

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

IN THE MATTER OF:)

F. E. S.)

) OAH No. 10-0001-CSS

) CSSD No. 001102465

REVISED DECISION AND ORDER

I. Introduction

The Obligor, F. E. S., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on October 20, 2009. The Obligee child is T., who is 10 years old. The custodian is L. S. C.

The hearing was held on January 19, 2010, and February 11, 2010. Mr. S. appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The agency indicated this was a foster care case, so the other party to the appeal would be the State of Alaska. The hearing was recorded; the record closed on March 12, 2010.

The child support decision was issued on April 1, 2010 and adopted as a final decision on April 19, 2010. On April 20, 2010, CSSD filed a Motion to Accept Late-Filed Proposal for Action, which was deemed a Motion for Reconsideration because it was filed after the decision became final. CSSD requested that the case be sent back to the administrative law judge to conduct an additional hearing. CSSD’s reason was that due to an oversight on the agency’s part, the form referring the appeal to the OAH did not identify a custodial parent so Ms. C. was not afforded an opportunity to participate in the hearing.

On April 29, 2010, Deputy Commissioner Jerry Burnett remanded the appeal to the administrative law judge to “conduct further proceedings as necessary to allow the custodial parent an opportunity to appear and be heard in this matter.” The supplemental hearing was held on June 3, 2010. Both Mr. S. and Ms. C. appeared by telephone.

This revised decision replaces the original decision and order in its entirety. Based on the evidence and after careful consideration, Mr. S.’s claim of financial hardship is denied. His child support is modified to \$912 per month from May 2009 through December 2009, and \$994 per month, effective January 2010, and ongoing.

II. Facts

A. *Procedural History*

Mr. S.'s child support obligation for T. was set at \$310 per month in 2003.¹ On March 13, 2009, Ms. C. requested a modification review.² On April 7, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Neither party provided income information.⁴ On October 20, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. S.'s ongoing child support at \$876 per month, effective May 1, 2009.⁵ He appealed on December 14, 2009, asserting that he supports eight children, one grandchild and his spouse in the home and he cannot afford the child support amount calculated by CSED.⁶

B. *Material Facts*

1. Mr. S.

Mr. S. lives in the Mat-Su Valley north of Anchorage. He supports nine children and one grandchild in the home, several of them older than T., the obligee in this case. They are: B., 25 years old (with her daughter, C., 4); D., 20; F., 19; G., 17; and I., 16. Four of the children in his home are younger than T.: K., 9; L., 7; M., 6; and N., 4. The three youngest children were born to Mr. S. and his wife, Q. K. was placed in Mr. S.'s home in December 2009 by the Office of Children's Services and Mr. S. is pursuing permanent custody, although K.'s placement in his father's home is currently considered temporary. K. is receiving counseling services and Mr. S. reports he is doing well.

B. is pursuing her GED and although she lives primarily with Mr. S. she chafes at his rules and spends on the average three overnights per week with her boyfriend in Anchorage. D. and F. graduated in 2010 and still live in the home. F. will probably get a job in the near future but Mr. S. indicated D. has health and mental problems so it is not likely he will get a job anytime soon. Mr. S. does not receive child support for any of his prior children.⁷

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Pre-hearing Brief at pg. 1.
5 Exh. 4.
6 Exh. 5.
7 Letter from obligor received on March 7, 2010.

Mr. S. and his wife Q. testified that their regular monthly expenses include \$1,684.04 for the mortgage payment; \$2,100 for food; \$170 for electricity; \$180 for natural gas; \$46 for trash pickup; \$85 for water and sewer; \$170 for telephone and Internet services; \$275 for five cell phones; \$565 for the payment on a 2006 Chevrolet Tahoe; \$583 for the payment on a 2008 Toyota Tundra; \$560 for gasoline; \$367 for vehicle insurance; and \$174 for the payments on two credit cards. They owe nearly \$14,000 for credit and charge cards, and also pay tuition and hockey fees at school. Finally, they have an outstanding medical debt for B., but it is under \$1,000. Q. is not employed; rather, she has to run the household because Mr. S. is employed on the North Slope and is gone for up to four weeks at a time.

In 2009, Mr. S. earned \$112,690.50 and received \$10,556.54 in Native corporation dividends,⁸ plus the PFD. Q. and all of the children, including his granddaughter, own 100 shares of stock in the Arctic Slope Regional Corporation (ASRC) and each received \$4,200 in 2009. Mr. S. and Q. use the children's dividends to contribute to household expenses.

2. Ms. C.

Ms. C. lives in No Name City, where she works at the F. C. C. full-time. She brings home approximately \$4,100 per month. Ms. C. has five children in the home, four of whom are 10 years of age and younger. The oldest, P., is 19 years old provides childcare for the younger children. Ms. C. receives child support of \$787 per month for another child in the home, but the payment is inconsistent because the child's father works for the local school district, which does not distribute payroll or collect child support from its employees during the summer.

Ms. C. has two older children who are not currently living with her but who require occasional financial assistance. One is a 19-year-old who recently graduated from high school in No Name Town and is waiting to start college. The custodian has had to send her money to get an apartment. Ms. C.'s oldest child is a 25-year-old son who is currently incarcerated and is expected to be released from jail in the near future. He is scheduled to go to a treatment center in Anchorage, so Ms. C. will have to help him with airfare.

Ms. C. has monthly expenses that she estimated total approximately \$5,500 per month. These bills are \$800 for the mortgage; \$2,000 for food;⁹ \$400 for heating oil; \$142 for water and

⁸ Exh. 6 at pgs. 1-2.

