

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

IN THE MATTER OF:)	
)	OAH No. 11-0412-CSS
L L. W)	CSSD No. 001176102
_____)	

DECISION AND ORDER

I. Introduction

This case involves the obligor L L. W’s appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on September 23, 2011. The obligee child is A, age 16. The other parent and custodian of record is J S. H.

The formal hearing was held on November 3, 2011. Ms. W appeared in person; Mr. H participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. W’s child support is set at \$50 per month, effective May 1, 2011, based on the “good cause” provisions of Civil Rule 90.3.

II. Facts

A. Procedural Background

Mr. H applied for child support services for A on May 23, 2011.¹ CSSD requested income information from Ms. W.² On July 20, 2011, CSSD issued an Administrative Child Support and Medical Support Order setting Ms. W’s ongoing child support at \$260 per month, effective May 1, 2011.³ She requested an administrative review and provided income information.⁴ On September 23, 2011, CSSD issued an Amended Administrative Child and Medical Support Order adjusting Ms. W’s child support to \$226 per month.⁵ Ms. W filed an appeal on October 17, 2011.⁶

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.
⁶ Exh. 6.

B. Material Facts

Ms. W is currently living in a house in no name owned by her father, who lives out of state. However, he has recently decided to sell the home because of his own financial needs and as a result, Ms. W will have to move out because she can't afford to keep it. Her boyfriend had been helping with the rent, but he recently moved out. Ms. W has received less than \$1,000 in 2011 and she is currently unemployed. Ms. W is currently unemployed. She testified her only work experience is in the fast food industry and that she has been unable to obtain employment even though she has distributed over 80 resumes to potential employers. At this time, her only source of income is a \$666 per month death benefit she receives from the Social Security Administration.

Ms. W has two younger children, C and J, who are home-schooled by a friend. Mr. H and Ms. W differ as to whether these children actually live with her, but their physical location is not material to this decision. Ms. W cannot support herself on her Social Security, regardless of whether C and J live in her home.

Ms. W's monthly Social Security benefit results in an estimated annual income of \$7,992 plus the PFD of \$1,174. These figures, when inserted into CSSD's online child support calculator, yield a child support amount of \$153 per month for one child.⁷

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁸ 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 calculated Ms. W's child support at \$226 per month for one child, beginning in May 2011.⁹ She does not have any apparent earnings and her only support at this time is the \$666 per month Social Security death benefits she receives.

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

⁷ Attachment A.

⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁹ Exh. 5.

injustice would result if the support award were not varied."¹⁰ 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 under Civil Rule 90.3(a).¹¹

Based on the evidence presented, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. W 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. Ms. W is unemployed and she has blanketed the no name with job resumes without success. Her only source of income is not sufficient even to provide herself with housing, let alone pay one-third of her monthly income in child support. Granted, Ms. W has an obligation to provide for A's support, but so long as the custodian of record is working,¹² it is manifestly unjust to charge Ms. W with more than the minimum amount of child support. When she becomes employed, Ms. W should contact CSSD and arrange for an upward modification to reflect her new income.

Ms. W's child support should be lowered to \$50 per month, the statutory minimum amount under Civil Rule 90.3.

IV. Conclusion

Ms. W met her burden of proving by clear and convincing evidence that there is "good cause" to vary her child support calculation from \$226 to \$50 per month. This amount should be adopted.

V. Child Support Order

- Ms. W is liable for child support in the amount of \$50 per month, effective May 1, 2011, and ongoing;
- All other provisions of the Amended Administrative Child and Medical Support Order dated September 23, 2011, remain in full force and effect.

DATED this 23rd day of November, 2011. By: Signed
Kay L. Howard
Administrative Law Judge

¹⁰ Civil Rule 90.3(c).

¹¹ See Civil Rule 90.3, Commentary VI.E.1.

¹² Mr. H was at work during the hearing; in fact, he participated by telephone from the cab while operating a machine that sounded like a D-9 Caterpillar.

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 12th day of December, 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.]