

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

IN THE MATTER OF )  
 )  
 J W. E, II ) Case No. OAH-07-0317-CSS  
 ) CSSD Case No. 001016419  
\_\_\_\_\_)

**AMENDED DECISION & ORDER<sup>1</sup>**

**I. Introduction**

The custodian, T S, appeals an administrative review decision and an Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on May 7, 2007. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on July 11, 2007. Ms. S appeared by telephone. Andrew Rawls represented CSSD by telephone. The child is T B (DOB 00/00/89). The obligor, J E, did not appear.<sup>2</sup>

The administrative law judge vacates the new administrative order and reinstates the 1990 administrative order.

**II. Facts**

CSSD, or CSED as it was then known, issued a child support order in May of 1990 setting Mr. E's support obligation at \$752 per month, with \$10,684 of accrued arrears.<sup>3</sup> These amounts were calculated based on AFDC need standards. On August 3, 2006, Mr. E submitted to CSSD a Motion to Vacate Default Order, with income information for the years from 1989 to 2006.<sup>4</sup>

Mr. E's financial information consists mostly of Child Support Guidelines Affidavits and Income Below Poverty Level questionnaires for the years from 1989 through 2006.<sup>5</sup> Mr. E documented that he has not filed tax returns for any of these years.<sup>6</sup>

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<sup>1</sup> This amended decision corrects two typographical errors on page 7, in which Mr. E was incorrectly referred to as "Mr. S." This typographical correction does not change the outcome of the decision.

<sup>2</sup> The hearing was initially convened on June 21, 2007, at which time Ms. S appeared but Mr. E did not. Concerned that Mr. E may have not received actual notice of the hearing, the administrative law judge rescheduled the hearing. The OAH clerk contacted Mr. E by telephone to identify a suitable time for the hearing, and verified that he could attend the July 11, 2007, hearing. The OAH then sent out a "Notice of Rescheduled Formal Hearing" by first class mail, directing the parties to provide a number where they could be contacted for the hearing. Mr. E did not provide a number. The administrative law judge attempted to call two telephone numbers on file for Mr. E, but nobody answered these numbers. Mr. E has not made any subsequent contact with the OAH.

<sup>3</sup> Exhibit 1.

<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibits 7-24.

<sup>6</sup> Exhibit 6.

All of the income affidavits show very low levels of annual income. The questionnaires ask eight questions, including the following three:

1. If, for the year indicated above, you earned less than \$11,000, please explain the circumstances.
2. Please explain how you met basic living expenses on the income you have reported for the year indicated above, such as rent or mortgage, utilities, food, car payments, insurance, and fuel.
7. What prevented you from finding employment at your skill level? Please document any illness, injury or disability, which prevents you from working full time with a doctor's statement as to type, severity and duration.

For the years shown below, Mr. E provided the total income figures shown and answers to the above three questions. Following the income amounts provided by Mr. E are the wages that CSSD's information shows were reported to the Department of Labor for Mr. E, for years that such information is available in the record.<sup>7</sup>

1989: \$14,104.07 (DOL \$13,230.91)

(no poverty questionnaire)

1990: \$9,930. (DOL \$19,804.04)

1. I was laid off.
2. I lived with T B [the custodian] in No Name until July, then we lived together in No Name. I had room-mates who paid the majority of the bills.
7. My skill level was low. I couldn't find work without more education.

1991: \$931.34 (DOL \$1,200.00)

1. I was depressed, could not find employment.
2. I had roommates. My friends, family and roommates took care of me.
7. Depression. Could not afford to see a doctor or get treatment.

1992: \$0.00 (DOL \$0.00).

1. I was hurt/in pain. Could not work. Depression.
2. I rented out rooms in my house. Friends and family helped.
7. A back injury and untreated depression.

1993: \$0.00 (DOL \$0.00)

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<sup>7</sup> Department of Labor information is at Exhibit 4, page 2.

1. I rented out rooms in my home that paid the bills. Roommates bought food. Friends and family helped.

2. I was hurt physically and depressed.

7. Physical injury, untreated depression.

1994: \$0.00 (DOL \$12,421.00)

1. Physical injury/depression.

2. I rented out rooms in my home. That paid the bills. Roommates bought food. Friends and family helped.

7. Physical injury/untreated depression.

1995: \$345.00 (DOL \$2,623.56)

1. Physical injury/untreated depression.

2. I rented rooms out in my home, that paid the bills. Roommates bought groceries. Friends and family helped.

7. Physical injury/untreated depression.

1996: \$1006.61 (DOL \$4,000.00)

1. I was still not working due a back injury. My wife worked and we lived off her income.

2. My wife's income.

7. Back injury.

1997: \$732.00

1. Not working due to back injury.

2. Lived off wife's income.

7. Physical injury

1998: \$0.00

1. Not working due to back injury.

2. Lived off wife's income.

7. Back injury.

1999: \$1769.84

1. Not working due to back injury.

2. Lived off wife's income.

7. Back injury.

2000: \$1963.86

1. Did not work due to back injury.
2. Lived off wife's income.
7. Back injury.

2001: \$1850.28

1. (page missing from record)
2. (page missing from record)
7. Back injury

2002: 2200.76

1. I started my own business because I could not work due to a back injury.
2. My wife's income.
7. Back injury. No driver's license.

