

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

IN THE MATTER OF: )

J W. H )

) OAH No. 11-0343-CSS

) CSSD No. 001093405

**DECISION AND ORDER**

**I. Introduction**

The Obligor, J W. H, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 24, 2011. The Obligee child is A, who is 14 years old. The custodial parent is K B. C.

The hearing was held on September 22, 2011. Mr. H appeared in person with his wife, J. Ms. C appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. H's request for a variance based on unusual circumstances and financial hardship is granted. As a result, the petition for modification filed on June 8, 2011, is denied. Mr. H's child support shall remain at \$700 per month for one child, as ordered *In the Matter of J W. H*, OAH No. 10-0189-CSS (Dept. of Revenue July 12, 2010).

**II. Facts**

*A. Background*

Mr. H's child support obligation for A was modified to \$700 per month in 2010.<sup>1</sup> On June 8, 2011, Ms. C initiated a modification.<sup>2</sup> On June 20, 2011, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. H did not provide financial information so on August 24, 2011, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. H's ongoing child support at \$1,037 per month, effective July 1, 2011.<sup>4</sup> He appealed on September 2, 2011, asserting unusual circumstances.<sup>5</sup>

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3.  
<sup>4</sup> Exh. 5.  
<sup>5</sup> Exh. 6.

*B. Material Facts*

In 2010, Mr. H was employed by M-I SWACO, an oilfield services company headquartered in Houston, Texas. He was laid off on August 29<sup>th</sup> and did not return to work until December 17<sup>th</sup> for X, the No Name Corporation, at the Kuparuk field. In 2010, he received wages of \$70,631, 2009, unemployment benefits (UIB) of \$3,094, and the PFD of \$1,281.<sup>6</sup> In addition, he withdrew retirement funds totaling \$19,001 from M-I SWACO while he was unemployed in order to supplement his UIB.<sup>7</sup>

CSSD estimated Mr. H's 2011 income from earnings at \$79,622.72 by extrapolating his year-to-date wages as reported by the Alaska Department of Labor and Workforce Development.<sup>8</sup> CSSD added the PFD of \$1,281 and calculated a child support amount of \$1,037 for the modification action.<sup>9</sup>

Mr. H and his wife, J, live north of Anchorage in the no name. They have two children – J, 5 and M, 3. J is severely autistic. This diagnosis has created a significant hardship for the H family. J is now in school for about six hours per day, but this is not long enough to enable Mrs. H to obtain work outside the home. M attends daycare three afternoons per week because the Hs believe she needs to spend time with other children in order to learn socialization skills. The cost is \$190 per month.<sup>10</sup>

J attends four occupational and speech therapy sessions per week in Palmer which are not now covered by insurance because the Hs have reached the maximum coverage for these services. Occupational therapy is \$250 per session and speech therapy is \$340 per session.<sup>11</sup> Gasoline for the trips back and forth to Palmer, a 45-minute drive from their home, costs \$100 per week. J needs physical therapy but they cannot afford to provide it for him. Also, Mr. H had to install a home security system to monitor J's movements, as he is prone to run out of the house and into the street without warning. Finally, Mr. H incurs costs of \$100 per month for classes for J's service dog and \$100 per month for swimming therapy.

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<sup>6</sup> Obligor's Exh. A at pg. 15.

<sup>7</sup> *Id.*

<sup>8</sup> Exh. 5 at pg. 6.

<sup>9</sup> *Id.*

<sup>10</sup> Obligor's Exh. A at pg. 26.

<sup>11</sup> Obligor's Exh. A at pgs. 27-32.

In addition to the costs for J's care, Mr. H and his wife listed regular monthly expenses of approximately \$5,891. After child support is removed from his pay, Mr. H brings home about \$3,500 per month.<sup>12</sup> His income does not come close to covering all of their expenses.

The obligee child in this case is A, who is 14 years old. She previously lived in no name with the custodian and their blended family.<sup>13</sup> She is now living with her grandparents in Oregon and Ms. C sends Mr. H's child support money to them. A is a diabetic and also needs a specialized diet and exercise.<sup>14</sup>

Ms. C's last employment was at the no name in 2009.<sup>15</sup> She testified that she plans on attending school in Anchorage for ten months beginning in October 2011 and that she will have to obtain financial aid in order to do it.

### **III. Discussion**

#### *A. Child Support Calculation*

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>16</sup> 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, but is not required, to modify the child support obligation. 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 July 1, 2009.<sup>17</sup>

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." CSSD modified Mr. H's child support to \$1,037 per month, up from the \$700 per month order issued by the undersigned in 2010.<sup>18</sup> After the hearing, CSSD recommended that the modification be denied due to the unusual circumstances in Mr. H's home centered around their son J and his needs.

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<sup>12</sup> Testimony of Mr. H.

<sup>13</sup> Obligor's Exh. A at pgs. 37-42.

<sup>14</sup> *Id.*

<sup>15</sup> Testimony of Ms. C.

<sup>16</sup> AS 25.27.190(e).

<sup>17</sup> 15 AAC 125.321(d). In this case, the notice was issued on June 2, 2009. Exh. 2.

<sup>18</sup> *In the Matter of J W. H.*, OAH No. 10-0189-CSS (Dept. of Revenue July 12, 2010).

*B. Financial Hardship*

Mr. H's primary issue on appeal is that he cannot afford the child support amount calculated by CSSD from his 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."<sup>19</sup> 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 . . . .<sup>[20]</sup>

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).<sup>21</sup>

Based on the evidence presented, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. H 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. Mr. H's son J is severely autistic and as a result, the obligor has extraordinary out-of-pocket expenses for J's care. The family cannot afford these costs on Mr. H's income alone, but Mrs. H is not able to work outside the home to supplement the family's income.

Ms. C is not employed at this time, but lives with a partner who is employed. She is planning on attending school in the near future but not for an extended period of time.

Mr. H's child support was reduced in 2010 based on a finding of good cause due to unusual circumstances and from the testimony and other evidence submitted it is clear that these circumstances have not changed. Thus there is clear and convincing evidence to support a finding of manifest injustice in the absence of a variation in Mr. H's child support amount.

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<sup>19</sup> Civil Rule 90.3(c).

<sup>20</sup> Civil Rule 90.3(c)(1).

<sup>21</sup> See Civil Rule 90.3, Commentary VI.E.1.

Therefore, Mr. H's child support should remain at \$700 per month and the petition for modification should be denied.

**IV. Conclusion**

Mr. H met his burden of proving by clear and convincing evidence that manifest injustice would result if his modified child support amount calculated under Civil Rule 90.3 were not varied. Mr. H's child support should remain at \$700 per month and the petition for modification should be denied.

**V. Child Support Order**

- The petition for modification dated June 8, 2011, is denied;
- Mr. H's child support obligation for A shall remain at \$700 per month;
- All other provisions of the previous order issued in this case, the Modified Administrative Child Support and Medical Support Order dated March 16, 2010, remain in full force and effect.

DATED this 26<sup>th</sup> day of October, 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 14<sup>th</sup> day of November, 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.]