

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

IN THE MATTER OF:)

S. M. G.)

OAH No. 10-0142-CSS

CSSD No. 001051635

DECISION AND ORDER

I. Introduction

The Obligor, S. M. G., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on November 19, 2009. The Obligees children are A., 19; B., 17; and C., 11. The custodian of record is D. G.

The hearing was held on April 19, 2010. Mr. G. is deployed overseas so his wife, E. G., represented him by telephone. The custodian, D. G., also appeared telephonically. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on May 25, 2010.

Based on the evidence and after careful consideration, Mr. G.’s claim of financial hardship is granted. His monthly ongoing child support obligation is modified to \$950 per month for two children and \$705 per month for one child, effective June 1, 2009, and ongoing. Mr. G. is not liable for supporting A. as of June 1, 2009, because she reached the age of 18 years on May 10, 2009, and the record does not establish that she was living with the custodian and attending high school as required by AS 25.27.061.

II. Facts

A. Background

Mr. G.’s child support obligation for A., B. and C. was set at \$786 per month in 2007.¹ On April 30, 2009, Ms. G. requested a modification review.² On May 15, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the case parties.³ On November 19, 2009, CSSD issued a Modified Administrative Child Support and Medical

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.

Support Order that set Mr. G.'s ongoing child support at \$1,157 per month, effective June 1, 2009.⁴ He appealed on March 20, 2010, asserting that his pay has not increased very much since his child support was set in 2007, he has remarried and has another child to support, and the oldest child in this order has emancipated.⁵

B. Material Facts

Mr. G. is in the military; he is an E-5 with 21 years of service in the Army.⁶ He is currently deployed to Iraq and expects to return in late 2010. In 2009, Mr. G. received base pay of \$33,940.80, plus annual non-pay benefits that include \$14,880 for housing and \$3,886.44 for sustenance (food), all of which total \$52,707.24.⁷ A monthly child support amount calculated from this income figure equals \$1,288 for three children, \$1,054 for two children and \$781 for one child.⁸

Based on his June 2010 leave and earnings statement (LES), Mr. G. is expected to receive base pay of \$35,096.40 in 2010, plus annual non-pay benefits of \$15,300 for housing and \$3,886.44 for sustenance, all of which total \$54,282.84.⁹ A monthly child support amount calculated from this income figure equals \$1,324 for three children, \$1,083 for two children and \$803 for one child.¹⁰

Mr. G. is married to E. G. and they have a son named Z. who was born in February 2010. Although Mr. G. is currently stationed in Texas, Mrs. G. lives in Michigan with Z. Due to a spinal cord injury, she is a quadriplegic and as a result, she has to remain in Michigan where her medical providers are located and her residence is set up for her particular needs. Mrs. G. is not able to work to help support the family.

The G.s have monthly bills as follows¹¹: \$775 for the rent on Mr. G.'s apartment in Texas;¹² \$400 for food; \$200 for formula and diapers; \$1,000 for the aides to assist with Mrs. G.'s personal needs and to help with Z.; \$40 for water, \$330 for condo heat and electricity;

4 Exh. 4.

5 Exh. 5.

6 Exh. 7.

7 Exh. 9 at pg. 2.

8 Exh. 9 at pg. 1.

9 Exh. 10 at pg. 2.

10 Exh. 9 at pg. 1.

11 Exh. 8.

12 The mortgage on Mrs. G.'s condo is paid, but she has regular expenses such as utilities and condo fees.

\$195.03 for condo fees; \$57.90 for Mr. G.'s car insurance; \$109.67 for Mrs. G.'s car insurance; \$24.63 for renter's insurance; \$83.33 for condo insurance; \$80 for the apartment utilities; \$150 for Mr. G.'s cell phone; \$120 for Mrs. G.'s cell phone; and \$100 for miscellaneous expenses. In addition, Mr. G. recently paid off a \$3,353.57 tax bill for the condo. Mrs. G. occasionally sells household items on Ebay, but she does not have an ongoing business on the website.

The custodian, D. G., lives with her mother and the obligees B. and C. Ms. G. has chronic problems with swelling in her ankles so she stated she has applied for disability benefits. She earns about \$240 per month providing childcare services and she also receives \$200 per month in food stamps.

The oldest child in this case is A., who turned 18 years of age on May 10, 2009. D. G. testified A. had just moved out of the house and would be getting her high school diploma through Nine Star Enterprises, an Anchorage nonprofit corporation that provides education and employment services. Ms. G. said A. is employed and pays the bulk of her own expenses but that Ms. G. helps her with food and medical bills. At the end of the hearing Ms. G. agreed to provide A.'s school records to establish that she was still in school after her 18th birthday but the custodian did not provide any documents after the hearing.

III. Discussion

A. Child Support Calculations

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹³ 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 June 1, 2009.¹⁴

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." The rule specifically provides that a military parent's total income from all sources includes "Armed Service Members base pay plus the

¹³ AS 25.27.190(e).

