

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

IN THE MATTER OF:)
)
 J. L. L.) OAH No. 10-0511-CSS
) CSSD No. 001104833
_____)

DECISION AND ORDER

I. Introduction

The obligor, J. L., requested that his child support obligation be modified. The Child Support Services Division (CSSD) denied his request, and Mr. L. appealed. The custodian of record is M. A. C. and the obligee child is D. J. L.

A hearing was held on October 27, 2010. Ms. C. appeared by telephone. Mr. L. appeared in person, and CSSD was represented by Child Support Specialist Andrew Rawls, who appeared in person. Based on the testimony and exhibits in the record, Mr. L.' child support obligation should remain at \$168.42 per month.

II. Facts

A. Background

An Administrative Child Support and Medical Support Order was issued by CSSD on May 17, 2001, setting Mr. L.' child support obligation at \$168.42 per month.¹ Mr. L. requested a modification on July 13, 2010,² and Ms. C. requested a modification on July 20, 2010.³ Notice of Petition for Modification of Administrative Support Order was mailed on July 26, 2010.⁴ CSSD denied the requested modifications based on its determination that there had been no material change of circumstances.⁵ Mr. L. appealed.⁶

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1 Exhibit 1.
2 Exhibit 2.
3 Exhibit 3.
4 Exhibit 4.
5 Exhibit 6.
6 Exhibit 7.

B. Material Facts

Mr. L.' most recent job was working as a landscaper earning \$12 per hour.⁷ He worked 30 to 35 hours each week, but it was seasonal work and he has not worked since September 26th. Prior to that, Mr. L. was working at Fred Meyer. He lost that job in December when he mistakenly sold an alcoholic beverage to a person under the age of 21. Since September, he has been diligently searching for work without success. He has worked in a variety of different types of jobs, and will likely find work earning \$9 to \$10 per hour.⁸

One major difficulty Mr. L. encounters in searching for and keeping a job is that he started having epileptic seizures last year. He testified that many employers will not hire him because of the risk of an on-the-job seizure, and that he has lost some jobs due to his health condition. Because of his epilepsy, Mr. L. cannot drive. This means he cannot apply for jobs where driving is a requirement. It also means he must find a job near public transportation.

Mr. L. is currently living with a friend. He is supposed to pay \$400 per month in rent, though he has not been making payments while unemployed. He spends about \$100 per month on food, \$15 per month on public transportation,⁹ \$6 per month for his cell phone, and an average of \$125 per month in other expenses.

Mr. L. owes about \$50,000 in past medical expenses. He has been making payments of about \$50 per month. His medications cost a total of \$326 per month, but his most expensive medication – at \$300 per month – has been paid for by a state grant through December. He does not know if he will be eligible for that grant again. He is required to see a neurologist on a regular basis to monitor his epilepsy, in addition to any other physicians. His epilepsy medicine has side effects that include damage to his teeth. He has not been able to afford to see a dentist to address this problem.

Ms. C. lives with her two children.¹⁰ The older child is the obligee child in this matter. The younger child is diabetic. Her take home pay is approximately \$900 every two weeks. She pays \$400 a month in rent, and about \$260 per month for utilities and cell phones. She spends about \$500 per month on food. Her car payment is \$380 per month, and she spends about \$200

⁷ Unless otherwise indicated, the facts in this section are found based on Mr. L.' testimony.

⁸ This is the typical starting pay of the jobs Mr. L. has been applying for.

⁹ He is eligible for a discounted monthly pass because of his health condition.

