

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

IN THE MATTER OF:)

J. C. D.)

) OAH No. 10-0197-CSS
) CSSD No. 001052307
)

DECISION AND ORDER

I. Introduction

The obligor, J. C. D., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in his case on March 23, 2010. The Obligee child is A., age 16.

The hearing was held on May 6, 2010. Both Mr. D. and the custodian, V. L. N., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on May 6, 2010.

Based on the record and after due deliberation, the Notice of Denial of Modification Review is vacated and Mr. D.’s child support is modified to \$339 per month, effective January 1, 2010.

II. Facts

A. Background

Mr. D.’s child support obligation for A. was set at \$715 per month in 2005.¹ He requested a modification review on December 16, 2009.² On December 17, 2009, CSSD notified the parties that a modification review had been requested.³ Mr. D. provided some financial information.⁴ On March 23, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that Mr. D. did not provide all of the information necessary.⁵ He provided additional financial documents with the appeal he filed on April 6, 2010.⁶ Before the hearing,

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Exh. 4.
5 Exh. 5.
6 Exh. 6.

CSSD submitted a new support calculation of \$339 per month based on Mr. D.'s expected annual income in 2010.⁷

B. Material Facts

Mr. D. is a former member of the military who is 80% disabled.⁸ He receives disability payments of \$1,694 per month from the Department of Veterans Affairs (VA).⁹ This monthly amount equals \$20,328 per year.¹⁰ Mr. D. is not an Alaska resident so he is not eligible for the PFD. A calculation using his current annual income yields a child support figure of \$339 per month.¹¹ This is a 47.4% decrease from his prior child support amount of \$715 per month.¹²

Mr. D. previously worked for No Name Communications¹³ but was laid off in December 2008 and has not worked since then. He still hopes to be called back to work someday. While he was unemployed in 2009, Mr. D. went back to school to improve his job skills. He became a certified EKG technician and CNA (certified nurse assistant) and he is actively seeking employment. He can also drive a fork lift. Because he was receiving disability benefits at the time, Mr. D. did not apply for unemployment after being laid off from No Name Communications.

Mr. D.'s regular expenses are approximately \$2,040 per month, which includes \$938 for rent; \$150 for food; \$30.09 for trash pickup and water; \$22.95 for internet, \$44.44 for telephone; \$78.09 for cable; \$83.58 for electricity; \$43 for a cell phone; \$273 for the payment on a 2002 Cadillac; \$80 for gasoline; \$175 for vehicle insurance; \$51.44 for life insurance; \$40 for personal care items; and \$30 for the payment on a gasoline charge card. He also has four credit cards with a total balance owing of \$12,557, but he is not able to make the monthly payments on these cards.

⁷ Exh. 7.

⁸ The facts are taken from Mr. D.'s testimony unless otherwise indicated.

⁹ Exh. 6 at pg. 3.

¹⁰ \$1,694 x 12 = \$20,328.

¹¹ *Id.*

¹² \$715 x 47.4% = \$338.91.

¹³ Exh. 4 at pg. 5.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁴ 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 the month following CSSD’s notice to the parties that a modification has been requested.¹⁵ As the person who filed the appeal in this case, Mr. D. has the burden of proving by a preponderance of the evidence that CSSD issued the Notice of Denial of Modification Review in error.¹⁶

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 initially denied Mr. D.’s request for modification for the reason that he did not adequately document his income. However, after he provided a letter from his VA representative verifying he receives a monthly disability payment of \$1,694, CSSD calculated a child support amount of \$339 per month from his annual income.¹⁷ Based on his annual income, CSSD’s calculation is correct and absent unusual circumstances, it should be adopted.

A. *Financial hardship*

Mr. D. claimed 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. A parent may obtain a reduction in the amount that would otherwise be awarded pursuant to Civil Rule 90.3(a), 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.”¹⁸ The presence of "unusual circumstances" in a particular case may be sufficient to establish “good cause” for a variation in the support award:

¹⁴ AS 25.27.190(e).

¹⁵ 15 AAC 125.321(d). In this case, the notice was issued on December 17, 2009, thus making the modification effective on January 1, 2010. See Exh. 3.

¹⁶ 15 AAC 05.030(h).

¹⁷ Exh. 7.

¹⁸ 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^[19]

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).²⁰

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. D. did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under the Rule were not varied.

Mr. D. is currently unemployed, but he is receiving disability benefits on a monthly basis that provide for the bulk of his living expenses. Mr. D. is employable and has taken classes to improve his job skills. The evidence as a whole indicates that his unemployment is only a temporary circumstance that will improve when he finds another job.

IV. Conclusion

Mr. D. met his burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was incorrect. Mr. D. has not shown unusual circumstances sufficient to depart from the child support guidelines in Civil Rule 90.3. His child support should be modified to \$339 per month, effective January 1, 2010.

V. Child Support Order

- Mr. D. is liable for modified ongoing child support for A. in the amount of \$339 per month, effective January 1, 2010.

DATED this 20th day of May, 2010.

By: *Signed* _____
Kay L. Howard
Administrative Law Judge

¹⁹ Civil Rule 90.3(c)(1).

²⁰ See 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 7th day of June, 2010.

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

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