

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

IN THE MATTER OF: )

J. W. H. )

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) OAH No. 10-0189-CSS  
) CSSD No. 001093405  
)

**DECISION AND ORDER**

**I. Introduction**

The Obligor, J. W. H., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on March 16, 2010. The Obligee child is A., who is 12 years old. The custodial parent is K. B. C.

The hearing was held on May 18, 2010. Mr. H. appeared in person with his wife, I. Ms. C. appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on June 1, 2010.

Based on the evidence and after careful consideration, Mr. H.’s request for a variance based on unusual circumstances and financial hardship is granted. His monthly ongoing child support obligation is modified to \$700 per month for one child, effective July 1, 2009.

**II. Facts**

*A. Background*

Mr. H.’s child support obligation for A. was set at \$362 per month in 2002.<sup>1</sup> On June 2, 2009, CSSD initiated a modification by sending the parties a Notice of Petition for Modification of Administrative Support Order.<sup>2</sup> On March 16, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. H.’s ongoing child support at \$1,010 per month, effective July 1, 2009.<sup>3</sup> He appealed on April 5, 2010, asserting that the modification would create substantial hardship to his subsequent family because one of his later-born children has been diagnosed with autism.<sup>4</sup>

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1 Exh. 1.  
2 Exh. 2.  
3 Exh. 3.  
4 Exh. 4.

*B. Material Facts*

Mr. H. is employed by M-I SWACO, an oilfield services company headquartered in Houston, Texas.<sup>5</sup> In 2009, he received wages of \$80,952.29,<sup>6</sup> and the PFD, for total income of \$82,257.29. In addition to paying income taxes, Social Security and unemployment insurance, Mr. H. had mandatory deductions of \$386.10 per month for retirement and he also paid \$24 per month in union dues.<sup>7</sup> A child support amount calculated from these annual figures equals \$943 per month for one child.<sup>8</sup>

Mr. H. and his wife, I., live in the Mat-Su valley near Houston. They have two children – L., 4; and Q., 2. When L. was one year old, he was diagnosed as being severely autistic. This diagnosis has created a significant hardship for the H.s and their other child. L. was in pre-school last school year and will begin kindergarten in the fall of 2010. According to Mrs. H., L. is often physically violent and he has a very difficult time communicating with others. L. attends occupational/physical therapy and speech therapy in Palmer, a 45-minute drive from their home. He is learning how to communicate using sign language and communication devices. L. should be going to therapy twice a week, but they can only afford to go once per week. Their current out-of-pocket cost for these services is \$384 per month; if they were able to take him as often as necessary, their costs would be another \$200 per month, totaling \$584 per month. In addition to his therapy appointments, L. should be on a restricted diet – wheat and dairy free – and taking additional supplements, all of which would cost the H.s an extra \$400 per month over and above their usual grocery costs.

Mrs. H. is not able to work outside the home to help support the family. She has to take care of Q. and L. when he is home, and coordinate L.'s care. In addition, Mrs. H. is training a service dog for L. They are in danger of losing the dog, however, because Mrs. H. can no longer afford to take it to Anchorage once a month for a mandatory training assessment conducted by the training supervisor. The lead trainer traveled to their home north of Wasilla for the last assessment, but they do not know how long they will be able to keep the dog.

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<sup>5</sup> Exh. 4 at pg. 3.

<sup>6</sup> Obligor's documents received at the hearing on May 18, 2010, pg. 5.

<sup>7</sup> The material facts are taken from hearing testimony, unless otherwise indicated.

<sup>8</sup> Exh. 6.

