

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

IN THE MATTER OF:)	
)	OAH No. 11-0050-CSS
M. A. R.)	CSSD No. 001165601
_____)	

DECISION AND ORDER

I. Introduction

This matter involves the obligor M. A. R.’ appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on January 7, 2011. The obligee child is T., 12. The custodian of record is T. L. G.

The formal hearing was held on March 1, 2011. Ms. R. appeared in person; the custodian did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record in its entirety and after careful consideration, Ms. R.’ child support is set at \$200 per month, effective January 1, 2010, based on the good cause provisions of Civil Rule 90.3(c).

II. Facts

A. Procedural History

This case arises from an application for child support services that Mr. G. filed with the child support agency in his state of residence in January 2010.² CSSD requested financial information from Ms. R. on February 16, 2010,³ then issued an Administrative Child Support and Medical Support Order on October 26, 2010.⁴ She requested an administrative review and provided financial information.⁵ On January 7, 2011, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Ms. R.’ ongoing child support at \$338 per

¹ Mr. G. could not be reached for the hearing. A message was left at his telephone number of record by the undersigned administrative law judge just before the hearing, but he has not returned the call to the OAH.

² Exh. 1.

³ Pre-Hearing Brief at pg. 1.

⁴ Exh. 2.

⁵ Exh. 3.

month, with arrears of \$4,350 for the period from January 2010 through January 2011.⁶ Ms. R. appealed on February 8, 2011.⁷

B. Material Facts

Ms. R. and Mr. G. are the parents of 12 year-old T. G., who is currently living with his father out of state. Ms. R. has not had custody of T. for significant periods of time since his birth. Soon after the child was born in early 1998, Mr. G. took custody of T. and left the state. They returned later in the year but left Alaska again in 1999. Since 1998, the parties have been involved in ongoing litigation regarding T.' care and custody. The most recent court order in the record of this case was issued by the Anchorage Superior Court on November 17, 2000, which released T. from the custody of the Department of Health and Social Services and placed him with his paternal aunt, S.J.⁸

Ms. R. is a single mother with two teenagers, K., 17, and B., 15, living in her home. The kids' fathers contribute only minimal support for their children. Ms. R. estimated she receives a total of approximately \$150 every three months or so.

Ms. R. has an associate degree in accounting and is currently working on her bachelor's degree on a part-time basis. She hopes to graduate in 2013. In addition to attending college part-time, Ms. R. is employed by G. C., Inc., where she has worked since mid-2009. Her 2010 earnings from employment totaled \$32,757.85.⁹ Prior to starting work full-time for G. C. Inc., Ms. R. worked part-time for other employers and also received unemployment benefits in 2008-2009.¹⁰

Ms. R.' income is not sufficient to support her household and enable her to pay child support to Mr. G. in the amount calculated from her actual income by CSSD. Ms. R. earns \$2,522.22 with each two checks, and she has regular monthly expenses of \$2114.70 per month,¹¹ but this total is just for her mortgage, condo dues, garbage collection, car insurance, utilities for the home and her car payment. Her list of expenses did not even account for food for the household, gasoline for the car, personal care items, school costs for her children that live in the

⁶ Exh. 4.

⁷ Exh. 5.

⁸ Exhibit 6 of Ms. R.' prehearing documents received on February 28, 2011.

⁹ Exh. 6 at pg. 1.

¹⁰ *Id.*

¹¹ Exhibit 1 of Ms. R.' prehearing documents received on February 28, 2011.

home, clothing and other nonrecurring expenses such as the \$1,400 deductible she had to pay for a recent surgery. Her oldest son does have a job and tries to help carry the burden of buying food and paying for other household expenses, but he should not have to help support the household with his earnings.

Little, if nothing, is known about Mr. G.'s financial circumstances or those of T., as the custodian of record did not participate in the hearing and has not contacted the OAH in response to the message left for him before the hearing started.