⁹ This food cost includes using Native food, which saves Ms. C. about \$1,000 per month. The custodian testified that 1 gallon of milk costs \$10 and other food prices are similarly elevated.

sewer service; \$150 for telephone, Internet and cell phone service; \$350 for electricity; \$89 for cable TV; \$150 for vehicle and home insurance; \$250 for gasoline; \$388 for personal care items; \$125 for tobacco; and \$285 for health insurance. Ms. C. has a dental bill of \$1,600; credit card bills totaling \$15,000; and charge accounts totaling \$1,325 at local stores that she pays on a monthly basis.

Ms. C. and her children also own Native corporation stock, although their dividends are not as high as the obligor's. Ms. C. received a dividend of \$200 in January 2010 for her 100 shares of stock. She testified this was the first dividend payout in 10 years. T., the child in this case, has 100 shares of ASRC stock, but she only received \$2,800 in 2009. The other children own a total of 400 shares of stock and received \$4,200 in 2009.

III. Discussion

Mr. S. has raised two primary issues in this appeal. First, he is requesting credit for the children older than T. who reside in his home. Second, he claims that having to pay support in the amount calculated creates a financial hardship for his family. As the person who filed the appeal in this case, Mr. S. has the burden of proving by a preponderance of the evidence that the child support amount in CSSD's Modified Administrative Child Support and Medical Support Order is incorrect.¹⁰

A. Child Support Calculation

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹¹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. If the 15% change has not been met, CSSD may, but is not required, to modify the child support obligation. A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of May 2009.¹²

¹⁰ 15 AAC 05.030(h).

¹¹ AS 25.27.190(e).

¹² 15 AAC 125.321(d). In this case, the notice was issued on April 7, 2009. Exh. 3.

A parent who supports an older child in the home is entitled to an additional deduction from his or her income.¹³ The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.¹⁴

Mr. S.'s child support was set at \$310 per month for one child in 2003. He was earning \$18 per hour at the time.¹⁵ In response to the current modification request, CSSD modified Mr. S.'s child support to \$876 per month, which was calculated using an estimated income figure of \$93,762.90, which included the PFD and \$1,987.39 in Native corporation dividends.¹⁶ The calculation also gave Mr. S. a monthly deduction of \$1,620 from his income for supporting prior children in the home.¹⁷ Although CSSD did not identify which children it considered eligible for the deduction at the time, it appears the agency was including G. and I. as the prior children because they were 16 and 15 years old as of May 2009.

The hearing testimony and additional documentation lead to the conclusion that CSSD's calculation should be corrected because Mr. S.'s income for 2009 and his Native corporation dividends actually were higher than CSSD estimated. Plus, he is entitled to having three of his children included in the prior child deduction because as of May 2009, F. was still in high school and did not reach the age of 19 until December 2009. Thus, Mr. S. is entitled to a prior child deduction for three children from May 2009 through December 2009, and for two prior children as of January 2010.¹⁸

After the hearing, CSSD submitted updated calculations that indicate Mr. S.'s deduction for prior children should be \$2,247 per month for three children; \$1,838 for two children; and \$1,362 for one child.¹⁹ These figures are correct, based on Civil Rule 90.3. Using these additional deductions, and based on his total 2009 income, Mr. S.'s modified child support is calculated at \$912 per month from May 2009 through December 2009,²⁰ and \$994 per month,

¹³ Civil Rule 90.3(a)(1)(C).

¹⁴ *Id.*

¹⁵ *See* Exh. 1 at pg. 2.

¹⁶ Exh. 4 at pg. 6.

¹⁷ *Id.*

¹⁸ It appears that the prior child deduction may decrease to one child in November 2010, after G. turns 18, but it would depend on whether he was still actively pursuing a high school diploma at the time. Thus, the facts are too tenuous to enter an order regarding Mr. S.'s support obligation in the future.

¹⁹ Exh. 11 at pg. 1.

²⁰ Exh. 11 at pg. 2.

effective January 2010, and ongoing.²¹ These calculations are correct and meet the necessary 15% change that allows modification of a child support order.

B. Financial Hardship

Mr. S.'s primary issue on appeal is that he cannot afford the child support amount calculated by CSSD from his actual income. 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."²² 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^[23]

It is appropriate to consider all relevant evidence 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).²⁴ Initially, CSSD did not object to a variance in Mr. S.'s case,²⁵ but after the hearing the division asserted that Ms. C.'s financial situation is more "desperate" than Mr. S.'s.

Based on the evidence presented, Mr. S. 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. Mr. S. earns a significant income on the North Slope and all of the members of his family receive hefty dividend payments from their Native corporation that Mr. S. uses to supplement the household income. Although Mr. S. and his wife have numerous children and a grandchild living in the home, there is no reason his older children can't be tasked with finding at least part-time employment to contribute to the household expenses. Q. must run the household by herself and cannot work outside the home, at least until the youngest child goes to school.

²¹ Exh. 11 at pg. 3.

²² Civil Rule 90.3(c).

²³ Civil Rule 90.3(c)(1).

²⁴ See Civil Rule 90.3, Commentary VI.E.1.

²⁵ See Post Hearing Brief at pg. 1.

IV. Conclusion

Mr. S. did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his modified child support amount calculated under Civil Rule 90.3 were not varied. Mr. S.’s child support should be modified to \$912 per month from May 2009 through December 2009, and \$994 per month, effective January 2010, and ongoing.

V. Child Support Order

- Mr. S.’s child support obligation for T. is modified to \$912 per month from May 2009 through December 2009, and \$994 per month, effective January 2010, and ongoing;
- All other provisions of CSSD’s October 20, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 30th day of June, 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 8th day of July, 2010.

By: Signed
 Signature
Jerry Burnett
 Name
Deputy Commissioner
 Title