

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

IN THE MATTER OF:)

S. A. R.)

) OAH No. 10-0170-CSS
) CSSD No. 001143347
)

CORRECTED DECISION AND ORDER¹

I. Introduction

The obligor, S. A. R., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in her case on January 14, 2010. The obligee children are K. and O., 7 and 4 years of age. The custodian of record is B. L. E., paternal grandmother of the children.

The hearing was held on May 3, 2010. Ms. R. appeared in person; Ms. E. participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on May 17, 2010.

Based on the record and after due deliberation, Ms. R.’ child support is modified to \$185 per month for two children, effective July 1, 2009.

II. Facts

A. Procedural History

Ms. R.’ child support obligation for K. and O. was set at \$309 per month in September 2006.² She requested a modification review on June 10, 2009.³ On June 15, 2009, CSSD notified the parties that a modification review had been requested.⁴ Ms. R. provided income information.⁵ On January 14, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that a child support calculation did not meet the required 15% change from her current order.⁶ Ms. R. appealed on January 21, 2010.⁷ For unknown reasons, CSSD treated Ms. R.’s

¹ The Decision and Order was issued on June 7, 2010. CSSD later discovered two incorrect dates in the decision and notified the OAH on June 16, 2010. This decision corrects those dates and is otherwise identical.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

⁶ Exh. 5.

appeal as another petition for modification and issued an order denying this second request, as well.⁸ The second request and order are moot.

B. Material Facts

Ms. R. is employed at W.'s, where she earns \$7.75 per hour for less-than full-time work.⁹ She stated at the hearing that she earns \$8.25 per hour, so she may have received a raise subsequent to the March 14, 2010 paystub she filed. Ms. R. earned \$7,537.71 in 2009.¹⁰

Ms. R. is currently living with a friend but testified that she would soon be moving into a room in her manager's house that she would rent for \$400 per month. She has only minimal expenses otherwise, because she doesn't have a vehicle. Ms. R. pays her mother to drive her to work and gives her \$15 for gasoline every 2-3 days. Ms. R. also has a cell phone that costs \$10 per month; and she pays \$250 per month for food; \$200 for personal care items and \$80 for cigarettes. Ms. R. usually has visitation with K. and O. on the weekends, although she occasionally has to work and change the visitation schedule.

The custodian, B. L. E., is the children's paternal grandmother. Ms. E. owns a 3-plex and lives in one of the units. K. and O. and their father, R. D., live in another unit and Ms. E. rents out the third apartment.¹¹ R. is currently receiving unemployment benefits so he helps pay the electricity bill. Ms. E. is paying the bulk of his living expenses while he gets re-certified as an electrical worker. R. has been incarcerated in the past.

III. Discussion

A. Child Support Calculation

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹² 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. A modification is effective the first day of

⁷ Exh. 6.

⁸ Exhs. 7 & 8.

⁹ Paystub dated March 14, 2010, received from Ms. R. on May 4, 2010.

¹⁰ Affidavit of Erinn Brian, Child Support Specialist, filed on May 5, 2010.

¹¹ Ms. E. also has another child in the home, D., who is 13 years old. D. is R.'s son whom she adopted at birth after R.'s parental rights were terminated.

¹² AS 25.27.190(e).

the month following CSSD's notice to the parties that a modification has been requested.¹³ As the person who filed the appeal in this case, Ms. R. has the burden of proving by a preponderance of the evidence that CSSD issued the Notice of Denial of Modification Review in error.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." When Ms. R. requested modification, CSSD calculated a child support amount of \$318 per month from an annual income figure of \$16,120.¹⁵ To get that income amount, CSSD multiplied the minimum wage of \$7.75 per hour times 2,080 hours.¹⁶ CSSD did not explain in its Pre-Hearing Brief or at the hearing why that income amount was the basis for its calculation, when Ms. R.' actual, *reported* income in 2009 was about half that figure.¹⁷ Her support amount has been recalculated based on her actual income in 2009; the result is a child support amount of \$185 per month for two children and \$137 for one child.¹⁸

B. Financial Hardship

Ms. R. testified that she cannot afford to pay the child support amount of \$309 per month as set in 2006. She requested a variance based on financial hardship pursuant to Civil Rule 90.3(c). 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."¹⁹ The presence of "unusual circumstances" in a particular case may be sufficient to establish "good cause" for a variation in the support award:

¹³ 15 AAC 125.321(d). In this case, CSSD issued the notice on June 15, 2009, so the modification is effective on July 1, 2009.

¹⁴ 15 AAC 05.030(h).

¹⁵ Exh. 6 at pg. 2.

¹⁶ Exh. 6 at pg. 2. 2,080 hours is considered full-time employment and is derived by multiplying 40 hours per week times 52 weeks per year.

¹⁷ See Affidavit of Erinn Brian at pg. 1.

¹⁸ Attachment A.

¹⁹ Civil Rule 90.3(c).

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^[20]

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child(ren) 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).²¹

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. R. 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. This decision has lowered her modified ongoing child support to \$185 per month for two children. There is insufficient evidence in the record to establish that it should be lowered further based on a financial hardship.

IV. Conclusion

Ms. R. met her burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was issued in error. Her child support should be modified to \$185 per month for two children and \$137 per month for one child, effective July 1, 2009. Ms. R. 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 from that amount. The modified child support amount should be adopted.

V. Child Support Order

- Ms. R. is liable for modified ongoing child support for K. and O. in the amount of \$185 per month, effective July 1, 2009;
- All other provisions of the August 17, 2006, Administrative Child Support and Medical Support Order remain in full force and effect.

DATED as of the 7th day of June, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

²⁰ Civil Rule 90.3(c)(1).

²¹ Civil Rule 90.3, Commentary VI.E.1.

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 6th day of July, 2010.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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