

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

IN THE MATTER OF:)	
)	OAH No. 11-0107-CSS
D J. M III)	CSSD No. 001162166
_____)	

DECISION AND ORDER

I. Introduction

This case involves the obligor D J. M III's appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 23, 2011. The obligee child is V, who is two years old. The custodian is F N. X.

The hearing was held on April 19, 2011 and June 27, 2011. Both Mr. M and Ms. X appeared telephonically. Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. M's child support for V is set at \$630 per month from April 2009 through December 2009; and \$722 per month for 2010 and ongoing. Mr. M's request for a variance due to financial hardship is denied.

II. Facts

A. Procedural Background

Ms. X submitted an application for child support services via her state of residence on August 26, 2009,¹ which was sent to CSSD on September 18, 2009.² After requesting Mr. M's financial information, CSSD issued an Administrative Child Support and Medical Support Order on June 24, 2010, and served Mr. M by process server on December 26, 2010.³ He requested an administrative review and Ms. X responded also.⁴ On February 23, 2011, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. M's ongoing child support at \$606 per month, with arrears of \$10,619 for the period from August 2009 through

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exhs. 4-5.

February 2011.⁵ Mr. M filed an appeal on March 23, 2011, asserting he supports two other children.⁶

*B. Material Facts*⁷

Mr. M is a truck driver in the military – he is an E-4 with 4 years of service.⁸ He was deployed for fourteen months in 2007-2008, then again from September 2010 through December 2010.⁹

Mr. M lives with his wife, N, her daughter T, and their son, Z, who is 1½ years of age. In addition, Mr. M pays support for an older child named E in the amount of \$367.91 per month.¹⁰ N has also been in the military for four years; she works in an administrative capacity.

Mr. M reported regular expenses of \$1,080 for rent; \$500 for food in the home; \$250 for eating out; \$200 for natural gas; \$25 for water service; \$25 for trash pickup; \$80 for internet; \$70 for electricity; \$50 for telephone; \$50 for waste water; \$120 for cable; \$186 for cell phone service; \$473 for the payment on a Cadillac STS that was purchased on December 30, 2010; \$700 for vehicle maintenance;¹¹ \$1,925 for vehicle insurance;¹² \$100 for entertainment; \$150 for personal care items; and \$432 for unpaid medical expenses (balance of \$957.84).¹³

Mr. M's 2009 base pay, on an annual basis, totaled \$23,363.10.¹⁴ In addition, on a monthly basis he received non-taxable benefits consisting of Basic Allowance for Subsistence (BAS) of \$323.87; Basic Allowance for Housing (BAH) of \$1,149.70; and Cost of Living Allowance (COLA) of \$12.69 per day.¹⁵ Thus, when annualized, all of his wages and

⁵ Exh. 6.

⁶ Exh. 7.

⁷ The material facts are taken from Mr. M's hearing testimony or the documentary evidence, as cited.

⁸ Exh. 8 at pg. 8.

⁹ Testimony of Mr. M.

¹⁰ E's mother, C C, submitted a letter on Mr. M's behalf. Exh. 9. In addition, CSSD represented at the hearing that the agency had received a copy of Mr. M's court order to pay support for E beginning in 2007, but that order has not been submitted into evidence.

¹¹ This is most likely an annual figure, or a combination of maintenance and gasoline, which was not listed. In any event, these figures are unclear. See Exh. 10.

¹² Again, most likely either a 6-month or 12-month amount.

¹³ Exh. 10.

¹⁴ Exh. 11 at pg. 1.

¹⁵ *Id.*

entitlements for 2009 total \$45,677.79.¹⁶ When inserted into CSSD's online child support calculator, this income figure yields a support amount of \$630 per month.¹⁷

Mr. M's 2010 pay is somewhat more complicated to determine because he was deployed for four months and does not have to pay income taxes for those months, although he does have to pay the Social Security and Medicaid withholdings.¹⁸ After the second hearing, CSSD determined Mr. M's taxable and non-taxable base pay and combined those figures with his other entitlements. His 2010 base pay and hostile fire disbursements totaled \$27,445.59 for the year, which is his taxable income.¹⁹ His non-taxable income includes Basic Allowance for Housing (BAH) of \$13,800; Basic Allowance for Subsistence of \$3,886.44; and Cost of Living Allowance (COLA) of \$5,573.61, for total non-taxable income of \$23,260.05.²⁰ Thus, all of his pay and entitlements for 2010 total \$50,705.64.²¹ When the total figures are inserted into their taxable and non-taxable income categories in CSSD's child support calculator, the result is a support amount of \$722 per month for one child.²²

Ms. X has just completed college and was scheduled to graduate in May 2011 with a degree in nursing. She and V live alone and she has been supporting the family with student loans and grants. She has recently been working on an internship at a hospital, but not for pay. She hopes to be employed there in the future.