2003: \$1304.36

1. I started my own business due to a back injury.
2. My wife's income.
7. Back injury, no driver's license.

2004: 1066.64

1. I run my own business but because I do not have a driver's license it is hard to make money.
2. My wife's income.
7. No driver's license. Previous back injury.

2005: \$845.76

1. I own my own business.
2. My wife's income.
7. No driver's license, previous back injury.

2006: \$0.00

1. I own my own business, but w/o a drivers license I cannot sell boats because I cannot deliver them.
2. My wife's income.
7. No driver's license, back injury.

Medical records show that Mr. E suffered a back injury in 2002.<sup>8</sup> About five months after the injury, a physician was “unable to explain why this gentleman is still plagued with the problems that he has mentioned pertaining to his low back, that is chronic pain since his injury...at this point there is no evidence that a permanent impairment exists.”<sup>9</sup> In 2003 a different physician found that there was no reason for Mr. E not to return to work. This doctor observed “evidence of inconsistent, submaximal effort” in tests of strength and range of motion.<sup>10</sup> In 2004 a chiropractor wrote a letter stating in its entirety that “J E has been under my care since 1992 for chronic back pain. He sees me periodically for neck and lower back pain.”<sup>11</sup> This is the extent of medical information in the record.

Before CSSD vacated the previous support order, Ms. S provided evidence that on March 1, 2004, a No Name police officer pulled Mr. E over for failing to stop completely at a stop sign as he turned right onto the No Name Highway. Upon learning that Mr. E’s license had been suspended for failing to pay child support, the officer arrested Mr. E for driving with a suspended license. In a routine search of Mr. E’s vehicle subsequent to the arrest, the officer found a box for a grow light and more than half of a pound of marijuana in the backseat.<sup>12</sup> The police report indicates that Mr. E stated “he’s been a careful driver since he’s been suspended.”<sup>13</sup> Mr. E was convicted of misconduct involving a controlled substance in the fifth degree.<sup>14</sup> In addition to ten days in jail, Mr. E performed 115 hours of community work service for Ducks Unlimited,<sup>15</sup> soliciting donations, doing paperwork, making phone calls, and helping to set up and run an annual Ducks Unlimited Event.<sup>16</sup> Ms. S also alleged that at some time during the period of the order Mr. E received a life insurance payment of approximately \$79,000 from his late father’s employer. Although Ms. S asked CSSD to investigate the life insurance matter, there is no evidence in the record to show whether any inquiry was made. CSSD’s decision states that

The documents provided by Ms. S were reviewed, regrettably, Ms. S’s request did not satisfy the conditions required to deny Mr. E’s Request for Relief. The order issued on 05/14/1990, was based on a default income amount, so this case qualifies for the order to be vacated. Should Ms. S not agree with the calculations used to determine Mr. E’s arrears and ongoing support obligation, she can request a Formal Hearing.

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<sup>8</sup> Exhibit 25, pages 3-5.

<sup>9</sup> Exhibit 25, pages 6-7.

<sup>10</sup> Exhibit 25, pages 3-4

<sup>11</sup> Exhibit 6, page 3.

<sup>12</sup> Exhibit 27, page 19.

<sup>13</sup> *Id.*

<sup>14</sup> Exhibit 27, page 20.

<sup>15</sup> Exhibit 27, page 27.

<sup>16</sup> Exhibit 27, page 22.

After vacating the previous order, CSSD established a new order based on gross annual income varying from \$19,915.84 for per year to \$1,304.36. It is not entirely clear how CSSD arrived at these figures from the evidence in the record. The calculations for each year contain a comment showing the source of CSSD's information as follows:

- 1989 – 1991: Child Support Guidelines Affidavit, AK DOL, IRS, SSA & PFD.
- 1992: \$1,500 x 12 months, In-kind contributions from house mates.
- 1994 – 1997: Child Support Guidelines Affidavit, AK DOL, IRS, SSA & PFD.
- 1998 – 2000: AK Min Wage \$5.65 x 2080 hrs & PFD.
- 2001 – 2002: AK Min Wage \$7.15 x 2080 hrs & PFD.
- 2003: Child Support Guidelines Affidavit, AK DOL, IRS, SSA & PFD.
- 2004 – 2005: AK Min Wage \$7.15 x 2080 hrs & PFD.
- 2006: Child Support Guidelines Affidavit, AK DOL, IRS, SSA & PFD.
- 2007: \$24.00 hr x 2080 hrs for full-time employment and the PFD.

Ms. S has submitted unsworn letters from people purporting to have observed Mr. E displaying signs of an active and lavish lifestyle during the years covered by this order. These hearsay statements are entitled to little weight on their own, but it is fair to observe that Mr. E did not appear at his hearing to dispute these allegations or to answer questions about the alleged life insurance proceeds he received. Mr. E also declined to provide documentation of his income or lack of income prior to the hearing as CSSD requested in its pre-hearing brief.

