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

IN THE MATTER OF:	)	
	)	OAH No. 10-0217-CSS
S. H. R.-R.	)	CSSD No. 001129509
	)	

DECISION AND ORDER

I. Introduction

The Obligor, S. H. R.-R., requested the Child Support Services Division (CSSD) vacate the Administrative Child Support and Medical Support Order dated March 7, 2005. This order set Ms. R.-R.'s monthly child support for two children at $306 per month effective March 1, 2004. CSSD granted the request and issued a Vacate Administrative Child Support and Medical Support Order and Administrative Child Support and Medical Support Order on November 13, 2009. The November 2009 order calculated arrears owing at $7,330.15 for the periods from January 2005 through November 2009. It also set Ms. R.-R.'s monthly ongoing child support for two children at $307 per month beginning December 2009. The children in this case are M., age 11, and I., age 7.

The formal hearing was held on May 12, 2010. Ms. R.-R. appeared by telephone; the custodian M. R., did not participate.[1] Andrew Rawls, Child Support Specialist, represented CSSD. At hearing, Ms. R.-R. accepted CSSD's child support calculation for January 2005 through December 2008. She maintained her objection to CSSD's calculation for 2009 and ongoing. That year's calculation is the only contested issue remaining is the focus of this decision.

II. Facts

A. Procedural Background

Ms. R.-R. filed a Motion to Vacate a Default Order with CSSD. On September 13, 2009, CSSD granted the motion and issued a revised Administrative Child Support and Medical Support Order. The revised order adjusted her arrears for the time periods from 2005 through

[1] Mr. R. was called at the phone number of record and it was answered by voice mail. A message was left informing him of the hearing and providing a number to call should he wish to participate.

November 2009.[2] Ms. R.-R. filed an appeal on December 4, 2009 in the form of a Request for Modification of a Child Support Order.[3] CSSD denied her request because Ms. R.-R. did not provide the income information it had requested for a modification review. Ms. R.-R. appealed the denial of her request for a modification review.[4] At the hearing, the parties agreed that the Petition for Modification was intended to be and should be treated as a timely appeal of the November 13, 2009 Order.

B. Material Facts

At the hearing it was determined that there was no dispute regarding CSSD's calculation of Ms. R.-R.'s monthly child support obligation for each year from 2004 through 2008. However, Ms. R.-R. disagreed with CSSD's child support calculation for 2009 forward. Specifically, she disagreed with the amount of income attributed to her for that time period because for the majority of 2009 she was not employed and, at the time of hearing, continued to be unemployed. Her only sources of income are unemployment benefits and public assistance.

Ms. R.-R. explained that she was terminated from her position with No Name Services in Naknek as a housekeeper in December 2008. Her next period of employment was in the second quarter of 2009. She was working for No Name Fisheries, LLC, in Naknek when she began to have medical problems with her pregnancy and returned to Anchorage. Ms. R.-R. testified she made little effort to look for employment upon arriving in Anchorage. She has a high school education and an employment history that is primarily waitressing and commercial housekeeping.

In October 2009, she was placed on bed rest. Her child was born January 2010 and she has not worked since. When asked when she thought she would return to the workforce she indicated probably when the baby turned one year old. Ms. R.-R. explained that she was breast feeding and wanted to be at home for the baby.

CSSD explained its 2009 child support calculation. It concluded that Ms. R.-R. was voluntarily unemployed and imputed income to her based on her 2008 reported income of

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[2] Exh. 2.
[3] Exh. 3.
[4] Exh. 6.

$15,552.07.[5] Using this amount, CSSD calculated Ms. R.-R.'s monthly child support obligation for two children to be $307 per month commencing January 2009.[6]

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.[7] 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 person who filed the appeal, in this case, Ms. R.-R., has the burden of proving by a preponderance of the evidence that the agency's revised Administrative Child Support and Medical Support Order is incorrect.

