

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

IN THE MATTER OF:)

J. D. L.)

) OAH No. 10-0555-CSS
) CSSD No. 001118530
)
)

DECISION AND ORDER

I. Introduction

The obligor, J. D. L., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 13, 2010. The obligee child is I., who is currently 8 years of age. The custodian is L. M. J.

The hearing was held on December 1, 2010. Both Mr. L. and Ms. J. appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, CSSD's Modified Administrative Child Support and Medical Support Order is affirmed. Mr. L.'s child support for I. is modified to \$486 per month, effective September 1, 2010, and ongoing.

II. Facts

A. Background

Mr. L.'s child support obligation for I. was set at \$320 per month in November 2003.¹ Mr. L. requested a modification review on August 27, 2010.² On August 30, 2010, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. L. provided income information.⁴ On October 13, 2010, CSSD issued a child support order that modified Mr. L.'s ongoing child support to \$486 per month, effective September 1, 2010.⁵ Mr. L. appealed on November 1, 2010.⁶

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Exh. 4.
5 Exh. 5.
6 Exh. 6.

B. Material Facts

Mr. L. is employed by a telephone company. During the first half of 2010 he lived in Alaska and worked for the company as a national account executive. On June 1st he was moved to a store location out of state and promoted to store manager. He currently receives a salary of \$32,800 per year plus a commission, based on total store sales, of about \$1,500 per month.

Mr. L. earned \$22,588.04 during the first half of 2010.⁷ Using this information plus his monthly salary and his average commission, Mr. L.'s total income for 2010 is estimated at \$53,199.60.⁸

Mr. L. lives with his girlfriend, P., and her 8 year-old child. P. is not employed and is not able to do much of a job search because they only have one car, which Mr. L. needs to drive to work. In Alaska, P. was a receptionist at a veterinary clinic. She is currently receiving unemployment benefits and paying her own bills. Mr. L. reported bills of \$2,570 per month.⁹ He has had medical bills of about \$1,687 written off, but he is currently paying on various payday loans.¹⁰

I. lives with his mother, Ms. J., who has four children in the home – her two biological children plus two foster children under the age of three. She receives a stipend for the foster children but testified it does not cover all of her expenses. Ms. J. reported bills totaling \$3,495, but this figure is confusing.¹¹ She indicated her rent of \$1,050 is currently being subsidized but did not state whether that is the total amount to which the subsidy is applied or the total she pays after the subsidy is applied.

Mr. L. has a total of four children, one older than I. and two younger. He pays support for all three of the other children, M., who is older than I., and S. and K., both younger than I. His support obligation for M. has been \$290 per month, but a modification in that case effective September 1, 2010, has set his child support for her at \$608 per month.¹² That support

⁷ Exh. 7 at pg. 1.

⁸ Exh. 5 at pg. 6. It is difficult to estimate Mr. L.'s 2010 income because he changed positions mid-year and is now earning a salary plus commissions. CSSD's estimate of \$53,199.60 is not unreasonable; in the absence of a more accurate figure that can be documented, the agency's amount should be used.

⁹ See Exh. 11.

¹⁰ See Exh. 11.

¹¹ Exh. 10.

¹² See *In the Matter of J. D. L.*, OAH Case No. 10-0556 (Dec. 26, 2010).

obligation entitles Mr. L. to an additional deduction from income in that amount, which results in a modified child support amount for I. of \$486 per month for 2010.¹³

III. Discussion

A. Mr. L.'s child support calculation

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁴ 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.¹⁵

Mr. L.'s child support was set at \$320 per month in 2003. In connection with the modification review, CSSD set his modified child support at \$486 per month, which was calculated from an estimation of his 2010 income taken from the Alaska Department of Labor and the paystubs he provided, and which also includes a deduction for supporting one older child.¹⁶ Mr. L. has not established that this monthly support amount is incorrectly calculated. Whether it should be affirmed or reduced because of Mr. L.'s claim of financial hardship is addressed below.

B. Financial hardship

Mr. L. claims that he cannot afford the child support amount calculated from his actual income. 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.”¹⁷ It is appropriate to consider all

¹³ Exh. 9.

¹⁴ AS 25.27.190(e).

¹⁵ 15 AAC 125.321(d). In this case, the notice was issued on August 30, 2010, so the modification is effective as of September 1, 2010. See Exh. 3.

¹⁶ Exh. 5 at pg. 6.

¹⁷ Civil Rule 90.3(c).

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).¹⁸

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. L. did not prove 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. L. has several child support obligations, but CSSD is limited in the amount it can collect on these cases. Mr. L. may have to secure part-time work to fund the increase in his support obligation or his girlfriend may have to contribute more of the household expenses.

IV. Conclusion

Mr. L. did not meet his burden of proving that the modification order for \$486 per month is incorrect. Nor did he meet his burden of proving by clear and convincing evidence that manifest injustice would result if his modified child support amount calculated under Civil Rule 90.3 were not lowered. CSSD's order should be affirmed.

V. Child Support Order

- CSSD's October 13, 2010, Modified Administrative Child Support and Medical Support Order is affirmed: Mr. L. is liable for modified child support in the amount of \$486 per month, effective September 1, 2010, and ongoing.

DATED this 28th day of December, 2010.

By: *Signed* _____
Kay L. Howard
Administrative Law Judge

¹⁸ See Civil Rule 90.3, Commentary VI.E.1.

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 14th 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.]