

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

IN THE MATTER OF:)

D. J. G.)

) OAH No. 11-0085-CSS
) CSSD No. 001167001
)

DECISION AND ORDER

I. Introduction

The custodial parent, K. M. M., appeals an Amended Administrative Child and Medical Support Order issued by the Child Support Services Division (CSSD). The obligor is D. J. G. and the obligee child is D. E. M.

A hearing was held on March 30, 2011. Both parents appeared by phone. CSSD was represented by Child Support Specialist Andrew Rawls. At the conclusion of the hearing, the record was kept open for seven days to allow the parties to submit additional information. Based on the testimony and exhibits in the record, Mr. G.'s support obligation should be set at \$50 per month for 2010 and \$158 per month beginning on January 1, 2011.

II. Facts

A. Background

CSSD issued an Administrative Child Support and Medical Support Order on November 17, 2010, establishing an obligation for Mr. G. to pay child support in the amount of \$221 per month for one child.¹ Mr. G. requested an administrative review of that decision.² The Administrative Review Decision reduced his child support obligation to \$120 per month for one child,³ and an Amended Administrative Child and Medical Support Order was issued.⁴ Ms. M. appealed that decision.⁵ On the morning of the hearing, a Formal Hearings Expense Checklist for Hardship was received by the Office of Administrative Hearings from Mr. G.⁶

1 Exhibit 2.
2 Exhibit 3.
3 Exhibit 5, page 6.
4 Exhibit 5, page 1.
5 Exhibit 6.
6 Exhibit 7.

After the hearing, CSSD submitted a post hearing brief that included new calculations for 2010 and 2011. The 2010 calculation⁷ is purportedly based on 2010 Department of Labor data. However, there is no admissible evidence in the record as to what that Department of Labor data is. The 2011 calculation⁸ is based on Mr. G.'s testimony that he is now employed part time earning \$8.50 per hour.

B. Material Facts

Mr. G.⁹ is a student studying to be an automotive technician. He expects to receive his Associates Degree in October of this year. He is living with his parents where he pays \$300 per month in rent. His expenses include \$70 per month for a cell phone, \$150 to \$200 per month for gasoline, \$100 per month for food, and \$48 per month for alcoholic beverages/tobacco. His insurance costs \$100 per month. He has been spending about \$500 per month repairing an older car. It needs another \$120 worth of work on the clutch and then it should be road worthy. Mr. G. also has credit card debt of about \$1200, but he is not currently able to make payments towards that debt.

Mr. G. has been out of work since May of 2010. In mid-March he was hired to do emissions control work. He is earning \$8.50 per hour and works 28 – 30 hours per week.

Ms. M. is also a student and expects to receive her Associates Degree in about 18 months.¹⁰ She is not working but is looking for a job in child care or some other field that will allow her to bring her daughter to work with her as she cannot afford to pay for child care.

Ms. M. lives with her parents and does not pay rent. She pays about \$250 to \$300 per month for food. She has a life line cell phone that costs \$5 per month. She spends about \$500 per month on gas and about \$200 per month on other expenses. She owes over \$2000 in medical bills and is paying \$10 per month.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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." Mr. G.'s support obligation was originally set at \$221

⁷ Exhibit 8.

⁸ Exhibit 9.

⁹ Findings concerning Mr. G. are based on his testimony and Exhibit 7.

¹⁰ Findings concerning to Ms. M. are based on her testimony.

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

per month.¹² In requesting an administrative review, he indicated that he was a full time student with limited income.¹³ His support obligation was reduced to \$120 per month.¹⁴

In appealing the amended support order, Ms. M. noted that she is also a student with limited income, but that she cannot ask for any reductions in the amount she must pay to support D.¹⁵ However, CSSD did not reduce Mr. G.'s obligation because of financial hardship. Instead, CSSD had more information about the actual amount of income he was likely to earn, and recalculated the support order based on this new information.¹⁶

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. A parent may obtain an adjustment in the amount calculated, but only if he or she shows that "good cause" exists for the adjustment. 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^[17]

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).¹⁸

It has not been proven by clear and convincing evidence that an adjustment to the calculation of Mr. G.'s child support obligation is required in this case. Both parents are struggling financially. Both are attending school and should be in a better position to support their child after completing their education. Mr. G. expects to obtain his degree in about six months, and at that time should be able to work full time, possibly at a higher paying job. At that time it may be appropriate for Ms. M. to request a modification. Until there are changed

¹² Exhibit 2.

¹³ Exhibits 3 and 4.

¹⁴ Exhibit 5.

¹⁵ Exhibit 6.

¹⁶ Compare Exhibit 2, page 9 and Exhibit 5, page 9.

¹⁷ Civil Rule 90.3(c)(1).

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

circumstances, however, Mr. G.'s obligation should be set according to the Civil Rule 90.3 schedule.

Mr. G. submitted evidence that he earned less than \$1,500 in 2010.¹⁹ This is less than the amount that CSSD considered in concluding that Mr. G.'s child support should be set at \$50 per month.²⁰ Since \$50 per month is the minimum child support obligation, Mr. G.'s support obligation should be set at \$50 per month through the end of 2010. Based on Mr. G.'s testimony about his current employment, CSSD calculated that Mr. G. will earn \$10,106.50 during 2011.²¹ This results in a child support obligation of \$158 per month.²²

IV. Conclusion

It is not manifestly unjust to set Mr. G.'s child support obligation based on the schedule in Civil Rule 90.3. He had only minimal earnings in 2010, so his obligation should be set at the minimum obligation amount of \$50 per month. He has obtained part time employment, so his support obligation should increase beginning on January 1, 2011, to \$158 per month for one child.

V. Child Support Order

- Mr. G.'s child support obligation is set at \$50 per month effective April 1, 2010 through December 31, 2010;
- Mr. G.'s ongoing child support obligation is set at \$158 per month effective January 1, 2011.
- All other provisions of the Administrative Child Support and Medical Support Order dated November 17, 2010 remain in effect.

DATED this 7th day of April, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

¹⁹ Exhibit 4, pages 1 and 2, 6 – 8.

²⁰ Exhibit 8.

²¹ Exhibit 9.

²² Exhibit 9.

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 25th day of April, 2011.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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