

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

IN THE MATTER OF:)	
)	OAH No. 10-0476-CSS
M. L. N.)	CSSD No. 001124769
_____)	

DECISION AND ORDER

I. Introduction

The obligor, M. L. N., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 8, 2010. The obligee children are M., 15, and K., 13 years old. The custodian of record is Q. H. W.

The formal hearing was held on November 29, 2010. Mr. N. participated by telephone; Ms. W. appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. N.'s child support is modified to \$835 per month for two children (\$618 for one child), effective as of November 1, 2009; and ongoing.

II. Facts

A. History

Mr. N.'s child support obligation for M. and K. was set at \$634 per month in July 2006.¹ Ms. W. filed a petition for modification on January 28, 2009.² On October 22, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. N. provided income information.⁴ On September 8, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. N.'s child support to \$1,145 per month, effective November 1, 2010.⁵ He appealed on September 21, 2010, asserting CSSD incorrectly included a 2009 PFD and his wife's Native corporation dividends in his

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

income and documenting his claims.⁶ CSSD agreed with Mr. N.'s issues so prior to the hearing, the agency prepared a revised calculation for 2009 in the amount of \$867 per month for two children, based on his 2009 federal income tax return.⁷ CSSD also prepared a 2010 calculation of \$962 per month for 2010, based on a letter from Mr. N.'s employer regarding his pay.⁸

B. Material Facts

Mr. N. is currently working as a contract paralegal, primarily for local attorney R. B.. In 2009, he earned \$52,000, which he reported on his 2009 federal income tax return.⁹ In addition to his earnings as a paralegal, Mr. N. received rental income of \$1,200.¹⁰ Prior to the hearing, CSSD used these figures to calculate a revised child support obligation of \$867 per month for two children and \$642 per month for one child.¹¹ However, CSSD acknowledged at the hearing that it had incorrectly attributed an additional \$1,000 to Mr. N. from the property rental so used the figure of \$54,200 for his 2009 income. CSSD and Mr. N. agreed that his actual income for 2009 was \$53,200, not \$54,200. A corrected child support calculation has been generated from this latest figure that yields a support amount of \$835 per month for two children and \$618 per month for one child.¹²

For 2010, Mr. N. submitted a letter from Mr. B. which states that in early 2010, the attorney began paying him \$5,000 per month, but on a contract basis and not as an employee. At the hearing, Mr. N. testified that he and Mr. B. had had difficulties regarding their working agreement and Mr. N.'s work hours had been significantly reduced later in the year. He provided documentation of the hours he worked after the end of September 2010. In addition to his earnings as an employee, for the following periods, Mr. N. billed Mr. B. for the following hours and received the amounts listed:

⁵ Exh. 5.
⁶ Exh. 6.
⁷ Exh. 7; Exh. 4 at pg. 5.
⁸ Exh. 8; Exh. 4 at pg. 1.
⁹ Exh. 4 at pg. 5.
¹⁰ *Id.* Mr. N. did not receive a 2009 PFD, nor is he expected to receive one for 2010. See Exh. 6 at pg. 2.
¹¹ Exh. 7.
¹² Attachment A.

DATES	NO. OF HOURS	HOURLY RATE	TOTAL PAID
Oct. 6 – Oct. 20	43.2	\$40	\$1,728 ¹³
Oct. 20 – Nov. 5	71.7	\$40	\$2,868 ¹⁴
Nov. 5 – Dec. 5	30.7	\$40	\$1,228 ¹⁵
Dec. 5 – Dec. 20	77.8	\$40	\$3,112 ¹⁶
TOTALS	223.4		\$8,936.00

Mr. N. did not document his year to date earnings prior to the last quarter of 2010, but based on all of the evidence received, it is more likely than not that he earned approximately \$5,000 per month for the first nine months of 2010, resulting in a year to date income amount of \$45,000 through the end of September. From October 2010 through December 2010, Mr. N. received an additional amount of \$8,936 from Mr. B. When these two figures are added, it results in total estimated income of \$53,936. This figure is only \$736 more than his reported income for 2009, so the 2009 figure should be used for 2010.

