

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

IN THE MATTER OF: )  
 )  
 L J. M ) OAH No. 12-0064-CSS  
 ) CSSD No. 001068224  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The obligor parent, L J. M, has disputed the upward modification of his child support obligation from \$50 per month to \$771 per month. C G is the custodian of record. The obligee child is A.

A hearing was held on April 3, 2012 and May 7, 2012. Mr. M and Ms. G participated by telephone. Child Support Specialist Erinn Brian represented the Child Support Services Division (CSSD).

Based on the evidence in the record, CSSD's Modified Administrative Child Support and Medical Support Order issued February 13, 2012 should be adjusted to reflect a support obligation of \$690.

**II. Facts**

*A. Background*

Mr. M's original child support obligation was established in a Decision on Notice of Paternity and Notice of Financial Responsibility dated March 1, 2002, effective April 1, 2002, requiring that he pay child support for one child in the amount of \$50 per month.<sup>1</sup> This decision and notice also established arrears from October 1, 1997 through March 31, 2002. The amount of support paid remained unchanged until December 9, 2011 when Ms. G requested a modification of the support obligation.<sup>2</sup> CSSD mailed a Notice of Petition for Modification of Administrative Support Order on December 16, 2011.<sup>3</sup> CSSD considered the petition and

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Exhibit 3.

determined that there had been a material change of circumstance, and granted Ms. G's modification request.<sup>4</sup>

Mr. M appealed that decision, contending that the \$721 increase in child support was too high, causing a financial hardship, and interfering with his ability to provide for his three other children who live with him.<sup>5</sup>

### *B. Material Facts*

Mr. M works full time for No Name, Inc. as an electrician, earning \$22 per hour.<sup>6</sup> He has the opportunity to earn overtime but explained that overtime is not expected in the immediate future.

He is married and has three children living at home. These children are younger than A. He explained that he and his wife decided she should not work because her earnings would not cover the cost of child care. The family's monthly expenses total \$3,800.<sup>7</sup>

Ms. G's household is similar to Mr. M's. She is also married and has three children living with her, all younger than A. Her husband is presently unemployed. She recently started a job earning \$11 per hour and works a two on/two off schedule. While working she receives overtime ranging from 2 to 6 hours per day. Her family's monthly expenses exceed \$3,500 per month.<sup>8</sup> Ms. G's family lives in a small village with a population of several hundred people. She relies upon public assistance (food stamps and heating assistance) to make ends meet.

## **III. Discussion**

### *A. Applicable Law*

A parent is obligated both by statute and at common law to support his or her children.<sup>9</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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>10</sup> If the newly calculated child

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<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibit 5.

<sup>6</sup> Factual findings are based on Mr. M's and Ms. G's testimony unless otherwise noted.

<sup>7</sup> Testimony of M. The expenses include \$1,550 rent, \$600 food, \$150 natural gas, \$153.04 electricity, \$38 phone, \$550 truck payment, \$600 gasoline, \$150 misc. expenses.

<sup>8</sup> Testimony of G. The expenses include \$150 rent, \$1,691 food, \$800 heating oil, \$140 water and trash, \$185 electricity, \$169 cable, \$40 phone, and \$325 personal care and misc. items.

<sup>9</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>10</sup> AS 25.27.190(e).

support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a “material change in circumstances” has been established and the order may be modified. If the 15% change has not been met, CSSD may modify the child support obligation, but is not required to do so. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>11</sup> Finally, the person appealing CSSD’s decision has the burden of demonstrating that the decision is incorrect.<sup>12</sup>

Child support is usually calculated as a percentage of the obligor parent’s income.<sup>13</sup> The obligation should be based on an estimate of what the parent will actually earn when the support obligation is due.<sup>14</sup> In this case, that means estimating the amount Mr. M will earn on an annual basis, beginning on January 1, 2012, when any modification would become effective. Once child support is calculated as a percentage of the obligor’s income, it is from this figure that Mr. M’s request for a variance is considered.

*B. Income for Purposes of Child Support*

At \$22 per hour, Mr. M can expect to earn at a minimum an annual gross wage of \$45,760.<sup>15</sup> The unchallenged evidence establishes that Mr. M has earned overtime in the past and that he expects to earn less overtime in the future. In an effort to determine Mr. M’s earnings for purposes of child support, CSSD filed three alternatives for calculating income. The first option utilized the wages reported to the Department of Labor in the last four quarters. This resulted in annual wages in the amount of \$55,082.51. Option 2 was based on Mr. M’s 2011 income and resulted in annual earnings in the amount of \$56,808.96. The third option averaged Mr. M’s February 29, 2012 year to date earnings and resulted in an anticipated annual income in the amount of \$49,735.40. Mr. M concurred that this last calculation was an approximate estimate of his anticipated earnings.