III. Discussion

Mr. M filed the appeal to challenge the calculation of his child support amount because he supports two other children. That issue has been addressed and resolved: Mr. M proved that he pays support for a prior child, so CSSD acknowledged during the hearing that he is entitled to a deduction from his income in the amount of the support payment.²³ Mr. M is also requesting a variance in the child support award due to financial hardship. In general, the person who filed the appeal, in this case, Mr. M, has the burden of proving by a preponderance of the evidence

¹⁶ *Id.*

¹⁷ Exh. 11 at pg. 2.

¹⁸ CSSD's Post-hearing Brief dated June 30, 2011, at pg. 1; *see also* Exh. 13 at pg. 3.

¹⁹ Exh. 16 at pg. 2.

²⁰ *Id.*

²¹ *Id.*

²² Attachment A. CSSD actually calculated the 2010 amount at \$743. Exh. 16 at pg. 1. However, the agency's income figures included a PFD, which Mr. M does not receive. \$722 per month is the correct amount.

²³ Mr. M is not entitled to a deduction for Z, his child living in the home because Z is younger than V.

that the agency's calculations are incorrect.²⁴ The financial hardship analysis utilizes a difference legal standard, which will be discussed in that section.

A. *Child Support Calculations*

A parent is obligated both by statute and at common law to support his or her children.²⁵ 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).²⁶ In this case, Ms. X requested child support services in her state of residence in August 2009, so that is the first month Mr. M is obligated to pay support in this administrative child support action.²⁷

Civil Rule 90.3 specifically provides that a military parent's total income from all sources includes "Armed Service Members base pay plus the Obligor's allowances for quarters, rations, COLA and specialty pay."²⁸ The base pay figure is put into the calculation in the taxable income column.²⁹ The other benefits go into the non-taxable income column.³⁰ If the soldier lives off base, the BAH benefit used is the actual monetary amount included in the soldier's pay and reflected in the Leave and Earnings Statement (LES). If the soldier lives rent-free in base housing, CSSD treats the housing allowance as an in-kind contribution, and its value, for child support purposes, is considered to be the same amount the soldier would receive for BAH while living off base.³¹ The reason for including the non-pay benefits in the calculation, especially the BAH, is because they reduce the parent's living expenses and allow a military member to use the remainder of his or her cash pay to cover other expenses.

After the hearing, CSSD revised the calculations. They resulted in a child support obligation for Mr. M of \$630 per month for 2009 and \$722 per month for 2010. These two child support amounts are correct because they were based on Mr. M's actual income figures and calculated pursuant to Civil Rule 90.3, Alaska's rule regarding child support calculations.

²⁴ 15 AAC 05.030(h).

²⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

²⁶ 15 AAC 125.105(a)(1)-(2).

²⁷ *See* Exh. 1.

²⁸ Civil Rule 90.3, Commentary III.A.29.

²⁹ *See* Exh. 10 at pg. 2.

³⁰ *Id.*

³¹ *See* Civil Rule 90.3, Commentary III.A.19.

B. Financial Hardship

The other issue in this appeal is whether Mr. M is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). His child support is now correctly calculated at \$630 per month for 2009 and \$722 per month for 2010. It is from these figures that Mr. M's request for a variance based on financial hardship should be considered.

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."³² The presence of "unusual circumstances" in a particular case also may be sufficient to establish "good cause" for a variation in the support award.³³

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).³⁴

The establishment of this child support order has undoubtedly created stress for Mr. M, especially given the fact that he and his wife, N, have two young children in the home. However, N is also an E-4 with four years of service in the military. Thus, she would have income roughly commensurate with Mr. M's and should be able to share the financial needs of the household on an equal footing. Obviously Mr. M feels a moral imperative to support his stepchild, T, and he has a legal obligation to support his youngest biological child, Z. But Mr. M's duty to his older child V takes priority over other debts, obligations and in most cases, even subsequent children.³⁵ V is entitled to receive child support in an amount commensurate with Mr. M's ability to pay, as calculated pursuant to Civil Rule 90.3. That obligation has been determined. Based on the evidence in its entirety, however, Mr. M's situation does not present "unusual circumstances" of the type contemplated by Civil Rule 90.3. He did not prove by clear

³² Civil Rule 90.3(c).

³³ Civil Rule 90.3(c)(1).

³⁴ See Civil Rule 90.3, Commentary VI.E.1.

³⁵ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not reduced.

IV. Conclusion

Mr. M met 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), because he established that his 2010 and ongoing child support should be recalculated. However, Mr. M did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced from those revised amounts. Mr. M's child support is correctly calculated at \$630 per month for 2009 and \$722 per month for 2010 and ongoing. These figures should be adopted.

V. Child Support Order

- Mr. M is liable for child support for V in the amount of \$630 per month for the period from April 2009 through December 2009; and \$722 per month for 2010 and ongoing;
- All other provisions of CSSD's Amended Administrative Child and Medical Support Order dated February 23, 2011, remain in full force and effect.

DATED this 21st day of July, 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 17th day of August, 2011.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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