

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

IN THE MATTER OF:)	
)	OAH No. 09-0647-CSS
J. H. Y.)	CSSD No. 001155516
_____)	

DECISION AND ORDER

I. Introduction

The obligor, J. H. Y., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on October 29, 2009. The Obligee children are J. and S., who are four and two years of age.

The formal hearing was held on December 23, 2009. Mr. Y. appeared by telephone; the other party to this case is the State of Alaska. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on December 23, 2009.

Based on the record and after careful consideration, Mr. Y.’s child support is set at \$141 per month for 2008 and \$321 per month for 2009 and ongoing, based on his actual income and the in-kind benefits he receives from working for his parents.

II. Facts

A. History

The obligee children began receiving foster care services in January 2008.¹ CSSD established Mr. Y.’s paternity on December 18, 2008.² On July 20, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. Y.³ He requested an administrative review but did not provide income information.⁴ On October 29, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. Y.’s ongoing child support at \$479 per month, with arrears of \$6,482 for the period from January 2008 through October 2009.⁵ Mr. Y. appealed on November 25, 2009, asserting he has two

¹ Exh. 7 at pg. 10.
² Exh. 3.
³ Exh. 4.
⁴ Exh. 5.
⁵ Exh. 7.

other children living in the home with him and he does not have a steady income. Mr. Y. requested that the child support amount be reduced.⁶

B. Material Facts

Mr. Y. lives with his parents and his two older children in the grandparents' home in No Name City. Mr. Y.'s parents own and operate the F. S. C., a restaurant that serves a varied ethnic menu of Chinese and American food, with some Mexican and Italian dishes, as well. Mr. Y. works in the restaurant six days per week, performing whatever duties are required during each 12-hour shift. He helps with cooking, prepping or delivery, and he also supervises the other staff members if his father is not on the premises.

In 2008, Mr. Y.'s income totaled \$10,071.46, which is broken down into wages of \$6,802.46; the PFD of \$2,069; and the energy rebate of \$1,200.⁷

In exchange for working at the restaurant, Mr. Y.'s father pays him between \$900-\$1,000 per month. Mr. Y. uses the cash to pay his regular monthly expenses of approximately \$720 per month, which includes \$230 for the payment on a Mitsubishi Land Rover; \$150 for the payment on a snowmachine; \$110 for vehicle insurance; \$80 for health insurance; \$50 for personal care items; and \$100 for the payment on a \$400 credit card bill.

In addition to wages, Mr. Y.'s parents provide room and board for himself and his two other children. Mr. Y. downplayed the value of the exchange, but he clearly receives a significant benefit from his parents. This benefit exceeds the modest wages they pay him because he does not have to pay for housing and food for himself and his two children, which in western Alaska would be valued at a minimum of \$1,000 per month. Combining wages of \$1,000 per month and the \$1,000 per month value of the in-kind housing and food, Mr. Y.'s total annual income for child support purposes is estimated to be \$24,000, plus the PFD.

III. Discussion

A. Mr. Y.'s Income

By regulation, CSSD collects support in a foster care case from the date foster care services were initiated on behalf of the child(ren).⁸ The record in this case indicates that foster care services began in January 2008, so that is the first month in which Mr. Y. is obligated to pay

⁶ Exh. 8.

⁷ Exh. 7 at pg. 6.

⁸ 15 AAC 125.105(a)(1)-(2).

support for his children through CSSD.⁹ As the person who filed the appeal, Mr. Y. has the burden of proving by a preponderance of the evidence that the child support amount calculated by CSSD in its Amended Administrative Child Support and Medical Support Order is incorrect.¹⁰

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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," minus mandatory deductions such as taxes and Social Security. This total income figure should also include in-kind benefits that an obligor parent receives from an employer.¹² Here, Mr. Y. receives a significant benefit from his parents in the form of free room and board. That value has been determined to be \$1,000 per month, which should be added to his wages for the calculation of child support for 2009.

CSSD prepared two calculations of Mr. Y.'s child support obligation. The first was for the 2008 obligation and CSSD used his total income figure of \$10,071.46, which includes his wages, PFD and the energy rebate. When inserted into CSSD's online child support calculator for foster care cases, Mr. Y.'s 2008 income figure results in a child support amount of \$141 per month for two children.¹³ CSSD's 2008 calculation is reasonable because it is based on Mr. Y.'s actual income and it should be adopted for 2008.

For the 2009 calculation, CSSD started with earnings of \$37,731.20, which the agency determined by multiplying the average annual wage for food supervisors of \$18.14 per hour times 2,080 hours to equal full-time work paid at that wage.¹⁴ This income amount, with the PFD added, results in a child support amount of \$479 per month for two children.¹⁵

CSSD's second calculation for the year 2009 should be adjusted to reflect Mr. Y.'s estimated annual income of \$24,000, not the figure CSSD used. The division's use of the average annual hourly wage for a food supervisor overestimates Mr. Y.'s income. The evidence is not sufficient to attribute that hourly wage to someone working in a small family restaurant in No Name City. Rather, Mr. Y.'s income should be determined based on his actual wages for

⁹ Exh. 5 at pg. 8.

¹⁰ 15 AAC 05.030(h).

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² Civil Rule 90.3, Commentary III.A.19.

¹³ Exh. 7 at pg. 8. In a foster care case, the child support calculation is done in a 2-step process that first determines the obligor's support obligation for all of his or her children, in this case, four (Exh. 7 at pg. 6), then in a subsequent step calculates the support amount for the children in foster care only. *See* Exh. 7 at pg. 8.

¹⁴ *See* Exh. 5 at pgs. 4 & 7.

¹⁵ Exh. 7 at pgs. 4, 7 & 9.

2009, which he said was \$900-\$1,000 per month, plus the \$1,000 per month value of the room and board his parents provide.¹⁶

Mr. Y.'s 2009 child support is now correctly calculated at \$321 per month for two children. It is from this figure that his hardship request will be considered.

B. Financial hardship

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."¹⁷ The presence of "unusual circumstances" in a particular case may be sufficient to establish "good cause" for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children^[18]

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).¹⁹

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. Y. did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. Granted, his financial situation is somewhat strained, but he should be able to pay his bills in addition to his child support obligation, especially after he sells his snowmachine and retires his \$400 credit card debt.

IV. Conclusion

Mr. Y. met his burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). His 2008 child support is correctly calculated at \$141 per month for two children, and his 2009 child support is

¹⁶ It would not be appropriate to attribute an in-kind value for room and board in this case if Mr. Y.'s parents were not also his employers. The room and board they provide allows them to reduce his cash wages, so the in-kind value should be included.

¹⁷ Civil Rule 90.3(c).

¹⁸ Civil Rule 90.3(c)(1).

¹⁹ See Civil Rule 90.3, Commentary VI.E.1.

correctly calculated at \$321 per month. These figures should be adopted. Mr. Y. did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if these child support amounts calculated under Civil Rule 90.3 were not varied.

V. Child Support Order

- Mr. Y. is liable for child support for J. and S. in the amount of \$141 per month for the period from January 2008 through December 2008; and \$321 per month for January 2009 through January 2010 and ongoing;
- All other provisions of the October 29, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 12th day of January, 2010.

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. 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 29th day of January, 2010.

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

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