

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

IN THE MATTER OF:)

D J. F)

) OAH No. 11-0403-CSS

) CSSD No. 001046780

DECISION AND ORDER

I. Introduction

The obligor, D J. F, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 28, 2011. The obligee children are K, 18, and N, 17. The custodian is L L M. F.

The hearing was held on November 3, 2011. Mr. F appeared in person; the custodian could not be reached by telephone and did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. F's child support is modified to \$434 per month for two children, effective September 1, 2011. His claim of financial hardship pursuant to Civil Rule 90.3(c) is denied.

II. Facts

A. Background

Mr. F's child support obligation for K and N was set at \$50 per month in 2001.² On July 29, 2011, Ms. F requested a modification review.³ On August 2, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order.⁴ Mr. F provided income information and his employers responded to CSSD's inquiry.⁵ On September 28, 2011, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. F's child support to \$534 per month for two children.⁶ He appealed on October 11, 2011, asserting he is

¹ A message was left for Ms. F to contact the Office of Administrative Hearings, but as of the date of this decision, she has not returned the call.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exhs. 4-5.

⁶ Exh. 6.

entitled to deductions for retirement contributions, union dues and for prior children in the home.⁷

B. Material Facts

Mr. F is employed by No Name, commonly known as “No Name”. He began the job in mid-2011, having been incarcerated at the beginning of the year. He had earned \$16,249.33 through the end of the third quarter of 2011 and CSSD estimates his annual income from this employment will be approximately \$31,678.06.⁸ Mr. F became a full-time, permanent employee at the company during the summer, so he is now receiving additional benefits such as a retirement contribution that is matched by his employer. He also pays union dues.

Mr. F and his partner, T,⁹ live together with three children in the home. Two of them are older than the children in this case – Mr. F’s son, V, who is 18 years old and still in high school, and his niece, R, who is also 18 and will graduate from high school in December 2011. She has been with the family since May 2011 out of necessity because her mother is incarcerated. The third child in the home is Mr. F’s other son, D, who is 12 and younger than both K and N. CSSD does not oppose a deduction for supporting two prior children in the home through December 2011, then a deduction for supporting one child in the home as of January 2011.

Mr. F and T have average expenses for a household of five. They pay \$1050 for rent; \$450 for food; \$65 for electricity; \$130 for cable; \$155 for a home phone and cell phones; \$84 for the payment on a 1995 Chevrolet pickup; \$133 for vehicle insurance; \$450 for gasoline for two vehicles; \$150 for vehicle maintenance; \$150 for entertainment; \$300 for personal care items; and \$205 per month for credit card payments.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁰ 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. A modification is effective beginning the

⁷ Exh. 7.

⁸ Exhs. 11 & 12.

⁹ Mr. F testified that T is employed and brings home about \$1,600 per month.

¹⁰ AS 25.27.190(e).

month after the parties are served with notice that a modification has been requested, so this modification is effective as of September 1, 2011.¹¹

The person who filed the appeal, in this case, Mr. F, has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.¹²

A. Child Support Calculation

A parent is obligated both by statute and at common law to support his or her children.¹³ 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." A parent who supports an older child in the home is entitled to an additional deduction from income.¹⁴ The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.¹⁵

Mr. F's child support was set at \$50 per month for two children in 2001.¹⁶ CSSD set the modified child support amount at \$534 per month, but filed corrected calculations after the hearing. The agency recommends that Mr. F's child support be set at \$434 per month for two children (\$321 for one child) for the period from September 2011 through December 2011. This calculation is based on Mr. F's total estimated income and includes the proper mandatory deductions for federal income taxes, Social Security, retirement, union dues, and for supporting two prior children in the home.¹⁷

For the period beginning January 2012, CSSD calculated Mr. F's child support at \$476 per month for two children (\$352 for one child). This calculation is identical to the one for the earlier period, but it includes a deduction for supporting just one prior child in the home, as compared to two prior children, so the calculated support amount is somewhat higher. Mr. F's niece, R, was going to be graduating from high school in December 2011, so he would not be entitled to the deduction for her as of January 2012.¹⁸

CSSD's calculations are now correct. Whether Mr. F may be entitled to a reduction in the calculated amounts based on a financial hardship is discussed below.

¹¹ 15 AAC 125.321(d). In this case, the notice was issued on August 2, 2011. Exh. 3.

¹² 15 AAC 05.030(h).

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁴ Civil Rule 90.3(a)(1)(D).

¹⁵ *Id.*

¹⁶ Exh. 1.

¹⁷ Exh. 12.

¹⁸ Exh. 11.

B. Financial Hardship

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."¹⁹ It is appropriate to consider all relevant evidence, including the circumstances of the 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).²⁰

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. F did not prove by clear and convincing evidence that manifest injustice would result if the child support amounts calculated under Civil Rule 90.3 were not varied. He and his partner, T, are both employed and contribute to the support of the entire household. Their monthly expenses appear to be reasonable. Under these circumstances, Mr. F is not entitled to a variance based on financial hardship.

IV. Conclusion

Mr. F met his burden of proving by a preponderance of the evidence that his modified child support amount was incorrect. He did not meet 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. CSSD's post-hearing calculations should be adopted.

V. Child Support Order

- Mr. F's child support obligation for K and N is modified to \$434 per month for two children (\$321 for one child), effective September 1, 2011, and further modified to \$476 per month for two children (\$352 for one child), effective January 1, 2012, and ongoing;

¹⁹ Civil Rule 90.3(c).

²⁰ See Civil Rule 90.3, Commentary VI.E.1.

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated September 28, 2011, remain in full force and effect.

DATED this 30th day of December, 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 January, 2012.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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