

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

IN THE MATTER OF:)
)
L. V. K.) OAH No. 10-0407-CSS
) CSSD No. 001131157
_____)

DECISION AND ORDER

I. Introduction

L. K., the obligor parent, requested a modification of his child support obligation. S. M. is the custodian of record, and the two children are D. M.-K. and N. M.-K.

A hearing was held on September 14, 2010. Child Support Specialist Erinn Brian appeared in person on behalf of the Child Support Services Division (CSSD). Mr. K. appeared by telephone. Ms. M. was called at the phone number listed in the file for her. No one answered the phone, and there was no answering machine or voice mail option.¹

Based on the record and the testimony at the hearing, Mr. K.'s ongoing support obligation should be set at \$865 per month, effective June 1, 2010.

II. Facts

A. Background

The Office of Administrative Hearings issued a Child Support Decision and Order on April 14, 2005, setting Mr. K.'s support obligation at \$667 per month for two children.² Mr. K. filed a Request for Modification date May 14, 2010.³ A Notice of Petition for Modification of Administrative Support Order was mailed on May 25, 2010. Exhibit 3. CSSD denied the modification request on July 22, 2010.⁴ Mr. K. appealed that denial.⁵ CSSD subsequently reviewed the information provided by Mr. K. and recalculated his child support obligation.⁶

¹ The Hearing Notice sent to Ms. M. by certified mail was returned as undeliverable.
² Exhibit 1.
³ Exhibit 2.
⁴ Exhibit 5.
⁵ Exhibit 6.
⁶ Exhibit 8.

B. Material Facts

Mr. K. works for the Municipality of Anchorage as a bus driver. He submitted a recent paystub which shows that as of May 23, 2010, he had earned year to date gross pay of \$22,718.49.⁷ Because he is paid every two weeks, this equates to an annual income of \$53,698.25.⁸ He also contributes \$302.05 per month towards his retirement and pays \$101.28 per month in union dues.⁹

Mr. K. testified that he has a third son who lives in his home. According to Mr. K., this child is younger than the two children at issue in this proceeding.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹¹ 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 modify the child support obligation, but is not required to do so. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹² Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹³

Mr. K. testified at the hearing that the annual income estimate of \$53,698.25 appeared correct and that his monthly payments for retirement and union dues also appeared correct. He did question whether he should receive a credit for his third child. He also testified that he has visitation with the two older children two nights a week.

7 Exhibit 4, page 1.
8 Exhibit 8, page 2.
9 Exhibit 8, page 2.
10 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.
11 AS 25.27.190(e).
12 15 AAC 125.321(d).
13 15 AAC 05.030(h).

In calculating a parent's adjusted annual income, deductions are made for supporting a child of a prior relationship.¹⁴ There is, however, no corresponding deduction allowed for children of a subsequent relationship.¹⁵ The child support obligation will also be calculated differently where there is shared custody,¹⁶ but Mr. K. would need to have custody of the children for at least 30 percent of the time for custody to be considered "shared."¹⁷ Mr. K. does not have custody of these two children for at least 30 percent of the time.¹⁸

Because there is no dispute as to the amount Mr. K. earns, CSSD's most recent calculation of his child support obligation¹⁹ is correct. That obligation is \$641 per month for one child and \$865 per month for two children.

Mr. K. also requested a hardship exception. The child support calculation under Civil Rule 90.3 may be varied

for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied.^[20]

Based on Mr. K.'s May 2010 pay stub, his take home pay after deductions will be approximately \$3,073 per month.²¹ Mr. K. testified that his monthly expenses are

Rent	\$725
Electric	90
Car Insurance	100
Food ²²	200
Phone	50
Cell Phone	5
Gas	300
Child Care	400
Total	1,870²³

¹⁴ Civil Rule 90.3(a)(1)(C).

¹⁵ Civil Rule 90.3, Commentary III.D. and VI.B.2.

¹⁶ Civil Rule 90.3(b).

¹⁷ Civil Rule 90.3(f)(1).

¹⁸ Calculation of shared custody is based on the number of overnights per year. Civil Rule 90.3, Commentary V.A.

¹⁹ Exhibit 8.

²⁰ Civil Rule 90.3(c)(1).

²¹ As of May 23, 2010, he had take home pay of \$12,218.62. This was for 11 pay periods, so that equals \$1110.78 per pay period. One of his deductions, however, is for child support in the amount of \$307.84 per pay period. When that is added back in, he receives \$1418.62 per pay period. Since there are 26 pay periods in a year, this equates to \$3073 per month in take home pay before deducting any child support payment.

²² This includes up to \$50 per month in meals outside the home. He gets food from a local food bank each month, but is not eligible for public assistance.

Mr. K. testified that he also has about \$5,000 in unpaid medical bills. He does not have any other debt.

Based on these expenses, Mr. K. should have money left over each month after paying his child support obligation. While the amount available to him is not large, Mr. K. has not shown by clear and convincing evidence that the child support obligation calculated pursuant to Civil Rule 90.3(a) would result in manifest injustice.

IV. Conclusion

CSSD correctly calculated Mr. K.'s child support obligation to be \$865 per month for two children and \$641 per month for one child. Mr. K. has not met his burden of proof that this calculation is incorrect. He has also not met his burden of proving that support based on this calculation would result in manifest injustice.

V. Child Support Order

Mr. K. is liable for modified ongoing child support in the amount of \$865 per month for two children, effective June 1, 2010.

DATED this 20th day of September, 2010.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

²³ See also, Exhibit 2, page 2. Diapers, listed as an expense on this exhibit, are no longer a household expense for Mr. K.

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 8th day of October, 2010.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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