Mr. N. is married. He and his wife, B., have five children in the home who range from 14 years old down to four years old.¹⁷ Mr. N. did not submit evidence regarding his household expenses, but from his tax return, it appears as though he provides the primary financial support for the family. B. receives Native corporation dividends, but those amounts are not significant.¹⁸

Mr. N. testified that he has recently had medical problems and submitted records from a local dermatology clinic.¹⁹ There is no letter from his doctor explaining these medical issues, but from the medical records themselves it appears that Mr. N. has been seen in 2010 for a growth on his neck which was biopsied and diagnosed as a grade I carcinoma, or skin cancer.²⁰

13 Obligor's Exh. 1.

14 Obligor's Exh. 2.

15 Obligor's Exh. 3.

16 Obligor's Exh. 14.

17 Exh. 4 at pg. 6.

18 See Exh. 4 at pg. 5.

19 Exh. 4.

20 Obligor's Exh. 4.

III. Discussion

A. Child Support Calculation

Mr. N. appealed CSSD's calculation of his modified child support obligation. He has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.²¹ A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of November 1, 2009.²²

Child support orders may be modified upon a showing of "good cause and material change in circumstances."²³ 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. When doing calculations for more than one year, CSSD will only change the support amount for the second and succeeding years if they would be 15% more or less than the first year calculated.²⁴

For the modification review, CSSD calculated Mr. N.'s modified child support at \$1,145 per month for two children, based on his income tax return.²⁵ In documents and at the hearing, Mr. N. established that CSSD incorrectly included a 2009 PFD and his wife Belle's Native corporation dividends. CSSD agreed this was the case and prior to the hearing had revised the child support amount to \$867 per month for two children (\$642 for one child).²⁶ An examination of the calculation reveals that CSSD inadvertently added an additional \$1,000 to Mr. N.'s income. Thus, the income figure was corrected after the hearing and a new calculation for 2009 is seen in Attachment A of this decision.

For 2010, CSSD estimated Mr. N.'s total income at \$62,400, which the obligor successfully disputed at the hearing because he worked significantly fewer hours during the last quarter of the year, due, he claimed, to a misunderstanding with the for whom attorney he does contract work. Mr. N.'s 2010 income has been correctly estimated, as discussed in the findings section, at \$53,936. This figure is only \$736 more than his reported income for 2009, so it is not

²¹ 15 AAC 05.030(h).

²² 15 AAC 125.321(d). In this case, the notice was issued on October 22, 2009. Exh. 3.

²³ AS 25.27.190(e).

²⁴ Citing *Duffus v. Duffus*, 72 P.3d 313 (Alaska 2003).

²⁵ Exh. 5 at pg. 6.

²⁶ Exh. 7.

sufficient to generate a support amount that is at least 15% different than the 2009 figure. Thus, the 2009 amount should be used for 2010.

B. Financial hardship

Both parties are claiming a variance in the amount calculated, essentially because of financial hardship. Mr. N. would like the amount lowered; Ms. W. would like it raised. She claims the obligor works for multiple attorneys and that she needs a higher amount of support because she has been ill and the amount is not sufficient to support two boys.²⁷

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 or increase in the amount calculated, but only if he or she shows that "good cause" exists for the change. 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."²⁸ 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).²⁹

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Neither party 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. N. does have several children in the home, but there is no evidence in the record that his wife B. cannot work at least part-time to supplement the household income. Also, if Mr. N. is working a lower number of hours for Mr. B. he may need to consider obtaining contract work from other attorneys. As a self-employed paralegal, Mr. N. is free to work for others in order to supplement his income.

Ms. W. also did not submit any financial information – she testified essentially that Mr. N. misses payments during the year and that he works for more than one attorney, but there is no other evidence regarding her claims. She stated in her letter that she is ill, but Ms. W. did not offer any evidence other than that. This is not sufficient to change the child support amount

²⁷ Filing from Ms. W. received on December 16, 2010.

²⁸ Civil Rule 90.3(c).

²⁹ See Civil Rule 90.3, Commentary VI.E.1.

calculated under Civil Rule 90.3, particularly given the presumption that the support determined from actual income figures is correct.

IV. Conclusion

Mr. N. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). That order, which modified his child support to \$1,145 per month, should be adjusted to \$835 per month based on Mr. N.'s actual income figures.

Neither party established clear and convincing evidence manifest injustice would result in the absence of a variation from the amount calculated from Mr. N.'s actual income. In the absence of clear and convincing evidence, the support amount of \$835 per month should be adopted.

V. Child Support Order

- Mr. N. is liable for modified ongoing child support for M. and K. in the amount of \$835 per month for two children (\$618 per month for one child), effective November 1, 2009, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated September 8, 2010, remain in full force and effect.

DATED this 18th day of January, 2011.

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 16th day of February, 2011.

By: Signed _____
Signature
Jerry Burnett _____
Name
Deputy Commissioner _____
Title

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