

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

IN THE MATTER OF: )

G. N. )

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) OAH No. 11-0129-CSS

) CSSD No. 001167399

**DECISION AND ORDER**

**I. Introduction**

This matter involves the obligor G. N.'s appeal of an Administrative Review Decision that the Child Support Services Division (CSSD) issued on December 7, 2010. The obligee children are X., 5; T., 3; and Z., 2. The custodian is J. A. T.

The formal hearing was held on April 21 and June 21, 2011. Mr. N. is represented by his wife, K. N. She and Ms. T. both participated during the first session of the hearing. Ms. T. did not participate in the second session because her telephone was no longer in service, so only Ms. N. appeared. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Administrative Review Decision is affirmed with one minor correction: Mr. N.'s child support is set at \$1,002 per month for three children, effective April 1, 2010, and ongoing. CSSD is not obligated to provide genetic testing for X. and T. because Mr. N. signed an affidavit of paternity regarding each child. He did not request paternity testing for the youngest child, Z. Finally, Mr. N.'s request for a good cause variance based on financial hardship is denied.

**II. Facts**

*A. Procedural History*

The children X., T. and Z. began receiving Medicaid benefits in April 2010.<sup>1</sup> On December 7, 2010, CSSD issued an Administrative Child Support and Medical Support Order that set Mr. N.'s child support at \$1,023 per month for three children, with arrears of \$9,207 for the period from April 2010 through December 2010.<sup>2</sup> He requested an administrative review,

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<sup>1</sup> Exh. 1 at pg. 9.

<sup>2</sup> Exh. 1 at pgs. 1-2.

questioning his paternity of X. and T., but not Z..<sup>3</sup> Mr. N. submitted a Petition for Genetic Testing on February 14, 2011, but CSSD subsequently denied it and informed him he would have to petition the court for DNA tests.<sup>4</sup> On March 10, 2011, CSSD issued an Administrative Review Decision affirming its earlier administrative child support order.<sup>5</sup> Mr. N. filed an appeal on March 24, 2011.<sup>6</sup>

*B. Material Facts*

Mr. N. and Ms. T. are the parents of X., T. and Z. Mr. N. voluntarily signed an affidavit of paternity regarding X. on October 5, 2005.<sup>7</sup> On August 11, 2008, Mr. N. voluntarily signed an affidavit of paternity regarding T.<sup>8</sup>

Mr. N. is in the military – he is an E-4 with 4 years of service.<sup>9</sup> He was deployed at the time of the hearing and was represented by his wife, K. N.

Mr. and Mrs. N. live on base with her two children from a previous relationship, M., 12, and D., 10, for whom she receives child support in the amount of \$60 per week. Mrs. N. is a full-time student and is not currently employed.

Mrs. N. reported they have regular expenses totaling about \$1,951, which includes \$400 for food; \$133 for cable, telephone and Internet service; \$50 for a cell phone; \$447 for the payment on a 2008 Chrysler Pacifica that was purchased in 2010; \$303 for gasoline; \$179 for vehicle insurance; \$40 for entertainment; \$220 for personal care items; and \$179 for a Rent-To-Own debt. She did not list expenditures for such items as clothing and school supplies.

Before his deployment, Mr. N.'s 2010 base pay was \$2,199.90 per month, which equals \$26,398.80 per year.<sup>10</sup> In addition, he received Basic Allowance for Subsistence (BAS) of \$323.87 per month (\$3,886.44 per year); and Basic Allowance for Housing (BAH) of \$924 per month (\$11,088 per year).<sup>11</sup> Thus, on an annual basis, his base pay and entitlements totaled

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<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 3. CSSD noted in its Pre-Hearing Brief that it had denied Mr. N.'s petition, but the denial is not in the record. Apparently the agency does not keep hard copies of these denial orders.

<sup>5</sup> Exh. 4.

<sup>6</sup> Exh. 5.

<sup>7</sup> Affidavit of Andrew Rawls, Exh. 8 at pg. 2.

<sup>8</sup> *Id.*

<sup>9</sup> Exh. 5 at pg. 19.