### **III. Discussion**

CSSD may vacate a support order that was based on default income information.<sup>17</sup> CSSD will vacate such an order if it determines that the default figure is not an accurate reflection of the obligor's income.<sup>18</sup>

An obligor requesting the vacate of a default order must provide accurate financial and medical information.<sup>19</sup> If an obligor fails to do so, CSSD is required to notify the obligor that the information is insufficient.<sup>20</sup> If the obligor still fails to provide accurate information, CSSD may review the case based on other income information it is able to gather, or it may cease further action on the obligor's request for relief.<sup>21</sup>

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<sup>17</sup> AS 25.27.195(b).

<sup>18</sup> 15 AAC 125.121(a).

<sup>19</sup> 15 AAC 125.121(b).

<sup>20</sup> 15 AAC 125.121(c).

<sup>21</sup> *Id.*

It is more likely than not that Mr. E did not provide accurate income or medical information. As Ms. S points out, it is suspicious that for seventeen years Mr. E has not shown any significant income, but now that the child is about to emancipate he is earning \$24.00 per hour. Mr. E has stated that injuries and clinical depression have prevented him from working all these years, but Mr. E apparently had no problem working for Ducks Unlimited when a judge ordered him to as an alternative to suspended jail time.

The greatest oversight in this case is the fact that on a random day in 2004 Mr. E happened to have more than a half of a pound of marijuana in his possession. The record does not indicate the value of a half of a pound of marijuana, as nobody has considered the economic implications of this asset which, regardless of or because of its status as contraband, was considerable. In 2005 the governor estimated the value of high quality marijuana to be \$500 per ounce.<sup>22</sup> CSSD determined that Mr. E earned a total of \$1,304.36 in all of 2003, which raises an obvious question about how he happened to have \$4,000 worth of marijuana in March of 2004 when he happened to get pulled over for not stopping completely at a stop sign. The facts that there was a grow light box in Mr. E's car when he was arrested, that he was able to live for so many years with no apparent income, and the quantity of marijuana in his possession all indicate that Mr. E was in the business of growing and distributing marijuana. The statute under which Mr. E was convicted categorizes possession of more than a half pound of marijuana with the manufacture, sale or delivery of marijuana.<sup>23</sup>

Mr. E's conviction of possessing a large amount of marijuana was not the result of an investigation or sting operation; it was merely fortuitous for the police officer that he happened to have thousands of dollars worth of marijuana in his car when she pulled him over for not coming to a complete stop when making a right turn at a stop sign. It was also fortuitous, for the officer, that Mr. E's license had been suspended, allowing her to arrest him and search his vehicle. One can only speculate as to whether Mr. E typically carried a half a pound of marijuana in the backseat, or if he usually had less or more. Weighed against the implausibility of Mr. E's accounting of how he has lived all these years with no visible means of support, the possibility that he has earned substantial income in the manufacture and sale of contraband, all unreported and untaxed, appears to be more of a likelihood than a possibility. The fact that

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<sup>22</sup> Journal Text for SB74 in the 24<sup>th</sup> Legislature (January 21, 2005); available online at [http://www.legis.state.ak.us/basis/get\\_jrn\\_page.asp?session=24&bill=SB74&jrn=0112&hse=S](http://www.legis.state.ak.us/basis/get_jrn_page.asp?session=24&bill=SB74&jrn=0112&hse=S) (accessed October 10, 2007).

income has been earned illegally does not make it excludable from reporting for calculation of a child support obligor's total income from all sources. It is as likely as not that, at \$752 per month, the previous order actually understates the amount of support that Mr. E should have been paying.

Mr. E's reporting of his finances was incomplete. CSSD failed to notify him of that fact and request additional information. To do so, however, would have probably been futile. Considering the apparent untruthfulness in Mr. E's financial affidavits, it is highly unlikely that upon receiving an additional notice from CSSD Mr. E would have voluntarily disclosed a large amount of illegally-obtained income that had not been detected by law enforcement officials. CSSD's failure to request further information was harmless error, but not ceasing further action on Mr. E's request for relief was error that should be reversed.

#### **IV. Conclusion**

For the reasons stated above, CSSD's actions in vacating the previous child support order and issuing a new one was erroneous. The replacement order should be vacated and the previous order reinstated.

#### **V. Order**

IT IS HEREBY ORDERED that the Administrative Child Support and Medical Support Order issued on May 7, 2007, be VACATED;

IT IS FURTHER ORDERED that CSSD's decision to "Vacate Administrative Child Support and Medical Support Order" issued on May 7, 2007, be VACATED;

IT IS FURTHER ORDERED that the administrative child support and medical support order (Notice and Finding of Financial Responsibility) issued on May 14, 1990 be REINSTATED.

DATED this 31<sup>st</sup> day of October, 2007.

By: *Signed* \_\_\_\_\_  
DALE WHITNEY  
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 31<sup>st</sup> day of October, 2007.

By: Signed  
Signature  
Dale A. Whitney  
Name  
Administrative Law Judge  
Title

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