

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

IN THE MATTER OF:)

M. A. I.)

) OAH No. 10-0488-CSS

) CSSD No. 001166608

DECISION AND ORDER

I. Introduction

This matter involves the obligor M. A. I.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 23, 2010. The obligee child is M., 3 years of age. The custodian of record is Y. F. I.

The formal hearing was held on October 14, 2010. Both parties appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 28, 2010.

Based on the record and after careful consideration, CSSD's Amended Administrative Child Support and Medical Support Order is affirmed with one addition: Mr. I. is entitled to a credit for direct child support paid to the custodian in the total amount of \$2,200 for the period from February 2010 through June 2010, which should be attributed to him in the amount of \$440 per month for those months.

II. Facts

A. Procedural History

This is a Uniform Interstate Family Support Act (UIFSA) case from Ohio. Ms. I. applied for child support services there in February 2010.¹ CSSD received the UIFSA petition on March 17, 2010.² CSSD issued an Administrative Child Support and Medical Support Order and it was served on Mr. I. on June 23, 2010.³ He requested an administrative review.⁴ On August 23, 2010, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. I.'s ongoing child support at \$945 per month, with arrears of \$4,615 for the period from

¹ Exh. 1 at pg. 5.
² Exh. 1 at pg. 1.
³ Exh. 2 at pg. 11.
⁴ Exh. 3.

February 2010 through August 2010.⁵ Mr. I. appealed on September 13, 2010, asserting that his child support arrears are incorrect because he has paid child support since February 2010.⁶

B. Material Facts

The parties are currently married but they live separately. Their daughter M. lives with Ms. I.

When Ms. I. applied for child support services, she indicated that Mr. I. had been paying child support directly to her in the amount of \$400 per month.⁷ Accordingly, CSSD credited Mr. I. with direct payments of \$400 per month beginning in February 2010.⁸ However, when he filed his appeal, Mr. I. claimed that he had been paying Ms. I. \$700 per month for M.'s support, and he filed a letter from the custodian to that effect.⁹

At the hearing, Ms. I. acknowledged she wrote the letter saying he had paid \$700 per month from February 2010 through June 2010 because she wanted to help Mr. I. with his arrears. She confirmed that they had initially agreed on \$400 per month, but apparently they later disagreed on the amount so Mr. I. told her just to go ahead and file for child support against him, which she did. Ms. I. further testified that in 2010, her husband paid her \$400 in February and March, \$500 in April and May, and \$400 in June. All of these payments total \$2,200, which averages out to be \$440 per month.¹⁰

Mr. I.'s list of expenses totals approximately \$4,235, which includes \$1,600 per month for the mortgage; \$550 for food; \$440 for utilities, telephone, cable and internet; \$500 for the payment on a 2007 Chevrolet Trailblazer; \$580 for vehicle gasoline, maintenance and insurance; \$200 for entertainment and personal care items; and \$360 for credit card and consumer debt payments.¹¹ He did not report any outstanding medical debt.

⁵ Exh. 4.

⁶ Exh. 5.

⁷ Exh. 1 at pg. 16.

⁸ Exh. 2 at pg. 8.

⁹ Exh. 5 at pgs. 2-3. Mr. I. also provided receipts for three recent payments, two of \$738 and one of \$1,100, that had not yet been attributed to him. Exh. 5 at pgs. 4-6. These payments were made through CSSD, so they will be accounted for in Mr. I.'s statement. Only the payments he made directly to Ms. I. are being discussed here.

¹⁰ $\$2,200 \div 5 \text{ months} = \440 per month.

¹¹ Mr. I. completed a list of his expenses after the hearing and submitted it to the OAH by mail. It was received on October 21, 2010.

III. Discussion

Mr. I. indicated at the hearing that CSSD correctly determined his annual income for child support purposes. Even so, the obligor challenged the monthly support amount, claiming that Ms. I.'s cost of living is lower in Ohio and as a result CSSD should be able to agree on a lower amount. Mr. I. also claims that he should not be liable for all of the arrears because he made payments to Ms. I. during the first half of 2010. Finally, Mr. I. requested that he be granted a financial hardship variance from the child support determination because he cannot afford the payment.

The person who filed the appeal, in this case, Mr. I., has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.¹²

A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.¹³ This obligation begins when the child is born.¹⁴ By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).¹⁵ Ms. I. requested child support services in Ohio in February 2010, so that is the first month for which Mr. I. is liable to provide support for M. through CSSD.