<sup>10</sup> Exh. 6 at pg. 2.

<sup>11</sup> *Id.*

\$41,373.24 for 2010.<sup>12</sup> When inserted into CSSD's online child support calculator, this income figure yields a support amount of \$1,002 per month for three children.<sup>13</sup> This calculation is \$21 per month lower than CSSD's original calculation because Mr. N. is paying \$110 per month into retirement, which was not previously included in the calculation.<sup>14</sup>

Before this establishment case arose, Mr. N. made direct child support payments to Ms. T. via deposits into her bank account. The payments averaged \$300 per month and he also frequently made a direct deposit of \$700 to Ms. T.'s landlord for her rent payment.<sup>15</sup>

### III. Discussion

Mr. N. challenges CSSD's determination of his support obligation for X., T. and Z. Also, Mr. N. objected to the calculation of his support obligation and requested credit for making direct payments to Ms. T. Finally, Mr. N. requested that he be granted a variance from the child support determination based on financial hardship because he asserts he cannot afford the payment.

The person who filed the appeal, in this case, Mr. N., has the burden of proving by a preponderance of the evidence that CSSD's child support order is incorrect.<sup>16</sup>

#### A. Paternity

Mr. N.'s first issue concerns his paternity of X. and T. He submitted a request for genetic testing to CSSD on February 14, 2011.<sup>17</sup> CSSD denied the request. Although he indicates he is unsure of paternity of the two oldest children, Mr. N.'s paternity of X. and T. was legally established through voluntary acknowledgements of paternity he signed regarding both children after July 1, 1997.<sup>18</sup> As a result, CSSD may not provide genetic testing for him. Mr. N. can only have his paternity of the children disestablished in court.<sup>19</sup> The obligor did not petition for

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*Id.*

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Exh. 6 at pg. 1. The support amount for two children is \$820 per month and for one child is \$607 per month.

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*See* Exh. 1 at pg. 8.

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*See* Exh. 5 at pgs. 1-13.

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15 AAC 05.030(h).

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Exh. 3.

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Exh. 8.

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*See* AS 25.27.166(a)(2). If he plans on pursuing disestablishment of his paternity of X. and T. in court, Mr. N. should do so without delay so as to stop the accrual of arrears if his paternity is disestablished.

genetic testing of the youngest child, Z., so the question of that child's paternity is not an issue in this appeal.

*B. Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.<sup>20</sup> This obligation begins when the child is born.<sup>21</sup> By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or Medicaid was initiated on behalf of the child(ren).<sup>22</sup> The children became eligible for Medicaid benefits in April 2010, so that is the month Mr. N.'s obligation to pay support begins.

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. The rule states specifically 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."<sup>23</sup> The reason for including the non-pay benefits such as the BAH in the child support calculation is because they reduce the parent's living expenses and allow the military member to use the remainder of his or her cash pay to cover other expenses. If the soldier lives off base, the BAH figure used is the actual monetary allowance reflected on the Leave and Earnings Statement (LES). If the soldier lives in base housing provided by the military, Civil Rule 90.3 directs CSSD to treat the housing benefit as an in-kind contribution, and its value, for child support purposes, is the same amount the soldier would receive for BAH while living off base and paying rent.<sup>24</sup>

Mrs. N. stated that when her husband was deployed they had to move onto the base so he no longer receives a BAH allowance. However, because their housing is being provided by the military, its value is the same as if he were still receiving the allowance. CSSD does not have the discretion to leave this in-kind benefit out of Mr. N.'s child support calculation. Civil Rule 90.3 requires that it be included in his income.

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<sup>20</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>21</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

<sup>22</sup> 15 AAC 125.105(a)(1)-(2).

<sup>23</sup> Civil Rule 90.3, Commentary III.A.29.

<sup>24</sup> Civil Rule 90.3, Commentary III.A.19.

Before the hearing, CSSD submitted a revised calculation of Mr. N.'s child support at \$1,002 per month for three children, based on his latest LES.<sup>25</sup> This new figure recognizes and includes a deduction of \$110 that he pays every month toward his retirement. This deduction is allowed by Civil Rule 90.3(a)(1)(B), so it should be included in the child support worksheet. Mr. N.'s child support obligation for X., T. and Z. is now correctly calculated.