¹⁴ 15 AAC 125.321(d). In this case, the notice was issued on May 15, 2009. Exh. 3.

Obligor's allowances for quarters, rations, COLA and specialty pay."¹⁵ The base pay is taxable income but the other non-pay benefits are not. When added together, all of the soldier's taxable income and the non-taxable benefits are added together to obtain his or her total income from all sources.¹⁶ The reason for including the non-pay benefits in the child support calculation is because they reduce the parent's living expenses and allow a military member to use the remainder of his or her cash pay to cover other expenses.¹⁷

After the hearing, CSSD revised the calculation of Mr. G.'s modified child support to \$1,288 for three children, \$1,054 for two children and \$781 for one child, effective June 1, 2009.¹⁸ As of January 1, 2010, CSSD revised the modified child support calculations to \$1,324 for three children, \$1,083 for two children and \$803 for one child, based on his expected annual income this year.¹⁹ The 2010 figures are not more than 15% higher than the 2009 calculations, so for purposes of this modification action, only the 2009 figures need to be considered.²⁰ Based on Mr. G.'s 2009 income, the calculations CSSD submitted after the hearing appear to be correct. It is from these calculations that Mr. G.'s other issues will be addressed.

B. Mr. G. is Not Obligated to Support A. As Of June 1, 2009

Mr. G. claims that he should not be liable for supporting his oldest child, A., after her 18th birthday on May 10, 2009. He asserts, and Mrs. G. continued this argument in the hearing, that A. has not been living with her mother or going to school, but in fact that she is living elsewhere and is out on her own, working. D. G. disputed Mr. G.'s claim and asserted her oldest daughter is getting her high school diploma through a local educational provider and had just moved out of the home.

A child reaches the age of majority and emancipates upon becoming 18 years of age.²¹ In general, a parent is not obligated to support a child over the age of 18 unless the child is living as a dependent with the custodian and "who is actively pursuing a high school diploma or an

¹⁵ Civil Rule 90.3, Commentary III.A.29.

¹⁶ See Exh. 9 at pg. 2 and Exh. 10 at pg. 2.

¹⁷ See Civil Rule 90.3, Commentary III.A.19.

¹⁸ Exh. 9 at pg. 1.

¹⁹ Exh. 9 at pg. 1.

²⁰ See Civil Rule 90.3(h)(1).

²¹ AS 25.20.010.

equivalent level of technical or vocational training”²² In order to resolve this issue, Ms. G. was directed to file copies of A.’s school or educational records so as to determine whether she has, indeed, been attending school since she turned 18. Ms. G. agreed to provide the records, in addition to A.’s rental contract and a letter from A., if she wanted to submit one, no later than May 10, 2010. Ms. G. did not file any documents regarding A., nor did Ms. G. make any attempt to explain her lack of doing so. Mr. G. is thus not obligated to pay support for A. as of June 1, 2009, the first of the month after A.’s 18th birthday, and coincidentally, the effective date of this modification action. Mr. G. is obligated to pay support for only two children as of June 1, 2009.

C. Financial Hardship

Mr. G.’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.”²³ 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^[24]

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).²⁵

Based on the evidence presented, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. G. proved by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not

²² AS 25.27.061.

²³ Civil Rule 90.3(c).

²⁴ Civil Rule 90.3(c)(1).

²⁵ See Civil Rule 90.3, Commentary VI.E.1.

varied. The primary factor in this case is that Mr. G.'s wife E. is a quadriplegic and she is not able to work to help support the family. She is required to live in Michigan to be close to her medical providers and also to take advantage of the condo she owns and that is set up to facilitate her needs. In addition, E. requires aides for additional assistance in the home that cost \$1,000 per month on top of their current expenses. Thus, Mr. G. must support two households on his current income in addition to supporting B. and C.

D. G. is not employed full-time, so any adjustment in Mr. G.'s case should not decrease Ms. G.'s ability to support the children in the home. A nominal decrease of 10% from the calculated amount is reasonable in this case. Thus, Mr. G.'s child support should be varied from the calculated amount of \$1,054 per month for two children to \$950 per month for two children, and from the calculated amount of \$781 per month for one child to \$705 per month for one child. This is a modest decrease but hopefully one that will adequately serve the needs of both parties.

IV. Conclusion

Mr. G. met 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. There is good cause to reduce Mr. G.'s modified child support to \$950 per month for two children and \$705 per month for one child, effective June 1, 2009.

V. Child Support Order

- Mr. G.'s child support obligation for B. and C. is modified to \$950 per month for two children and \$705 per month for one child, effective June 1, 2009, and ongoing;
- Mr. G. is not liable for supporting A. as of June 1, 2009, because she turned 18 years of age on May 10, 2009, and it has not been established that she was living with the custodian and actively pursuing a high school diploma after that date;

- All other provisions of CSSD's November 19, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 14th 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 2nd day of July, 2010.

By: Signed _____
Signature
Christopher Kennedy _____
Name
Deputy Chief Administrative Law Judge
Title

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