

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

In the Matter of)	
)	OAH No. 15-0535-CSS
L B. S)	Agency No. 001058772
_____)	

DECISION AND ORDER

I. Introduction

The Child Support Services Division (CSSD) established L S’ support obligation in 1996.¹ Mr. S filed a motion to vacate CSSD’s default order on September 27, 2010. CSSD denied that motion on January 14, 2014, and Mr. S appealed.

The children in this case are A, born in 1995, B, born in 1996, and C, born in 1998. The custodial parent is E N.

A hearing was held on June 9 and June 23, 2015.² Ms. N did not appear at the hearing. Mr. S represented himself. CSSD was represented by a lay advocate, Andrew Rawls.

This case presents two issues. The first issue is whether the default child support order should be set aside. The second issue is the proper calculation of Mr. S’ child support obligation if the prior order is set aside. As discussed below, none of the orders may be set aside because they were not based on default income information.

II. Procedural History

On February 12, 1996, the District Court issued a 90 day domestic violence order that required Mr. S to pay child support during the effective period of that order.³ On March 29, 1996, CSSD issued a Notice and Finding of Financial Responsibility setting a child support obligation of \$50 per month for A beginning on January 1, 1996.⁴ This support obligation was suspended as of June 1, 1996 because Mr. S was living in the same home as the children.⁵

On February 25, 1998, CSSD issued a Supplemental Notice of Finding of Financial Responsibility for two children.⁶ This order set past due child support for A at \$50.97 for the

¹ At that time, CSSD was called the Child Support Enforcement Division (CSED).

² The hearing was held before Administrative Law Judge Kay Howard. This case was reassigned to ALJ Jeffrey A. Friedman, who has reviewed the entire record, including listening to the audio recordings.

³ Exhibit 1.

⁴ Exhibit 2.

⁵ Exhibit 2, page 4.

⁶ Exhibit 5.

period January 1, 1996 through February 25, 1998. The order also set ongoing support for both A and B at the statutory minimum amount of \$50 per month beginning April 1, 1998, with no past due amount owed for B.⁷

On August 6, 1998, CSSD issued a new order.⁸ This order established a support obligation for both A and B at the rate of \$354 per month beginning on September 1, 1998. This order was based on the median wage of a delivery route worker.⁹ Mr. S appealed that order.¹⁰

A hearing was held on March 10, 1999.¹¹ Mr. S did not appear at that hearing.¹² During the hearing, CSSD notified the hearing examiner that Mr. S had a third child, and asked that this child, C, be added to the child support order.¹³ CSSD also provided evidence of Mr. S' actual earnings. CSSD indicated that Mr. S had worked as a courier in 1997 earning \$6.00 per hour.¹⁴ The hearing examiner remanded the matter to CSSD to recalculate the child support obligation.¹⁵

On June 3, 1999, a new child support order was issued setting child support for three children at \$323 per month.¹⁶ This order found that the past due obligation through June 30, 1999 was zero dollars.¹⁷ The order set ongoing child support at \$323 per month, for three children beginning on July 1, 1999.¹⁸ This order was based on Mr. S' past earnings of \$6.00 per hour plus one PFD check.¹⁹

On May 1, 2000, Mr. S moved to vacate a default order.²⁰ He submitted additional income information with that motion. On December 27, 2000, CSSD determined that the information he had sent was insufficient, and notified Mr. S that it had stopped reviewing his motion.²¹

⁷ Exhibit 4, page 1.

⁸ Exhibit 6.

⁹ Exhibit 6, page 2.

¹⁰ Exhibit 7.

¹¹ Exhibit 8, page 1.

¹² *Id.*

¹³ Exhibit 8, page 2.

¹⁴ *Id.*

¹⁵ Exhibit 8, page 4.

¹⁶ Exhibit 10.

¹⁷ CSSD's summary spreadsheet shows that Mr. S was charged \$1650 in child support from October 1996 through June 30, 1999. Exhibit 10, page 5. Based on the order issued on June 3, 1999, these amounts had been fully paid by Mr. S.

¹⁸ Exhibit 10, page 1.

¹⁹ Exhibit 10, page 3 (\$6.00 per hour x 40 hours per week x 52 weeks per year = \$12,480 per year).

²⁰ Exhibit 11.

²¹ Exhibit 12.

On June 10, 2010, Mr. S filed a request to modify his child support order.²² CSSD denied his request for modification for failure to include a child support guideline affidavit and income documentation.²³

On July 23, 2010, Mr. S submitted a form titled Inquiry for Default Review of an Alaska Administrative Child Support Order.²⁴

On August 30, 2010, Mr. S submitted additional income information and child support guidelines affidavits.²⁵

On September 27, 2010, Mr. S submitted a second Motion to Vacate Default Order.²⁶ That motion was denied on April 3, 2015.²⁷ The denial notice states:

The Request for Relief of a Default Administrative Child Support Order is denied because: Mr. S did not provide any income information or supporting documentation that indicates he has a medical condition or disability that would prevent him from obtaining and maintaining full-time employment. He does not live in an economically distressed area and jobs are available. Therefore, the default review is denied and Mr. S is found to be voluntarily under/unemployed.^[28]

