

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

IN THE MATTER OF:)

C. M. F.)

) OAH No. 10-0350-CSS

) CSSD No. 001160603

DECISION AND ORDER

I. Introduction

The obligor, C. M. F., has appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on June 3, 2010. The obligee child, A., is seven years old. The custodian is J. G. P.

The formal hearing was held on August 23 and September 14 of 2010. Mr. F. appeared in person for both proceedings; Ms. P. appeared by telephone for the second one. Both parties are represented by counsel. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. F.' child support is set at \$835 per month for the period from November 2008 through December 2008; and \$740 per month for the period from January 2009 through December 2010, and ongoing pursuant to the "good cause" provisions of Civil Rule 90.3(c).

II. Facts

A. Procedural History

Ms. P. received public assistance benefits on A.'s behalf beginning in November 2008.¹ On July 15, 2009, Ms. P. signed an application for child support services and identified Mr. F. as A.'s putative father.² CSSD initiated paternity establishment by serving Mr. F. with a Notice of Paternity and Financial Responsibility on October 14, 2009.³ Following paternity tests that indicate his probability of paternity of A. is 99.99%,⁴ CSSD issued an Order Establishing Paternity finding that Mr. F. is A.'s biological father on February 8, 2010.⁵

¹ Affidavit of Andrew Rawls, received Aug. 24, 2010.

² Exh. 15.

³ Exh. 2.

⁴ Exh. 5 at pg. 3.

⁵ Exh. 6.

On April 14, 2010, CSSD served an Administrative Child Support and Medical Support Order on Mr. F., charging him with ongoing support for A. of \$1,125 per month, with arrears of \$20,250 from November 2008 through April 2010.⁶ He requested an administrative review of the order and provided income information.⁷ On June 3, 2010, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. F.' ongoing child support at \$756 per month, with arrears of \$17,332 for the period from November 2008 through June 2010.⁸ Mr. F. appealed on June 25, 2010.⁹

During the second portion of the hearing the parties requested that they be granted additional time for post hearing briefing and related activities. The chief administrative law judge granted the request and the 120-day deadline under AS 44.64.060(d) was extended to December 23, 2010.

B. Material facts

Mr. F. is a laborer and a union member. He pays \$30 per month in union dues plus 3% of his income for working dues. In 2008, Mr. F.' income from wages was \$86,669.¹⁰ When the PFD, energy rebate and unemployment benefits are added, his total income from all sources was \$91,359.¹¹ In 2009, Mr. F.' income from wages was \$70,191.¹² When the PFD and his unemployment benefits are added, it results in total income from all sources of \$75,548.¹³ Mr. F.' income is expected to be the same in 2010.

Mr. F. has two children in the home who are older than A.: B., who is 26 and J., who is 7 years old.¹⁴ B. is an adult, but he is considered disabled because he has had epilepsy since the age of 13 and cannot work or support himself. The obligor submitted a letter from Mary M. H., ANP, who wrote that she has been treating B. for epilepsy for seven years. She stated he has a poorly controlled seizure disorder and is unable to work. Ms. H. indicated she is attempting to figure out which medication will control B.'s seizures without causing debilitating side effects,

⁶ Exh. 7.

⁷ Exhs. 8, 9 & 11.

⁸ Exh. 12.

⁹ Exh. 13.

¹⁰ Exh. 11 at pg. 21.

¹¹ Exh. 17 at pg. 2. CSSD mistakenly marked this post hearing exhibit as Exhibit 7, but the numbering has been corrected.

¹² Exh. 11 at pg. 11.

¹³ Exh. 16 at pg. 4.

but in spite of her efforts, he continues to have one to two seizures per week, which has caused a significant financial and emotional hardship for B. and his father. She wrote that she hopes to have significant improvement in B.'s condition in the next six to eight months.¹⁵ Mr. F. supports him completely by paying all of his bills including food, clothing and medication. However, the obligor cannot get B. on his insurance because he is over the age of 18. As a result, all of B.'s medical costs, including a \$300 per month medication expense, must be borne by Mr. F. out-of-pocket. B. has been denied disability benefits and he will continue to live with Mr. F. into the foreseeable future.

III. Discussion

Mr. F. requested that the effective date of the order be delayed until the date Ms. P. applied for child support services or, at the latest, the date he was served with notice of this action. He also requested that he be granted an additional deduction for supporting his adult disabled child in the home. As the person who filed the appeal, Mr. F. has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.¹⁶

A. Effective date of the obligation

A P. is obligated both by statute and at common law to support his or her children.¹⁷ This obligation begins when the child is born.¹⁸ However, CSSD collects support from the date the custodial P. requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren), whichever is earlier, up to six years prior to service on the obligor of notice of his or her support obligation.¹⁹ In this case, public assistance benefits began to be paid on A.'s behalf in November 2008, so that is the first month for which Mr. F. is obligated to pay support for her through CSSD. There is no basis in the law for delaying the effective date of his obligation to support his child, A., under these circumstances.

B. Child support calculations

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," minus mandatory deductions such as taxes

¹⁴ Mr. Flores' oldest son, Jason, is 27 and living out on his own.

