

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

IN THE MATTER OF:)

J. L. G.)

) OAH No. 11-0080-CSS
) CSSD No. 001100933
)

DECISION AND ORDER

I. Introduction

The obligor, J. L. G., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in her case on February 3, 2011. The obligee child is L., 12. The custodian is D. R. Y.

The hearing was held on March 29, 2011. Ms. G. appeared telephonically with her case manager and representative payee, M. B.; Mr. Y.’s telephone is out of service so he could not be reached for the hearing and did not participate. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Ms. G.’s claim of financial hardship is granted. Her ongoing child support as of January 1, 2011, should be modified to \$50 per month, pursuant to the good cause provisions of Civil Rule 90.3(c).

II. Facts

A. Background

Ms. G.’s child support obligation for M., 21, and L., 12, was set at \$310 per month in 2004.¹ M. has emancipated. On December 14, 2010, Ms. G. requested a modification review.² On December 17, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Ms. G. did not provide income information, so on February 3, 2011, CSSD issued a Notice of Denial of Modification Review.⁴ Ms. G. provided income information,⁵ and submitted an appeal on February 24, 2011.⁶

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

B. Material Facts

Ms. G. was assisted in her appeal by her case manager and representative payee, Misty Baker. Ms. Baker presented Ms. G.'s case in the formal hearing and also provided her own testimony on the basis of knowing the obligor since 2003.

Ms. G. suffers from fetal alcohol syndrome and has been receiving Social Security disability payments since October 2004. She receives \$674 per month plus \$362 per month in Adult Public Assistance and food stamps. She gets medical care at the Indian Health Service clinic in No Name City, Alaska. In addition to her monthly benefits, Ms. G. worked for a short time in 2010 taking care of a sick relative, for which she was paid a total of \$1,611.76.⁷ Otherwise she has no income from employment.

Ms. G.'s oldest child, M., and M.'s three children, all age three years or younger, also live with Ms. G. M. is not employed, nor is she receiving any child support for her children, although apparently she has a case with CSSD. Ms. G. listed her monthly expenses at \$2,443 per month, but this total includes about \$1,090 in expenses for just M. and the children – \$400 for diapers and wipes, \$50 for baby formula and probably \$640 for food, which is two-thirds of the \$960 total listed for food expenses for the household.⁸ Subtracting M.'s and the children's portion of Ms. G.'s expenses results in a figure of about \$1,353 for Ms. G. alone. Only by getting rid of her cable service (\$80), stopping her use of the taxi to go to the store (\$120), stopping buying any alcohol or tobacco (\$70) and cutting her personal care purchases in half (\$50), would Ms. G. be able to reduce her monthly expenses down to the level of her monthly income of \$1,036. In other words, even without having M. and her children in the home, Ms. G. does not have the income to be able to pay child support of \$156 per month, CSSD's latest calculation.⁹ Even paying the absolute minimum of \$50 per month would be extremely difficult for Ms. G.

Nothing is known of Mr. Y.'s circumstances or those of L., the parties' youngest child and the only one still a minor.

⁷ Exh. 5 at pg. 3.

⁸ See Exh. 8.

⁹ Exh. 9.

III. Discussion

A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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."¹¹ 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 January 1, 2011.¹²

CSSD initially denied Ms. G.'s request for modification because she did not provide income information. After the hearing, however, CSSD completed a calculation of \$156 per month, based on her disability income.¹³ CSSD's calculation is correct, based on her income. Whether she is entitled to a reduction in the calculated amount based on a financial hardship is discussed below.

B. *Financial Hardship*

Ms. G.'s primary issue on appeal is that she cannot afford the child support amount calculated by CSSD from her 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."¹⁴ It is appropriate to consider all relevant evidence, including the circumstances of the

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ AS 25.27.190(e).

¹² 15 AAC 125.321(d). In this case, the notice was issued on December 17, 2010. Exh. 3.

¹³ Exh. 9.

¹⁴ Civil Rule 90.3(c).

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).¹⁵

Based on the evidence presented, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. G. 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. Ms. G. is disabled and receiving minimal income from SSI and adult public assistance. Her meager disability and public assistance benefits do not begin to cover her household expenses. On top of that the parties' oldest child, M., and her three children are currently living with Ms. G. Because Ms. G. is not likely able to find suitable work to supplement her disability benefits and public assistance, even without her daughter and grandchildren in the home, she would be in danger of losing housing or other necessities of living without a reduction.

Ms. G. has proven by clear and convincing evidence that manifest injustice would result in the absence of a reduction in her child support obligation. As a result, her child support should be lowered to \$50 per month, the statutory minimum. This reduction is further justified because M. is also Mr. Y.'s child – so if Ms. G. were not able to help M. and the children, his assistance would likely be sought. Because his older child and grandchildren are living with Ms. G., he is essentially relieved of that responsibility.

IV. Conclusion

Ms. G. met her burden of proving by clear and convincing evidence that manifest injustice would result if her modified child support amount calculated under Civil Rule 90.3 were not varied. There is good cause to reduce Ms. G.'s child support to \$50 per month, effective January 1, 2011.

V. Child Support Order

- Ms. G.'s child support obligation for L. is modified to \$50 per month, effective January 1, 2011, and ongoing;

¹⁵ See Civil Rule 90.3, Commentary VI.E.1.

All other provisions of the last child support order issued in this case, the Modified Administrative Child Support and Medical Support Order dated April 14, 2004, remain in full force and effect.

DATED this 12th day of May, 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 31st day of May, 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.]