The third option is the best estimate of what Mr. M will earn when the support is due. It recognizes that there is an opportunity for some overtime but its availability will be significantly reduced.

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<sup>11</sup> 15 AAC 125.321(d).

<sup>12</sup> 15 AAC 05.030(h).

<sup>13</sup> Alaska Rule Civil Procedure 90.3(a)(2).

<sup>14</sup> Alaska Rule Civil Procedure, Commentary III.E.

<sup>15</sup> \$13 per hour x 40 hours per week x 52 weeks per year.

In addition, Mr. M will receive one Permanent Fund Dividend, bringing his total estimated annual income to \$50,909. When this information is inserted into CSSD's online child support calculator, the resulting child support obligation is \$690 per month for one child.<sup>16</sup> Because this is more than a 15% change, Mr. M's current support obligation, CSSD's decision to modify his support obligation was correct. However, while modification is appropriate, Mr. M has also established that the amount of child support ordered on February 13, 2012 and effective January 1, 2012 was incorrect.

*C. Hardship Variance*

As part of his appeal, Mr. M also requested his child support obligation be varied. The child support calculation under Civil Rule 90.3 may be varied

for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied.<sup>17]</sup>

“Good cause” may be found if there are unusual circumstances which require a variation in the amount of support ordered to avoid manifest injustice.<sup>18</sup> Manifest injustice, in turn, requires a finding that a reasonable person would be convinced that the award is either unjustly large or unjustly small.<sup>19</sup> Because child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct, the person requesting the variance has a high burden of proof to rebut this presumption.

Mr. M's monthly expenses total \$3,800 per month. His average adjusted monthly income is anticipated to be \$3,350.<sup>20</sup> Mr. M's monthly expenses exceed his income by \$351. When child support for A is considered, his monthly expenses exceed his income by \$1,000.

As discussed at hearing, Mr. M has three children younger than A. He and his wife have made a decision that it is better and more economically feasible for their family if his wife does not obtain a paying job. This is their choice, and if Mr. M's request for a variance were granted, it would cause A to support Mr. and Ms. M's lifestyle.

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<sup>16</sup> Attachment A.

<sup>17</sup> Alaska Rule Civil Procedure 90.3(c)(1).

<sup>18</sup> Alaska Rule Civil Procedure 90.3(c)(1).

<sup>19</sup> 15 AAC 125.080.

<sup>20</sup> In calculating a parent's adjusted annual income, deductions are made for supporting a child of a prior relationship. Alaska Rule Civil Procedure 90.3(a)(1)(C). There is, however, no corresponding deduction allowed for children of a subsequent relationship. Alaska Rule Civil Procedure 90.3 Commentary III.D and IV.B.2.

A variance is not appropriate in this instance. This is especially true when the Ms have options available to them without A bearing the burden of supporting Mr. M's current family. For example, Ms. M could obtain employment during the hours that Mr. M is not working and is available to watch the children. This would permit additional income for the family without the offsetting expense of child care.

A is entitled to the support Mr. M is legally obligated to pay. Under the facts presented, Mr. M has not established by clear and convincing evidence that manifest injustice would result if the support award were not varied.

#### **IV. Conclusion**

Mr. M met his burden of proving by a preponderance of the evidence that the February 13, 2012 Modified Administrative Child Support and Medical Support Order was incorrect. When calculated pursuant to Alaska Rule Civil Procedure 90.3(a), Mr. M's monthly child support obligation for one child should be \$690 per month effective January 1, 2012. Conversely, Mr. M has not met his burden of proving by clear and convincing evidence that manifest injustice would result if this amount were not varied.

#### **V. Child Support Order**

- Mr. M's ongoing child support obligation is set at \$690 per month, effective January 1, 2012.
- All other provisions of the February 13, 2012 Modified Administrative Child and Medical Support order remain in effect.

DATED this 16<sup>th</sup> day of May, 2012.

By: Signed  
Rebecca L. Pauli  
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 4<sup>th</sup> day of June, 2012.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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