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions. The rule states specifically that a military parent's total income from all sources includes "Armed Service Members base pay plus the obligor's allowances for quarters, rations, COLA and specialty pay."¹⁶ These untaxed allowances are included as income in the member's child support worksheet because they reduce living expenses and allow the parent to use his or her base pay to cover other expenses. There is no provision in Civil Rule 90.3 that allows CSSD or the administrative law judge to adjust a child support amount because the custodian is living in a different geographical location and may have a lower standard of living than the obligor. This

¹² 15 AAC 05.030(h).

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁴ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹⁵ 15 AAC 125.105(a)(1)-(2).

¹⁶ Civil Rule 90.3, Commentary III.A.29.

type of system would be nearly impossible to administer and would be subject to constant adjustments.

CSSD estimated Mr. I.'s 2010 income will consist of base pay and other entitlements totaling \$60,479.76.¹⁷ He agreed at the hearing that this income figure is correct. When inserted into CSSD's online child support calculator,¹⁸ Mr. I.'s income yields a child support amount of \$945 per month for 2010.¹⁹ This child support amount is correct because it is based on Mr. I.'s actual income for the year and it was calculated pursuant to Civil Rule 90.3, Alaska's rule regarding child support calculations.

B. Credit for direct payments

Mr. I. claimed in his appeal that the arrears are too high because he had been making payments of \$700 per month to Ms. I. since February 2010. She also made that assertion but it became clear at the hearing that his payments to her were in fact much lower: \$400 per month in February, March and June 2010, and \$500 per month in April and May 2010, a total of \$2,200 before Mr. I. began paying support through CSSD.

CSSD may give the obligor credit for direct payments made "before the time the obligor is ordered to make payments through the agency," so long as the direct payment was not made before the first date support is due in the administrative child support action.²⁰ An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments.²¹ Based on Ms. I.'s testimony at the hearing, Mr. I. has met his burden and is entitled to the direct credit totaling \$2,200.

Ms. I.'s desire to help the obligor with the arrears is understandable, but the administrative law judge may not grant Mr. I. a credit for payments that have not actually been made to the custodian. Ms. I. was informed at the hearing that if she wants Mr. I. to have additional credit, she would have to direct that issue to CSSD, which is responsible for child support collections.

¹⁷ Exh. 4 at pg. 7.

¹⁸ <http://www.childsupport.alaska.gov/>

¹⁹ Exh. 4 at pg. 8.

²⁰ AS 25.27.020(b).

²¹ *Id.*

C. Financial hardship variance

Mr. I.'s final issue in this appeal is whether he is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). He testified that he cannot afford to pay his support obligation.

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 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 parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."²² A finding of "unusual circumstances" may also provide sufficient basis for a finding of good cause to vary the calculated child support amount.²³

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child, to determine if the support amount should be lowered from the amount calculated pursuant to Civil Rule 90.3(a).²⁴ In a situation where CSSD is collecting arrears for a time period prior to the establishment of the child support order, the administrative law judge should consider whether "unfairness may result from rigid application . . ." of the Civil Rule 90.3 formula.²⁵

Based on the evidence in its entirety, Mr. I. has not proven by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not reduced. Although Mr. I.'s bills are somewhat high, this does not constitute "unusual circumstances" such that his child support should be varied. Most likely Mr. I. will have to engage in some rather aggressive budgeting, but there is insufficient evidence of good cause to reduce his child support obligation.

IV. Conclusion

Mr. I.'s child support is correctly calculated at \$945 per month for 2010 and ongoing based on his actual income. Mr. I. did not prove by clear and convincing evidence that there is good cause to vary his child support obligation from the amount calculated by CSSD from his

²² Civil Rule 90.3(c).

²³ Civil Rule 90.3(c)(1).

²⁴ Civil Rule 90.3, Commentary VI.B.

²⁵ Civil Rule 90.3, Commentary VI.E.1.

actual income. CSSD's Amended Administrative Child and Medical Support Order should therefore be affirmed, with one addition: Mr. I. is entitled to a credit totaling \$2,200 during the period from February 2010 through June 2010, which, for averaging purposes equals \$440 per month.

V. Child Support Order

- CSSD's August 23, 2010, Amended Administrative Child and Medical Support Order is affirmed, with one addition: Mr. I. is entitled to a credit for direct child support paid to the custodian in the total amount of \$2,200 for the period from February 2010 through June 2010, which should be attributed to him in the amount of \$440 per month for those months;
- All other provisions of the August 23, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 19th day of November, 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 21st day of December, 2010.

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

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