custodian P. E. C.' appeal of a revised Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. W.'s case on December 29, 2006. The Obligee child is M., DOB 00/00/84.

The formal hearing was held on March 2, 2007. Mr. W. appeared in person; Ms. C. participated by telephone. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on March 30, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, it is concluded CSSD's revised Administrative Child and Medical Support Order should be affirmed.

**II. Facts**

**A. History and Proceedings**

In October 1989, CSSD issued the original child support order in Mr. W.'s case based on the former AFDC needs standards.<sup>1</sup> The order was subsequently modified based on Mr. W.'s actual income in October 1995.<sup>2</sup> On March 3, 2006, Mr. W. submitted a Motion to Vacate Default Order.<sup>3</sup> On December 29, 2006, CSSD granted the motion and issued a revised Administrative Child Support and Medical Support Order.<sup>4</sup> Ongoing child support was not at issue, as M. emancipated in 2002. The revised order reduced Mr. W.'s total arrears to \$1269.20

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 2.

<sup>3</sup> Exh. 3.

<sup>4</sup> Exhs. 6 & 7.

for the period from May 1988 through July 1995.<sup>5</sup> Ms. C. filed an appeal and requested a formal hearing on February 5, 2007.<sup>6</sup>

At the hearing, Ms. C. asserted CSSD used incorrect income figures in Mr. W.'s default review decision. She claimed Mr. W. used to work "under the table" for his uncle, A. C., who had a contract for snow removal. Ms. C. also asserted Mr. W. bought his girlfriend a house in Anchorage and he must have made the purchase from funds he received working "under the table." Ms. C. was not able to provide any evidence other than the things she had been told about Mr. W. to support her position that his income figures in the revised Administrative Child Support and Medical Support Order were too low.<sup>7</sup>

Mr. W. testified in response to Ms. C.'s allegations that he did previously work for his uncle, but he never had a commercial driver's license. Mr. W. said he has lost his driver's license for life and he also has been incarcerated on numerous occasions, the last time for 40 months, and before that, for 19 months. Mr. W. acknowledged his girlfriend owned a home in the Spenard area, but he claimed she purchased it on her own. He also said they lived there together for a period of time, but they separated before she sold it and he did not receive any money from the sale. Mr. W. added he had a hip replacement in 1995 that was paid for by Supreme Alaska Seafoods, and in addition, he received a settlement check for \$25,000, all of which was paid to CSSD for child support. Other than that, his only asset is a 16' x 16' log cabin located on his mother's former 5-acre homestead.

The question was raised whether Mr. W. may have been voluntarily unemployed or underemployed in the late 1980's because he lived in the Trapper Creek area and relied on a subsistence lifestyle. Ms. C. acknowledged she lived there with Mr. W. during the years from about 1982 through 1987, and they participated in the subsistence lifestyle together.

After the hearing, CSSD was directed to research the available online databases in order to determine if Mr. W. had any additional assets or financial interest in his uncle's business, Gate Creek Sand and Gravel. Also, CSSD was to research whether Mr. W. ever had an ownership or financial interest in the Spenard home owned by his former girlfriend. On March 6, 2007, CSSD

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<sup>5</sup> Exh. 7. Mr. W.'s arrears after July 1995 were not adjusted because the 1995 modification calculated his child support based on his actual income at the time. *See* 15 AAC 125.121(h)(2).

<sup>6</sup> Exh. 8.

<sup>7</sup> Ms. C. added that the Obligee M. needs extra financial help because she is now paralyzed as the result of a 4-wheeler accident in 2004. Ms. C. said M. is in a wheelchair and lives in Bellingham, Washington, on \$650 per month.

filed a Post Hearing Brief that states the agency was not able to locate any evidence Mr. W. had a financial interest in the named properties.

### **B. Findings of Fact**

1. CSSD correctly calculated Mr. W.'s child support obligation from his actual income information, for the period from May 1988 through July 1995;
2. There is insufficient evidence in the record to support a finding that Mr. W. was voluntarily and unreasonably unemployed or underemployed;
3. Ms. C. did not meet her burden of proving by a preponderance of the evidence that CSSD's revised Administrative Child Support and Medical Support Order was incorrect.

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>8</sup> 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."

When an obligor parent requests CSSD to conduct a default review of a child support case, he or she must provide the financial information necessary to determine the child support obligation for each year at issue.<sup>9</sup> Alaska law allows CSSD to use a parent's "potential income" if a finding is made that the parent is voluntarily and unreasonably unemployed or underemployed.<sup>10</sup>

The person who filed the appeal, in this case, Ms. C., has the burden of proving by a preponderance of the evidence that the agency's revised Administrative Child Support and Medical Support Order is incorrect.

When he filed the motion to vacate the default order, Mr. W. provided child support affidavits, IRS extracts, Social Security documents and medical records as evidence of his income.<sup>11</sup> CSSD used those documents to calculate his support obligation for each year at issue, namely for the period from May 1988, when his support obligation began, through July 1995. On October 16, 1995, Mr. W.'s child support obligation was modified based on his actual income, effective August 1, 1995.<sup>12</sup> Pursuant to CSSD's regulation 15 AAC 125.121(b), a

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<sup>8</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>9</sup> 15 AAC 125.121(b).

<sup>10</sup> Civil Rule 90.3(a)(4).

<sup>11</sup> Exh. 5.

<sup>12</sup> Exh. 2.

default review cannot recalculate an obligor's support obligation after the date of a modification based on his actual income. As a result, the default review may be employed to revise the child support amount only for the period from May 1988 through July 1995. CSSD correctly calculated Mr. W.'s child support obligation, and for the correct period of time.

In the context of child support, a claim that an obligor parent worked under the table is a claim of voluntary unemployment or underemployment. Alaska law allows CSSD to use a parent's "potential income" if a finding is made that the parent is voluntarily and unreasonably unemployed or underemployed.<sup>13</sup>

Having considered the evidence in this appeal, I find that Ms. C. did not meet her burden of proving by a preponderance of the evidence that CSSD's revised Administrative Child Support and Medical Support Order is incorrect. Mr. W. provided ample evidence of his income for the period of time in question; in light of that evidence, Ms. C.' testimony, without more, is not sufficient to overcome Mr. W.' evidence and support a finding that he was voluntarily unemployed or underemployed during the time at issue. Thus, CSSD's revised Administrative Child Support and Medical Support Order should be affirmed.

#### **IV. Conclusion**

Ms. C. did not meet her burden of proving CSSD's Administrative Child Support and Medical Support Order was incorrect.

#### **V. Child Support Order**

- CSSD's December 29, 2006, revised Administrative Child Support and Medical Support Order is affirmed.

DATED this 19th day of April 2007.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>13</sup> Civil Rule 90.3(a)(4).

**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 7th day of May, 2007.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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