III. Discussion

A. Child Support Calculation

A parent is obligated both by statute and at common law to support his or her children.¹² The Alaska Supreme Court has made it clear that this obligation begins when the child is born,¹³ but CSSD rarely collects support back to the child's date of birth. For administrative efficiency, CSSD only collects support from the date the custodial parent requested child support services, or the date public assistance or foster care benefits began to be paid on behalf of the child(ren), up to six years before the child support action was initiated.¹⁴

The person who filed the appeal, in this case, Ms. R., has the burden of proving by a preponderance of the evidence that CSSD's amended order is incorrect.¹⁵

CSSD charged Ms. R. with support as of January 2010, the month that Mr. G. applied for child support services in his state of residence.¹⁶ Thus, Ms. R. is liable for paying support for T. as of that month. While it may be true that it is Ms. J., T.' paternal aunt, and not Mr. G. who has been ordered by the court to have custody of T., Ms. R. is still obligated by law to support her child. The identity of the custodian of the child is essentially irrelevant to the fact of Ms. R.' obligation. Ms. R. may once again need to address custody issues through the court.

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 such as taxes and Social Security. CSSD first calculated Ms. R.' child support at \$338 per month for 2010 and

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹³ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹⁴ 15 AAC 125.105(a)(1)-(2).

¹⁵ 15 AAC 05.030(h).

¹⁶ Exh. 4 at pg. 7.

\$294 per month for 2011 and ongoing.¹⁷ Prior to the hearing, CSSD refined the calculation for 2010 and ongoing based on Ms. R.’ actual income for 2010. Because she has two children older than T. living in her home, Ms. R. is entitled to a deduction from income for supporting those children.¹⁸ That deduction is calculated from her annual income as though she were paying support for two children, and it results in a figure of \$632 per month for two children.¹⁹ That amount should be included in the deductions section of the calculation for T. and adding it to her other deductions – taxes, Social Security – results in a child support amount of \$342 per month.²⁰ Based on her income for 2010, this amount is correct on its face.

A. *Good Cause Variance*

Ms. R. has requested that the child support amount calculated pursuant to Civil Rule 90.3 be adjusted downward to reflect her financial hardship.

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.”²¹ Civil Rule 90.3 also states that when establishing support arrears, the court or tribunal should consider all the relevant factors in the case. The Commentary provides:

It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. *Vachon v. Pugliese*, 931 P.2d 371, 381-382 (Alaska 1996). However, in some circumstances unfairness may result from rigid application of the rule. The court should consider all relevant factors in such a situation See also Commentary VI.B.2.^[22]

17 Exh. 4 at pgs. 6 & 7.
18 Civil Rule 90.3(a)(1)(D).
19 Exh. 7 at pg. 1.
20 Exh. 7 at pg. 2.
21 Civil Rule 90.3(c).
22 Civil Rule 90.3, Commentary VI.E.1.

Based on all the evidence, Ms. R. proved by clear and convincing evidence that manifest injustice would result if she were required to pay the full child support amount calculated from her income. Ms. R.' income is not sufficient to meet all of the expenses she has in the home, especially having two older teenagers living with her. Ms. R. is already behind on her necessary bills and she anticipated that without relief, she would be in danger of losing her home within about eight months. Moreover, Ms. R.' insurance coverage is not exemplary – she recently had surgery that required she pay a deductible of \$1,400, which was a further strain on her finances. Her support obligation for her younger child should not result in homelessness for her two older children, nor should Ms. R.' obligation to support T. require that her older son, Kristopher, contribute to household expenses from his part-time earnings.

As a result of the finding of manifest injustice, Ms. R.' child support should be set at \$200 per month for all the time periods in this action.

IV. Conclusion

Ms. R. met her burden of proving by clear and convincing evidence that manifest injustice would result if her child support obligation were not varied from the amount calculated by CSSD. A child support amount of \$200 per month represents a balance of the totality of the circumstances in this case and should be adopted.

V. Child Support Order

- Ms. R. is liable for child support for T. in the amount of \$200 per month for the period from January 2010 through March 2011, and ongoing;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated January 7, 2011, remain in full force and effect.

DATED this 21st day of March, 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 8th day of April, 2011.

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

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