*C. Credit for direct payments*

Mrs. N. submitted copies of bank records showing that before April 2010 Mr. N. gave Ms. T. direct child support payments averaging \$300 per month and that he also paid her rent of \$700 per month.<sup>26</sup>

CSSD may give the obligor credit for direct payments made "before the time the obligor is ordered to make payments through the agency," so long as the direct payment was not made before the first date support is due in the administrative child support action.<sup>27</sup> An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments.<sup>28</sup> Mr. N.'s bank records would be sufficient to establish that he made direct child support payments to Ms. T., but unfortunately they were all made before April 2010 when his child support case with CSSD arose. Mr. N. is therefore not entitled to any credit for the payments he made to Ms. T. before April 2010.

*D. Financial hardship variance*

The final issue in this appeal is whether Mr. N. is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). Mrs. N. testified that her husband cannot afford to pay his support obligation.

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."<sup>29</sup> A finding of "unusual

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<sup>25</sup> Exh. 6 at pgs. 1-2.

<sup>26</sup> Exh. 5.

<sup>27</sup> AS 25.27.020(b).

<sup>28</sup> *Id.*

<sup>29</sup> Civil Rule 90.3(c).

circumstances” may also provide sufficient basis for a finding of good cause to vary the calculated child support amount.<sup>30</sup> It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee children, to determine if the support amount should be lowered from the amount calculated pursuant to Civil Rule 90.3(a).<sup>31</sup>

Based on the evidence in its entirety, Mr. N. has not proven by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not reduced.

Mrs. N. maintains that her husband is incapable of paying the child support amount because his income is not sufficient to meet all of his financial obligations, especially now that he has another family. His income and bills seem to be on average for an E-4 with four years of service. Mr. N. obviously feels a moral obligation to support his stepchildren, but he should not have to support the household by himself, especially at the expense of his biological children, for whom he has a legal obligation. Mrs. N. is a full-time student, but she may have to find part-time work in order to make ends meet. Mr. N.’s duty to support X., T. and Z. takes priority over other debts and obligations. It should also be noted that the calculated child support amount in Mr. N.’s case is almost identical to the direct child support payments he was making to Ms. T. before April 2010.

The establishment of this child support order has undoubtedly created stress for the N.s, especially given the fact that the obligor is deployed and cannot deal with these matters himself. Hopefully he is receiving hostile duty pay for the period of time he is away from home. This may help somewhat. Based on the totality of circumstances, however, Mr. N.’s financial situation does not constitute “unusual circumstances” pursuant to Civil Rule 90.3(c) such that his child support calculated under the Rule should be lowered.

#### **IV. Conclusion**

CSSD’s Administrative Review Decision should be affirmed with one minor correction: Mr. N.’s child support is set at \$1,002 per month for three children, effective April 1, 2010, and ongoing. CSSD is not obligated to provide genetic testing for X. and T. because Mr. N. signed an affidavit of paternity regarding each child. He did not request paternity testing for the youngest child, Z. Also, Mr. N. is not entitled to credits for direct payments to Ms. T. because all

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<sup>30</sup> Civil Rule 90.3(c)(1).

of his payments were made before April 2010, when his child support case with CSSD arose. Finally, Mr. N.'s request for a good cause variance based on financial hardship is denied. Mr. N. did not prove by clear and convincing evidence that there is good cause to vary his child support obligation from the amount calculated by CSSD from his actual income.

**V. Child Support Order**

- CSSD's Administrative Review Decision dated March 10, 2011, is affirmed, with one correction: Mr. N. is liable for child support for X., T. and Z. in the amount of \$1,002 per month for three children, effective April 1, 2010, and ongoing;
- The support amount for two children is \$820 per month and for one child is \$607 per month.

DATED this 18th day of July, 2011.

By: *Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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<sup>31</sup> Civil Rule 90.3, Commentary VI.B.

**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 5th day of August, 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.]