

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

IN THE MATTER OF:)

E. R. Q.)

) OAH No. 10-0585-CSS
) CSSD No. 001164941
)

DECISION AND ORDER

I. Introduction

This case involves the obligor E. R. Q.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on November 4, 2010. The obligee child is F., who is four years old. The custodial parent is F. J. M.

The hearing was held on December 7, 2010. Mr. Q. appeared by telephone with his wife, G., who assisted with translation. Ms. M. did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Amended Administrative Child and Medical Support Order is affirmed. Mr. Q.'s child support obligation is correctly calculated for F. and Mr. Q.'s request for a variance due to financial hardship is denied.

II. Facts

A. Procedural Background

Ms. M. began receiving public assistance benefits on F.'s behalf in November 2009.² On January 21, 2010, CSSD served a Notice of Paternity and Financial Responsibility on Mr. Q.³ He requested genetic testing, the results of which indicate a 99.99% probability that he is F.'s biological father.⁴ CSSD issued an order establishing Mr. Q.'s paternity of F. on April 12, 2010.⁵ On September 3, 2010, CSSD issued an Administrative Child Support and Medical Support Order to Mr. Q.⁶ He requested an administrative review and provided additional

¹ A telephone call was placed to Ms. Mendoza's contact number on record, but there was no answer.
² Pre-Hearing Brief at pg. 1.
³ Exh. 1.
⁴ Exhs. 2-3.
⁵ Exh. 4.
⁶ Exh. 5.

information.⁷ On November 4, 2010, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. Q.'s ongoing child support at \$233 per month, with arrears of \$3,029 for the period from November 2009 through November 2010.⁸ Mr. Q. filed an appeal on November 15, 2010, asserting he cannot afford the child support amount set by CSSD because he is a cannery worker and is employed on a seasonal basis.⁹

B. Material Facts

Mr. Q. lives in Kodiak, where he has been a cannery worker for several years. His work is mostly seasonal. According to the Alaska Department of Labor and Workforce Development, he is typically employed by several canneries throughout the year and receives unemployment benefits between his jobs at the canneries.¹⁰

In 2009, Mr. Q. earned \$20,278.69.¹¹ In addition, he received \$3,045 in unemployment benefits.¹² His 2009 income from wages was higher than 2008 by nearly \$7,000.¹³ His most recent paystub shows that Mr. Q.'s year-to-date income as of November 24th was approximately \$19,813.96.¹⁴ At the hearing he indicated he would not have any other work through the end of the year, so that figure represents his total income from earnings for 2010, roughly equal to his 2009 income.

Mr. Q. is married to G., who is employed and brings home approximately \$1,600 per month.¹⁵ Mr. Q. and G. have four children in the home: I., 8 years old, K., 6, A., 4, and B., 2. The three oldest, I., K. and A. are all older than F., the child in this case. As a result, Mr. Q. is entitled to an additional deduction from income for supporting three prior children in the home.

Mr. Q. submitted a list of household expenses that totals approximately \$3,330 per month.¹⁶ It includes a mortgage payment of \$1,250 per month, food expenses of \$600, a car payment of \$350 and about \$335 for vehicle insurance, gasoline and vehicle maintenance. They have regular expenses of about \$50 each for entertainment, personal care, alcohol/tobacco and

⁷ Exhs. 6-8.

⁸ Exh. 9.

⁹ Exh. 10.

¹⁰ Exh. 11.

¹¹ Exh. 11 at pg. 1.

¹² Exh. 11 at pg. 2.

¹³ *Id.*

¹⁴ Hearing testimony.

¹⁵ Exh. 14.

medical expenses. They have between \$4,000-\$5,000 in credit card debt, with payments totaling about \$350 per month.¹⁷

The custodian, Ms. M., received public assistance benefits for the child in this case for four months from November 2009 through February 2010.¹⁸ As of March 2010, she has been receiving only Medicaid benefits on F.'s behalf.¹⁹ She listed expenses of less than \$1,400 per month in addition to what appears to be a debt of \$10,200 for overpaid unemployment benefits that is being paid off from her permanent fund dividend. However, because Ms. M. did not attend the hearing, this debt is not entirely clear.

III. Discussion

Mr. Q. is not challenging the actual calculation of his child support amount, but he is requesting that his child support be lowered because of financial hardship. He claims the amount calculated will cause manifest injustice to his subsequent children. The person who filed the appeal, in this case, Mr. Q., has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.²⁰

A parent is obligated both by statute and at common law to support his or her children.²¹ 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).²² In this case, Ms. M. began receiving public assistance benefits for F. in November 2009, so that is the first month Mr. Q. is obligated to pay support in this administrative child support action.

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," minus mandatory deductions such as taxes and Social Security. A parent who supports an older child in the home is entitled to an additional deduction from income.²³ The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.²⁴

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Id.

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Id.

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Exh. 9 at pg. 7.

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Id.

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15 AAC 05.030(h).

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

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15 AAC 125.105(a)(1)-(2).

23

Civil Rule 90.3(a)(1)(D).

24

Id.

CSSD calculated Mr. Q.'s child support at \$233 per month from his actual 2009 earnings of \$20,278.69 plus unemployment benefits of \$2,796 and the 2009 PFD.²⁵ CSSD was aware Mr. Q. and his wife support three children in the home who are older than F. and who entitle the obligor to an additional deduction from income. Thus, CSSD reduced his income by \$574 per month, which is what his child support for them would be if he had to pay it. This deduction had the practical effect of reducing Mr. Q.'s net income by \$6,888,²⁶ which significantly lowered his child support obligation to \$233 per month.

CSSD's calculation of Mr. Q.'s child support at \$233 per month for 2009 forward is correct because it is based on his actual income and includes the deduction for supporting his three older children in the home. It is from this calculation that Mr. Q.'s request for a variance based on financial hardship should be considered.

B. Financial Hardship

The second issue in this appeal is whether Mr. Q. is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). 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." Civil Rule 90.3(c). The presence of "unusual circumstances" in a particular case may be sufficient to establish "good cause" for a variation in the support award:

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^[27]

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 set at a different level than provided for under the schedule in Civil Rule 90.3(a).²⁸

Based on the evidence in its entirety, Mr. Q.'s situation does not present "unusual circumstances" of the type contemplated by Civil Rule 90.3. He did not prove by clear and

²⁵ Exh. 9 at pg. 6.

²⁶ \$574 x 12 = \$6,888.

²⁷ Civil Rule 90.3(c)(1).

convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not reduced. Granted, Mr. Q. and his wife have a difficult time with all of their household expenses, but his child support obligation has been reduced significantly because he supports three children in the home who are older than F. and thus entitle him to an additional deduction from income for those children. The resulting child support amount of \$233 per month is not unreasonable. If the total amount CSSD is collecting on the arrears is too difficult, Mr. Q. may be able to contact CSSD to arrange a reduction in the total amount collected.

IV. Conclusion

Mr. Q. did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). CSSD correctly calculated his child support obligation at \$233 per month. Also, Mr. Q. did not prove by clear and convincing evidence that manifest injustice would result in the absence of a variation of the child support amount. CSSD's child support calculation of \$233 per month is correct and should be adopted.

V. Child Support Order

- CSSD's November 4, 2010, Amended Administrative Child and Medical Support Order is affirmed: Mr. Q. is liable for child support of \$233 per month, effective November 1, 2009 forward.

DATED this 4th day of January, 2011.

By: Signed
Kay L. Howard
Administrative Law Judge

²⁸ 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 24th 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.]