

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGSON REFERRAL BY THE  
COMMISSIONER OF REVENUE**

IN THE MATTER OF: )

K. L. F. )

) OAH No. 10-0071-CSS  
) CSSD No. 001152957  
)

**DECISION AND ORDER**

**I. Introduction**

This is an establishment case in which CSSD’s initial administrative order for support was not served on Mr. F. until nearly one year after it was issued, at which time he mistakenly requested a modification review instead of an administrative review. At the hearing, the parties stipulated that Mr. F. intended to appeal his entire support obligation and that this decision and order should address his child support for all the time periods at issue.

The formal hearing was held on March 10, 2010. Mr. F. appeared in person; the custodian, M. R. K., did not participate. The obligee child is B., who is 11 years old. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on March 31, 2010.

Based on the record and after due deliberation, Mr. F.’s child support is set at \$150 per month for the period from December 2007 through December 2009; and \$256 per month, effective January 2010 and ongoing.

**II. Facts**

*A. Procedural History*

On October 22, 2008, CSSD issued an Administrative Child Support and Medical Support Order to Mr. F., charging him with ongoing support for B. of \$249 per month, with arrears of \$820 from December 2007 through November 2008.<sup>1</sup> The administrative order was not served on Mr. F. until nearly one year later, on September 30, 2009.<sup>2</sup> Instead of requesting an administrative review of the order, Mr. F. filed a petition for modification on November 14, 2009.<sup>3</sup> On November 20, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order and requested income

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

<sup>2</sup> Exh. 1 at pg. 13.

<sup>3</sup> Exh. 2.

information from both parties.<sup>4</sup> Mr. F. did not respond.<sup>5</sup> On November 27, 2009, CSSD issued a Notice of Denial of Modification Review.<sup>6</sup> Mr. F. appealed on February 5, 2010.<sup>7</sup>

At the formal hearing, the parties agreed that Mr. F.'s modification request is essentially moot and that this decision and order should address his child support for all the months at issue, going back to December 2007, as though he were appealing an administrative review decision issued under 15 AAC 125.118(e).

*B. Material facts*

Mr. F. is disabled. His wife, A., who testified on his behalf, stated that he was physically abused as a child and suffers lasting physical injuries to his neck and back, in addition to Post Traumatic Stress Disorder (PTSD) and dementia, or memory loss. She testified he has been seen by numerous specialists, and he also has been evaluated by the vocational rehabilitation program.

Mr. F. receives Social Security disability benefits, in addition to occasional earnings from employment. Mr. F. and his family have had to move back and forth from Anchorage to No Name City in order to be available to assist with B., who in 2004 was receiving services from the Office of Children's Services (OCS). While living in No Name City, Mr. F. did not work until October 2008, when he obtained a part-time job working as a janitor in the local store. They were able to move back to Anchorage in May 2009, but Mr. F. has not been able to find employment suitable for him since then. A. provides the bulk of the family's support from employment.

In 2007, Mr. F. received \$9,878 from Social Security and \$160 from employment, for a total of \$10,038.<sup>8</sup> In 2008, Mr. F. received \$13,996 from Social Security, and \$2,252.50 from employment, for total income of \$16,248.50.<sup>9</sup> Finally, in 2009, Mr. F. received \$10,693.60 from Social Security and \$3656.08 from employment, for total income of \$14,349.68.<sup>10</sup> These income figures, when inserted into CSSD's online child support calculator, result in child support amounts of \$195 per month for 2007, \$302 per month for 2008, and \$256 per month for 2009.<sup>11</sup>

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<sup>4</sup> Exh. 3.

<sup>5</sup> Pre-hearing brief at pg. 1.

<sup>6</sup> Exh. 4.

<sup>7</sup> Exh. 5. Subsequent events regarding disclosure of contact information are not relevant to this appeal and will not be discussed here.

<sup>8</sup> Obligor's documents received on March 12, 2010.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Attachments A, B & C.

### III. Discussion

Mr. F. requested that he be granted a financial hardship variance from the child support determination based on the “unusual circumstances” provisions of Civil Rule 90.3(c). He did not contest CSSD’s calculation of his monthly child support amount, but he claims that his disability prevents him from obtaining suitable work so that he can contribute to the support of his family.

A parent is obligated both by statute and at common law to support his or her children.<sup>12</sup> Disability income that an obligor parent receives must be included in his or her child support calculation.<sup>13</sup> This obligation begins when the child is born.<sup>14</sup> By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren), up to six years prior to service on the obligor of notice of his or her support obligation.<sup>15</sup> B. qualified for Medicaid benefits as of December 2007, so that is the first month for which Mr. F. is obligated to pay support for her through CSSD. The person who filed the appeal, in this case, Mr. F., has the burden of proving by a preponderance of the evidence that the agency’s calculations are incorrect.<sup>16</sup>

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.” Civil Rule 90.3(c). 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 . . . .<sup>[17]</sup>

It is appropriate to consider all relevant evidence to determine if the support amount should be lowered from the amount calculated pursuant to Civil Rule 90.3(a).<sup>18</sup>

Based on the evidence as a whole, Mr. F. has proven by clear and convincing evidence that manifest injustice would result if his child support were not varied from the amounts calculated pursuant

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<sup>12</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>13</sup> Civil Rule 90.3, Commentary III.A.

<sup>14</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

<sup>15</sup> 15 AAC 125.105(a)(1)-(2).

<sup>16</sup> 15 AAC 05.030(h).

<sup>17</sup> Civil Rule 90.3(c)(1).

<sup>18</sup> Civil Rule 90.3, Commentary VI.B.

to Civil Rule 90.3. Mr. F.'s disability prevents him from obtaining suitable work to support his family. His wife is employable, but because they have had to move back and forth from Anchorage, they have had a difficult time finding employment. As a result, Mr. F.'s child support arrears should be set at \$150 per month, from December 2007 through December 2009. As of January 2010, Mr. F.'s child support should be set at \$256 per month, based on his total 2009 income. The family will have been back to Anchorage for a period of several months and should have been able to obtain employment either for Mr. F. or his wife A. during that time period.

**IV. Conclusion**

Mr. F. met his burden of proving by clear and convincing evidence that unusual circumstances exist in this case and that manifest injustice would result if his child support obligation were not varied from the amounts calculated by CSSD. A child support arrears amount of \$150 per month represents a balance of the totality of the circumstances in this case and it should be adopted for the period from December 2007 through December 2009. Ongoing support as of January 2010 should be set at \$256 per month, based on Mr. F.'s 2009 income.

**V. Child Support Order**

- Mr. F. is liable for child support in the amount of \$150 per month for the period from December 2007 through December 2009; and in the amount of \$256 per month, effective January 2010 and ongoing;
- All other provisions of CSSD's Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 20<sup>th</sup> day of April, 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 7<sup>th</sup> day of May, 2010.

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

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