In addition to the nearly \$1,000 per month for L.'s care and nutrition needs, Mr. H. and his wife listed regular monthly expenses consisting of \$576.33 for food; \$1,262.66 for the mortgage payment; \$333 for electricity; \$175 for heating oil; \$161.38 for a home telephone and two cell phones; \$224 for gasoline; \$611.47 for the car payment and contract maintenance on a 2009 Toyota Tundra; \$141.72 for car insurance; \$146 for health insurance, which is paid through Mr. H.'s employment; \$87.24 for cable TV; \$22.50 for Internet service; and \$150 for personal care items. All of these expenses total \$4,891.30 per month, not including Mr. H.'s child support obligation for A. Mr. H. brings home about \$4,713.78 per month.<sup>9</sup>

The obligee child in this case is A., who is 12 years old. She lives in Homer with her mother, two other siblings and Ms. C.'s boyfriend, D.<sup>10</sup> Ms. C. formerly worked for S. S. and R. on a seasonal basis, but no wages have been reported to her since the third quarter of 2008.<sup>11</sup> Ms. C. currently receives Medicaid benefits and food stamps and has not received a public assistance cash grant since July 2009.<sup>12</sup>

A. also has medical problems. She is a diabetic and needs a specialized diet and exercise, in addition to needing assistance in reaching a more healthy weight. Her medication requirements are not known. Ms. C. was directed to document her monthly expenses but she did not submit any evidence after the hearing.

### **III. Discussion**

#### *A. Child Support Calculation*

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>13</sup> 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

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<sup>9</sup> Adjusted annual (net) income of \$56,565.41 ÷ 12 = \$4,713.78. See Exh. 6.

<sup>10</sup> Mrs. H. wrote after the hearing that Ms. C. is not a single mother of three, that she actually lives with her boyfriend, D., who is a chef. Documents received on May 21, 2010. Mrs. H. submitted copies of pages that appear to be from D.'s online profile on the social networking site "myspace.com", but they were nearly impossible to read. References to Ms. C. and A. could be seen, however.

<sup>11</sup> Exh. 7 at pg. 2.

<sup>12</sup> Exh. 8.

<sup>13</sup> AS 25.27.190(e).

beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of July 1, 2009.<sup>14</sup>

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." CSSD modified Mr. H.'s child support to \$1,010 per month, up from the \$362 per month order that has been in place since 2002.<sup>15</sup> After the hearing, CSSD revised the calculation to \$943 per month.<sup>16</sup> The amount is lower because Mr. H. pays retirement and union dues. This figure is more than 15% higher than the previous child support amount, so it is sufficient to justify modification. Based on Mr. H.'s 2009 income, the calculation CSSD submitted after the hearing appears to be correct. It is from this amount – \$943 per month – that Mr. H.'s hardship issue will be addressed.

*B. Financial Hardship*

Mr. H.'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."<sup>17</sup> 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>[18]</sup>

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).<sup>19</sup>

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<sup>14</sup> 15 AAC 125.321(d). In this case, the notice was issued on June 2, 2009. Exh. 2.

<sup>15</sup> Exh. 3 at pg. 6.

<sup>16</sup> Exh. 6.

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

<sup>18</sup> Civil Rule 90.3(c)(1).

<sup>19</sup> See Civil Rule 90.3, Commentary VI.E.1.

Based on the evidence presented, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. H. proved 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. H.'s son L. is severely autistic and as a result, the obligor has out-of-pocket expenses for L.'s care and nutritional needs that total nearly \$1,000 per month. The family cannot afford these costs on Mr. H.'s income alone, but Mrs. H. is not able to work outside the home to supplement the family's income.

Ms. C. is not employed at this time, but there is evidence in the record that she also has a young child in the home. Although Mr. H.'s child support should be varied, any adjustment in Mr. H.'s case should not decrease Ms. C.'s ability to support A. A decrease to \$700 per month is reasonable in this case; it reduces Mr. H.'s child support just over \$300 from the amount CSSD originally calculated in this modification, and yet it still represents nearly a 100% increase over the obligor's prior order. Thus, the adjustment is balanced as between Mr. H. and Ms. C.

#### **IV. Conclusion**

Mr. H. 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. H.'s modified child support to \$700 per month for one child, effective July 1, 2009.

#### **V. Child Support Order**

- Mr. H.'s child support obligation for A. is modified to \$700 per month, effective July 1, 2009, and ongoing;
- All other provisions of CSSD's March 16, 2010, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 21<sup>st</sup> 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 12<sup>th</sup> day of July, 2010.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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