At the hearing, CSSD argued that its child support calculation was correct because Ms. R.-R. is voluntarily and unreasonably unemployed and under Alaska law it is appropriate to impute income to her for purposes of determining her child support obligation.[8] It asserted that Ms. R.-R. has made, at best, minimal efforts to obtain employment and that income should be imputed to her at an amount equal to her 2008 earnings. CSSD reasoned that no consideration should be given to her medical removal from the workforce because it was caused by a subsequent child and a subsequent child should not negatively impact the support owed to a prior child in all but the narrowest of circumstances.

Similarly, CSSD believed that Ms. R.-R.'s desire to stay home with her baby for the first year is insufficient to relieve her of the obligation to support M. and I. Were her support obligation reduced, CSSD offered that the prior children would be deprived of support and the practical effect would be tantamount to the prior children financing Ms. R.-R.'s choices.

Ms. R.-R. offered in reply that she made some effort to look for work but then she was placed on bed rest. She is still breast feeding and would like to be home with the baby. She plans on eventually returning to the workforce.

It is appropriate to conduct an inquiry into the nature and reasons for the Obligor's unemployment prior to determining a child support award.[9] The essence of an inquiry into whether an Obligor is voluntarily unemployed or underemployed is to determine if he or she has

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5 Exh. 2 at 11.
6 Exh. 2 at 11.
7 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.
8 Civil Rule 90.3(a)(4).
9 *Kowalski*, 806 P.2d at 1371 at n. 5.

engaged in voluntary conduct "for the purpose of becoming or remaining unemployed."[10] It is not necessary to prove the parent was purposefully avoiding a support obligation, or acting in bad faith, in order to find voluntary unemployment or underemployment.[11] The inquiry should focus on whether the person's lack of employment is for reasons beyond his or her control, such as in being laid off, or of "purely personal choices."[12]

If a parent is found to be voluntarily unemployed or underemployed, potential income will be based on that parent's "past income, skills, work history, and education and the job opportunities in the area where the parent physically resides."[13] The use of "potential income" in a child support obligation is not to punish the obligor parent; rather, it is to insure that the child(ren) and the other parent are not "forced to finance" the obligor parent's lifestyle.[14] The commentary states the court should consider "the totality of the circumstances" when deciding whether to impute income to the obligor parent.[15] A primary goal of imputing income, according to the Alaska Supreme Court, is to compel the parent to find full-time employment:

> An important reason -- if not the chief reason -- for imputing income to a voluntarily underemployed parent is to goad the parent into full employment by attaching an unpleasant consequence (a mounting child support debt or, in certain cases of shared custody, a reduced child support payment) to continued inaction. Indeed, in primary and shared custody situations alike, an order imputing income often yields no tangible benefits to the children unless and until it impels the underemployed parent to find a job.[16]

Based on the evidence, it is more likely than not that Ms. R.-R. is voluntarily and unreasonably unemployed. The Obligor admitted that she was not that interested in obtaining employment after she was terminated in December 2008. Ms. R.-R. testified that her usual occupations were waitressing and housekeeping for commercial operations. These are job skills which are easily transferable and location specific. Thus, her lack of employment was a purely personal choice and not due to circumstances beyond her control.[17]

Having determined that Ms. R.-R. was voluntarily and unreasonably unemployed, the question becomes the appropriate amount of income to impute. When imputing potential income

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10 *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).
11 *Kowalski*, 806 P.2d at 1371 (Alaska 1991).
12 *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).
13 15 AAC 125.020(b).
14 *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).
15 Civil Rule 90.3, Commentary III.C.
16 *Beaudoin v. Beaudoin*, 24 P.3d 523 (Alaska 2001).

it is appropriate to consider, based on available information, the parent's past income, skills, work history, and education, and the job opportunities in the area where the parent physically resides.[18] The minimum wage is $7.75 per hour. A person earning minimum wage working 2,080 hours a year would have an annual gross income totaling $16,120. However, her highest reported annual earnings occurred in 2008 and totaled $15,552.07. Considering the totality of the circumstances, it is appropriate to impute income to Ms. R.-R. in the amount of $15,552.07 and it is from this figure that her child support should be calculated. Therefore, CSSD correctly calculated Mr. R.-R.'s monthly child support for two children to be $307 per month beginning January 1, 2009 and ongoing.