¹⁵ Exh. A.

¹⁶ 15 AAC 05.030(h).

¹⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁸ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹⁹ 15 AAC 125.105(a)(1)-(2).

and Social Security. A P. who supports an older child in the home is entitled to an additional deduction.²⁰ Although Civil Rule 90.3(a)(1)(D) does not specifically ban adult children from being included in the deduction, they are generally not considered because a P. does not have a legal obligation to support an adult child.²¹ Child support decisions consistently include only minor children in the deduction.²²

An alternative basis for granting Mr. F. a deduction for supporting B. in the home is the “good cause” provision of 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 P. 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 P. must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.” Civil Rule 90.3(c). 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^[23]

It is appropriate to consider all relevant evidence to determine if the support amount should be lowered from the amount calculated pursuant to Civil Rule 90.3(a).²⁴

After the hearing, CSSD prepared new draft calculations for 2008 through 2010 based on Mr. F.’ total income and including the correct deductions for retirement and union dues.²⁵ The first set, found in Exhibit 16, calculates the obligor’s support obligation with only one prior child, J., included. For 2008, the deduction from income for supporting J. in the home equals \$1,143.²⁶ Inserting this deduction into the child support calculation yields a final support amount for 2008 of \$915 per month.²⁷

20 Civil Rule 90.3(a)(1)(D).

21 See AS 25.20.010.

22 See, e.g., *In the Matter of F.E.S.*, OAH Case No. 10-0001-CSS, July 8, 2010.

23 Civil Rule 90.3(c)(1).

24 Civil Rule 90.3, Commentary VI.B.

25 Exhs. 16 & 17.

26 Exh. 16 at pg. 3.

27 Exh. 16 at pg. 2.

For 2009, the prior child deduction, again for only one child, equals \$1,014 per month.²⁸ Inserting this deduction into the child support calculation yields a final support amount for 2009 of \$811 per month.²⁹ Finally, for 2010, the prior child deduction just for J. equals \$1,014 per month.³⁰ Including this deduction results in a final support amount of \$811 per month for A. in 2010 and ongoing.³¹ These new calculations yield a total arrears amount of approximately \$19,672 through October 2010.³²

The second set of calculations prepared by CSSD reflects a prior child deduction for two children, which would include both J. and B. For 2008, the prior child deduction for two children equals \$1,544 per month.³³ This additional deduction yields a final support amount for 2008 of \$835 per month for A.³⁴ For 2009, the deduction for supporting two prior children in the home equals \$1,368 per month.³⁵ The resulting child support amount for A. is \$740 per month.³⁶ Finally, for 2010, the prior child deduction for two children equals \$1,368 per month.³⁷ When inserted into the final child support calculation, the result is \$740 per month for A. for 2010 and ongoing.³⁸ These new calculations yield a total arrears amount of approximately \$17,950 through October 2010.³⁹ Thus, the total savings to Mr. F. over the course of this obligation equals approximately \$1,722, exclusive of interest charges and any other fees applicable to this case.

Based on the evidence as a whole, Mr. F. has proven by clear and convincing evidence that manifest injustice would result if his child support were not varied from the amounts calculated pursuant to Civil Rule 90.3 for one prior child in the home. Although Civil Rule 90.3(a)(1)(D) does not specifically allow Mr. F. a deduction for supporting an adult child in the home, the equities of this case lead to the conclusion that the additional deduction for supporting B. in the home should be granted. Mr. F. has to pay all of B.'s expenses, including housing,

28 Exh. 16 at pg. 5.
29 Exh. 16 at pg. 4.
30 Exh. 16 at pg. 7.
31 Exh. 16 at pg. 6.
32 Exh. 16 at pg. 1.
33 Exh. 17 at pg. 3.
34 Exh. 17 at pg. 2.
35 Exh. 17 at pg. 5.
36 Exh. 17 at pg. 4.
37 Exh. 17 at pg. 7.
38 Exh. 17 at pg. 6.
39 Exh. 17 at pg. 1.

food, clothing and his medical costs, which equal a minimum of \$300 per month for his son's daily medication needs. As testified to by Mr. F. and confirmed by B.'s medical provider, B. will need to live with the obligor into the foreseeable future. This need may even outlast Mr. F.'s obligation to support provide support for A., who will turn 18 in about nine years.

IV. Conclusion

Mr. F. met his burden of proving by clear and convincing evidence that unusual circumstances exist in this case and that manifest injustice would result if his child support obligation were not varied from the amounts calculated by CSSD. Mr. F.'s child support should be calculated including the deduction for supporting two prior children in the home, B. and J. The calculations prepared by CSSD in Exhibit 17 should be adopted.

V. Child Support Order

- Mr. F. is liable for child support in the amount of \$835 per month for the period from November 2008 through December 2008; and \$740 per month for the period from January 2009 through December 2010, and ongoing;
- All other provisions of CSSD's Amended Administrative Child and Medical Support Order issued on June 3, 2010, remain in full force and effect.

DATED this 23rd day of December, 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 11th day of January, 2011.

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

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