III. Discussion

CSSD may vacate a prior administrative order that was based on a default amount rather than on the obligor's ability to pay.²⁹ An administrative support order will be vacated if the support order is based on a default income figure, the default income figure is not an accurate reflection of the obligor's income, and "granting the request will not cause undue hardship to a party because of the party's reasonable reliance on the support order."³⁰

A default income amount is one that was based on the former AFDC needs standards; gender-based average annual wage statistics or other group wage statistics; or the federal or state minimum wage in effect at the time. A calculation is *not* based on a default income amount if it was based on the obligor's actual income information; an estimated or projected income based on

²² Exhibit 13.
²³ Exhibit 15.
²⁴ Exhibit 14.
²⁵ Exhibit 16.
²⁶ Exhibit 17.
²⁷ Exhibit 21.
²⁸ *Id.*
²⁹ AS 25.27.195(b).
³⁰ 15 AAC 125.121(a) & (c).

the obligor's actual but incomplete information, or imputed potential income based on a finding of voluntary unemployment or underemployment.^[31]

A support obligation is also considered a default amount if it was set at the \$50 per month minimum because the obligor parent was under the age of 19 at the time.³²

The first support order in this case, issued on March 29, 1996, was not based on a default income amount. Instead, it was set at the minimum \$50 per month amount because Mr. S' income was below the poverty level.³³ An informal conference decision was issued on June 11, 1996, confirming the \$50 per month support obligation.³⁴

The second support order was issued on February 25, 1998. Mr. S' support obligation remained at \$50 per month based on the 1996 determination that his income was below the poverty level.³⁵ Neither of these orders were based on default income amounts.

The third order, issued on August 6, 1998, was based on group wage statistics.³⁶ However, this order was apparently never made effective. Mr. S appealed the August 6, 1998 order. The matter was remanded for a new calculation, and a fourth order was issued on June 3, 1999. This new order modified the June 11, 1996 informal conference decision.³⁷ Accordingly, Mr. S' support obligation remained at \$50 per month until the fourth order was issued.

The June 3, 1999 order set Mr. S' obligation at \$323 per month for three children. This order was based on information that Mr. S had earned \$6.00 per hour in 1997. Because it was based on incomplete but actual information from a prior year, it is not a default income amount.³⁸

One order was based on default income information, but that order was never put into effect. Because none of the other orders were based on default income amounts, none of them may be set aside pursuant to AS 25.27.195(b). Because the prior orders may not be set aside, it is not necessary to recalculate the support obligation for each year based on the additional information Mr. S supplied in 2010 and 2014. This does not preclude him from seeking a modification of his obligation for future support.

³¹ *In re K R J*, OAH No. 13-0842-CSS (Commissioner of Revenue 2014), page 2 (internal footnotes omitted, emphasis in original).

³² 15 AAC 125.120(j)(1)(D)

³³ Exhibit 2, page 3.

³⁴ Exhibit 3.

³⁵ Exhibit 4, page 6.

³⁶ Exhibit 6, page 2.

³⁷ Exhibit 10, page 1.

³⁸ Exhibit 10, page 3; 15 AAC 125.121(j)(2)(B).

Mr. S noted during the hearing that he has paid the custodial parent as much as \$10,000 since their first child was born. Some of those payments may be reflected in to the zero arrears amount shown on the June 3, 1999 order. However, he may not have been credited with all of the payments he says he made.³⁹ The issues referred to OAH are limited and do not include calculating the amount still owed. Mr. S needs to work with CSSD to determine if there are any payments he was not credited with. Credit for direct payments will be given if there is clear and convincing evidence that both parents intended the payment to be a child support payment.⁴⁰ If CSSD does not allow credit, that decision may be appealed to the Superior Court.⁴¹

Mr. S also testified that he was living with the custodial parent for at least some months when he was being charged child support. He was also incarcerated at different times while being charged child support. If the existing orders had been set aside, a new calculation could have considered whether he was obligated to pay more support during those times. Because those orders were not set aside, they cannot be retroactively modified.⁴²

IV. Conclusion

Mr. S was charged the minimum child support obligation of \$50 per month through July 1, 1999. At that time his child support obligation was increased to \$323 per month. The prior orders establishing those support obligations may not be set aside.

V. Child Support Order

CSSD's Administrative Review Decision dated April 3, 2015 is affirmed for the reasons stated above, and the Modified Administrative Child Support Order dated June 3, 1999, remains in full force and effect.

Dated this 17th day of September, 2015.

Signed

Jeffrey A. Friedman

Administrative Law Judge

³⁹ July 1, 1999 through September 2013, when A turned 18, is 170 months. At \$323 per month, Mr. S would have owed \$54,910 in child support. Even if he is credited with direct payments of \$10,000, he would still owe more than \$44,000, plus interest. In addition, child support is owed for the younger children until they each turn 18.

⁴⁰ 15 AAC 125.465. Credit is not allowed if the obligor is on notice that the custodial parent is receiving public assistance. 15 AAC 125.465(f).

⁴¹ 15 AAC 125.465(d).

⁴² Mr. S did not seek a modification when he was living with the custodial parent or when he was incarcerated.

Adoption

1. 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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of October, 2015.

By: Signed _____
Name: Rebecca L. Pauli
Title: Administrative Law Judge

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