This does not, however, end the inquiry. An obligor 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 claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."[19] If the parent proves that "unusual circumstances" exist in his or her case, this may be sufficient to establish "good cause" for a reduction 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 . . . .[20]

An obligor who claims he or she cannot work or pay child support because of a disability or similar impairment, must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.[21] CSSD does not dispute that Ms. R.-R. was placed on bed rest in October 2009. She has offered no medical evidence that she could not return to the work force now that the baby has been born.

Generally, because child support is calculated based on annual income, temporary periods of unemployment do not negate the support obligation. Here, Ms. R.-R.'s medical removal from the workforce, although temporary, is distinguishable from simple unemployment: when Ms. R.-R. was placed on bed rest she was precluded from working; when someone is unemployed, if

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17 *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).
18 15 AAC 125.020(b)
19 Civil Rule 90.3(c).
20 Civil Rule 90.3(c)(1)(A).
21 *Id*. at 1371.

offered work, they can work. The imputation of income requires a finding that the parent was *unreasonably* unemployed. Usually, obeying a health care provider's orders that the parent not work is not unreasonable.[22]

Whether there is "good cause" depends upon "the circumstances of each cause."[23] Ms. R.-R. was medically removed from the workforce in October 2009 and her child was born in early January 2010. Thus, Ms. R.-R.'s situation from November 2009 through February 2010 constitutes an unusual circumstance of the type contemplated by Civil Rule 90.3(c). Therefore, good cause exists to vary Ms. R.-R.'s child support during this limited period. She did not, however, present evidence sufficient to support a finding that she could not have returned to work within a few months of the baby's birth, so the variance should be limited to this time period.

A variance does not relieve an Obligor of the obligation to support his or her child. Therefore, it must be determined what is an adequate amount taking into consideration the ability of Ms. R.-R. to pay. During this time period, she received unemployment and public assistance. Means based sources of income such as food stamps should not be considered income for purposes of child support.[24] Accordingly, it would be appropriate to calculate Ms. R.-R.'s monthly child support for the period from November 2009 through February 2010 based on her unemployment benefits. When annualized, Ms. R.-R. would receive $6,916 from unemployment.[25] Using CSSD's online Guideline Calculator, her monthly child support obligation for two children should be $143 per month.[26]

Because of the unusual circumstances present, Ms. R.-R.'s monthly child support obligation for two children should be $307 from January 2009 through October 2009, $143 per month from November 2009 through February 2009, and $307 per month from March 2009 and ongoing. Ms. R.-R.'s failure to return to the workforce before October 2009 and after February 2010, is more likely than not, a purely personal choice which M. and I. should not finance.

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22 "The agency may not determine that a parent is voluntarily underemployed or unemployed if the parent is mentally or physically incapacitated…." 15 AAC 125.060(b).

23 Civil Rule 90.3 Commentary IV.A.

24 Civil Rule 90.3 Commentary III. A.

25 Exh. 7 at 2, 3 ($133 per week x 52 weeks = $6,916 per year).

26 Attachment A.

IV. Conclusion

Ms. R.-R. met her burden of proving by clear and convincing evidence that from November 2009 through February 2010, her child support amount should be varied because her medical removal from the work force constituted an unusual circumstance under Civil Rule 90.3(c). She has not established by a preponderance of the evidence that her unemployment was anything other than a purely personal choice after February 2010.

V. Child Support Order

- Ms. R.-R. is liable for child support for M. and I. in the amount of $307 per month for two children for the period from January 2009 through October 2009, $143 per month for two children from November 2009 through February 2010, and $307 per month for two children from March 2010 and ongoing.
- All other provisions of CSSD's November 13, 2009, Vacate Order, and revised Administrative Child Support and Medical Support Order remain in effect.

DATED this 17th day of May, 2010.

By:*Signed*
Rebecca L. Pauli
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 7th day of June, 2010.

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

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