

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

IN THE MATTER OF:)

P. X.)

OAH No. 10-0609-CSS

CSSD No. 001162755

DECISION AND ORDER

I. Introduction

The obligor, P. X., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in his case on November 4, 2010. The obligee children are Q., 14, M., 12, and K., 9. The custodian is C.V.

The hearing was held on December 28, 2010. Mr. X. appeared in person; the custodian could not be reached by telephone and did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. X.’s claim of financial hardship is granted. His ongoing child support as of October 1, 2010, should be modified based on his disability to \$100 per month, pursuant to the good cause provisions of Civil Rule 90.3(c).

II. Facts

A. Background

Mr. X.’s child support obligation for Q., M. and K. was set at \$222 per month in July 2010.¹ On September 16, 2010, Mr. X. requested a modification review.² On September 27, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Mr. X. provided income information and his former employer responded to CSSD’s inquiry.⁴ On November 4, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that a child support calculation done from Mr. X.’s income did not result in a minimum 15% change.⁵ He appealed on December 6, 2010, asserting he is not employed and he only receives \$749 per

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

month for Social Security disability, of which \$299.60 per month is deducted for child support, which leaves him only \$449.31 per month to live on.⁶

B. Material Facts

Mr. X. is a Hmong native. He lives with his wife, S. L., and her 16 year-old daughter from a prior relationship. Mr. X. is disabled from a serious automobile accident in 1998. He cannot work anymore and has had to apply for Social Security disability (SSI). He tried to go back to work when he first moved to Alaska but had to stop work. He first applied for disability benefits several years ago but was denied. He reapplied and was granted benefits in 2003. He receives \$749 per month plus \$307 per month in adult public assistance (APA), for a total of \$1,056.

Mr. X.'s wife is also disabled. On a monthly basis she receives SSI of \$674, APA of \$362 and \$450 for public assistance (ATAP) for her daughter, in addition to food stamps. S. L. does not receive child support from her daughter's father because he is deceased.

The obligor's total household income is \$2,243 per month, from which CSSD has been collecting \$229 from his SSI, for total funds received in the amount of \$2,014. The household also receives food stamps. Mr. X. provided a list of expenses totaling \$2,356 per month, which includes rent and space rent of \$1,150; \$200 for food over and above their food stamp allotment; \$80 for natural gas; \$60 for electricity; \$50 for a cell phone; \$456.40 for the payment on a 2008 Toyota Tacoma pickup;⁷ \$200 for gasoline; and \$160 for vehicle insurance.⁸ Mr. X. still owes about \$20,000 on the Toyota.

Nothing is known of the custodian's circumstances or those of Q., M. and K., the three children on this case.

III. Discussion

A. Child Support Calculation

A parent is obligated both by statute and at common law to support his or her children.⁹ 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

⁶ Exh. 7.

⁷ Mr. X. still owes approximately \$20,000 on the truck.

⁸ Exh. 10.

of “good cause and material change in circumstances.”¹⁰ 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 it is not required. 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 October 1, 2010.¹¹

Mr. X.’s child support was set at \$222 per month for three children in July 2010, based on his disability income.¹² Two months later, he requested a modification review, which CSSD denied because his income was the same as it had been earlier. CSSD’s denial was correct at the time, given that he had not experienced a change in income sufficient to change his child support calculation by at least 15%. Whether he may be entitled to a reduction in the calculated amount based on a financial hardship is discussed below.

B. Financial Hardship

Mr. X.’s primary issue on appeal is that he cannot afford the child support amount calculated by CSSD 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.”¹³ It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child(ren), 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).¹⁴

Based on the evidence presented, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. X. 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. Several factors contribute to this conclusion, and most likely also would have been

⁹ *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁰ AS 25.27.190(e).

¹¹ 15 AAC 125.321(d). In this case, the notice was issued on September 27, 2010. Exh. 3.

¹² Exh. 1.

¹³ Civil Rule 90.3(c).

¹⁴ *See* Civil Rule 90.3, Commentary VI.E.1.

relevant in 2010 when this case was first established. Mr. X. is disabled and receiving minimal income from SSI and adult public assistance. His wife is in the same predicament, but fortunately she also receives public assistance and food stamps for her daughter. Their meager disability and public assistance benefits do not begin to cover their household expenses. Granted, Mr. X. purchased a new Toyota pickup in 2008, which has significantly increased his monthly expenses, but even if he had acquired a used pickup his total household income would likely not cover his total expenses. Because neither Mr. X. nor his wife is able to work to supplement their disability benefits and public assistance, and they would be in danger of losing housing or other necessities of living without a reduction, Mr. X. has proven manifest injustice by clear and convincing evidence. As a result, his child support should be lowered to \$100 per month. This is a reduction of just over 50%, and although Mr. X.'s finances will still be stressed, the reduction should allow him to pay all of his bills and at least retain necessary housing for the family. He may have to sell the Toyota and try to find another vehicle that is more affordable. A reduction to the statutory minimum of \$50 per month is not advisable because nothing is known of the circumstances of Ms. V. and the three children.

IV. Conclusion

Mr. X. met 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 varied. There is good cause to reduce Mr. X.'s child support to \$100 per month, effective October 1, 2010.

V. Child Support Order

- Mr. X.'s child support obligation for Q., M. and K. is modified to \$100 per month, effective October 1, 2010, and ongoing;
- In the event any of the obligee children reach the age of emancipation before any other action is undertaken in this case, Mr. X.'s child support should remain at \$100 per month unless further reviewed;

- All other provisions of the last child support order issued in this case, the Amended Administrative Child and Medical Support Order dated July 14, 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 4th day of February, 2011.

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

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