¹⁰ The facts concerning Ms. C.'s income and expense are found based on her testimony.

per month on gasoline. Ms. C.'s other expenses total about \$380 per month. She also owes \$7400 on two credit cards, with minimum monthly payments of \$205.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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."¹² 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.¹³ Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁴

Civil Rule 90.3(c) allows for setting the child support obligation at a different amount than what it would be calculated at under Civil Rule 90.3(a) for good cause. To do this, there must be clear and convincing evidence that "manifest injustice would result if the support award were not varied."¹⁵

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. The court shall consider the custodial parent's income in this determination.^[16]

Mr. L.' recent earning history shows that he is capable of earning more than \$14,000 per year. As reported to the Department of Labor and Workforce Development, his wages for 2009 were \$14,857.30.¹⁷ Looking at the most recent four quarters, he has earned a total of \$14,065.71 in wages and unemployment benefits. Although he is currently unemployed, he hopes to find a job earning at least \$9 per hour. If he worked full time, that rate of pay would equate to annual

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² AS 25.27.190(e).

¹³ 15 AAC 125.321(d).

¹⁴ 15 AAC 05.030(h).

¹⁵ Civil Rule 90.3(c)(1).

¹⁶ Civil Rule 90.3(c)(1).

¹⁷ Exhibit 8.

wages of \$18,720. Given Mr. L.' medical condition and work history, however, he is not likely to work 40 hours per week for the full year. He will more likely have periods of unemployment as he has had in the past. Accordingly, based on the best information available, it is reasonable to expect him to earn \$14,100 per year. This would result in a child support obligation of \$227.00 per month.¹⁸ Mr. L.' current child support obligation of \$168 per month is the amount he would be obligated to pay based on an annual pre-tax income of about \$9,750 per year.¹⁹ This is very close to what he would receive annually working half-time at \$9.00 per hour.²⁰

Mr. L.' appeal asserts paying the current child support obligation of \$168.42 per month creates a hardship, so there is also a question of whether a higher obligation would create a hardship. As stated above, a person's child support obligation can be reduced when there are unusual circumstances such that it would be manifestly unjust not to vary the obligation amount.

Mr. L.' medical condition is the type of unusual circumstance that Civil Rule 90.3(c) contemplates as a circumstance that may justify varying his support obligation. Accordingly, it is necessary to balance the relative hardships between the two families.

Ms. C. has a full time job, with take home pay of about \$900 every two weeks. This equates to net income of about \$1,950 each month.²¹ Her expenses are not extravagant, but she does have a relatively new car, and she is able to provide cell phone service for her children. On the other hand, she is trying to provide for two children and any reduction in the child support she receives will impact her ability to provide for her children, including Mr. L.' child.

Mr. L. is currently unemployed, and has high medical expenses. He also has a large outstanding debt for past medical care, and can be expected to continue incurring additional medical costs. His other expenses are modest and when he is employed he has sufficient money to pay his expenses, but based on his work history he will likely have periods of unemployment or underemployment throughout the year.

Mr. L. has applied for various types of public assistance, mostly without success. Without medical treatment, his ability to earn any money to support his child will be impaired. Under the circumstances, there is clear and convincing evidence that it would be manifestly

¹⁸ Attachment A.

¹⁹ Attachment B.

²⁰ \$9 per hour times 1040 hours per year equals \$9,360.

²¹ \$900 x 26 pay periods, divided by 12 months.

unjust to increase Mr. L.' child support obligation from the current amount. It is not, however, manifestly unjust to keep Mr. L.' support obligation at its current amount.

This ruling is not intended to prohibit a future modification based on circumstances as they may exist in the future. At this time, however, Mr. L.'s child support obligation should remain at \$168.42 per month.

IV. Conclusion

There has been a material change of circumstances in Mr. L.' earnings and in his medical condition since the original support order was entered in 2001. Mr. L. has shown by clear and convincing evidence that there are unusual circumstances such that it would be manifestly unjust to increase his child support obligation to reflect his increased earning capacity. Accordingly his support obligation should remain at \$168.42 per month for one child.

V. Child Support Order

All of the terms and conditions of the Administrative Child Support and Medical Support Order of May 17, 2001 remain in full force and effect.

DATED this 28th day of October, 2010.

By: Signed
Jeffrey A. Friedman
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 15th day of November, 2010.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief ALJ
Title

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