

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

In the Matter of: )  
 )  
R H ) OAH No. 12-0067-CSS  
 ) CSSD Case No. 001171988

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**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of R H for the support of M-G D. The custodian of record is N D.

On March 6, 2012, the Child Support Services Division issued an amended administrative child support order establishing an ongoing support obligation of \$1,003 per month, with arrears at the rate of \$664 per month in 2010 and \$1,003 thereafter.<sup>1</sup>

Mr. H filed an appeal and requested an administrative hearing. The assigned administrative law judge conducted telephonic hearings on April 3 and June 5, 2012. Andrew Rawls represented the division. Mr. H participated in both hearings and Ms. D participated in the second.<sup>2</sup>

The primary dispute on appeal concerns the amount of the deduction from income to be provided to Mr. H for the support of his older child. Mr. H did not prove that the division's deduction of \$602 per month was erroneous. He is, however, entitled to a deduction for his contributions to a retirement account. Given those deductions, monthly arrears are set at \$606 in 2010 and \$894 in 2011-2012, and ongoing support is set at \$894 per month.

**II. Facts**

R H, currently aged 27,<sup>3</sup> is the father of two children. His older child, L, is the issue of Mr. H's marriage to M M. E. L is in Ms. E's custody and lives with her in Montana.<sup>4</sup> On April 9, 2010, the Alaska Child Support Services Division issued an administrative support order establishing Mr. H's support obligation for L in the amount

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<sup>1</sup> Ex. 11.

<sup>2</sup> Ms. D was not available at her telephone number of record at the time of the first hearing. Following the hearing she contacted the Office of Administrative Hearings and a supplemental hearing was scheduled, at which she participated.

<sup>3</sup> Ex. 7, p. 4.

<sup>4</sup> Testimony of R. H. See Ex. 15.

of \$602 per month, based on his 2009 gross income of \$44,327.<sup>5</sup> As of January 3, 2012, Mr. H was current on his payments under that order, and had made additional voluntary payments in excess of the amount ordered.<sup>6</sup>

On February 16, 2012, Ms. E filed a complaint for divorce in the Maryland Circuit Court.<sup>7</sup> The parties filed a written agreement calling for Ms. E to have sole custody, and for Mr. H to pay \$500 per month in child support.<sup>8</sup> The master hearing the case recommended setting support at \$1,355 per month, which was the amount owed under the Maryland child support guideline.<sup>9</sup> He also recommended sole custody be awarded to Ms. E, with reasonable visitation as agreed by the parties.<sup>10</sup>

After the division issued the support order for L, but before Ms. E filed her divorce complaint, Mr. H's daughter M-G was born, and the division issued the administrative support order for her support that is at issue in this case.<sup>11</sup> An amended administrative support order was issued on March 6, 2012.<sup>12</sup> The division calculated support without providing a deduction from Mr. H's income for his support of his prior child, L.

Three weeks later, on March 27, the Maryland divorce case was heard by the court.<sup>13</sup> Neither Mr. H nor Ms. E filed an objection to the master's recommendation that support be set at \$1,355 per month, and a final divorce order was issued on April 17.<sup>14</sup>

Mr. H lives in No Name. He is a welder. In 2009 he was employed in No Name by No Name, Inc., and earned wages of \$40,508.59.<sup>15</sup> He was laid off in the fourth

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<sup>5</sup> Ex. 19.

<sup>6</sup> Testimony of R. H. *See* Ex. 21, Ex. 23 (\$720 per month for day care, plus "occasionally helps out if needed."). Ms. E submitted an unsworn statement supporting Mr. H's August, 26, 2011, assertion that he was paying \$1,296 per month in child support, purportedly for day care expenses. *See* Ex. 4, pp. 2-3. Because the division is not enforcing the support order, payments are being made directly to Ms. E and the division does not have any record of the current status of payments.

<sup>7</sup> Ex. 15, p. 1. Mr. H testified that Ms. E and L had moved to Maryland about a year and a half prior to the child support hearing, and moved to Montana after the Maryland divorce was finalized.

<sup>8</sup> Ex. 15, p. 1.

<sup>9</sup> Ex. 15, p. 1.

<sup>10</sup> Ex. 15, p. 1.

<sup>11</sup> A default order establishing paternity was issued on June 1, 2011. Ex. 2. Mr. H's paternity was confirmed by genetic testing in February, 2012. *See* Ex. 10, Ex. 12.

<sup>12</sup> Ex. 11.

<sup>13</sup> Ex. 17, p.1.

<sup>14</sup> The abstract of the Maryland court record in this case states that a final divorce judgment was issued on April 17, and does not show any filing either party after the master's recommendation was issued. *See* Ex. 17, p. 2. Mr. H testified that the entire divorce was handled by Ms. E and that he did not participate in any hearings.

quarter of 2009, and his gross income in 2009, including unemployment compensation (\$2,514)<sup>16</sup> and his Alaska Permanent Fund dividend (\$1,305) was \$44,327.59. Mr. H returned to work for a new employer in the first quarter of 2010.<sup>17</sup> His gross income in 2010 was \$60,448.74, consisting of wages (\$51,206.74), unemployment compensation (\$7,961), and his Alaska Permanent Fund dividend (\$1,281). Since mid-2010, Mr. H has been steadily employed by CH2M Hill, working a two week on-two week off schedule on the North Slope.<sup>18</sup> His current hourly wage is \$29.50. In 2011 his gross income was \$88,423.88, consisting of wages (\$87,249.98) plus his Alaska Permanent Fund dividend (\$1,174). His net monthly take-home pay (exclusive of child support) is around \$4,319 after taxes, contributions to his retirement account, medical and dental insurance, and other miscellaneous deductions.<sup>19</sup>

Mr. H lives with his girlfriend at his parents' house, where he does not pay for rent or utilities, but does buy his share of groceries.<sup>20</sup> Mr. H owns a 2003 Chevy S-10 that is currently not operable, but on which he makes a loan payment of about \$400 per month, with a balance of about \$7,500.<sup>21</sup> He pays about \$15 per month for comprehensive insurance, and (because the vehicle is inoperable) does without collision and liability insurance.<sup>22</sup> He has no credit card debt but owes \$5,000 from a medical bill for knee surgery.<sup>23</sup> His total current actual monthly living expenses for food, lodging, clothing, and transportation<sup>24</sup> are estimated as less than approximately \$2,000.

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<sup>15</sup> See Ex. 14.

<sup>16</sup> See Ex. 14.

<sup>17</sup> See Ex. 14.

<sup>18</sup> Testimony of R. H.; Ex. 4, p. 2; Ex. 9.

<sup>19</sup> Mr. H's year-to-date gross wages and net earnings are shown on Exhibit 16, his April 3, 2012, earnings statement, which was current through March 25, 2012, or 12 weeks. His gross wages for that period were \$20,073.67. His total deductions were \$13,674.09. Adding back in \$5,655 (the total child support deducted for the year-to-date) yields net take home pay (exclusive of child support) of \$12,052.20 (\$20,073.67 - \$13,674.09 + \$5,655), or \$1,004.35 per week, for monthly net take home pay of \$4,318.71 (\$1,004.35 x 12).

<sup>20</sup> Testimony of R. H.

<sup>21</sup> Mr. H's bank statements show a payment of \$700.98 per month through March, 2011, at which time the balance on the loan was \$10,393.14. See Ex. 4, p. 5. It appears, based on Mr. H's testimony, that the loan was refinanced to a lower payment. See Ex.

<sup>22</sup> Mr. H testified that he paid \$90 for six months' comprehensive insurance.

<sup>23</sup> Testimony of R. H.

<sup>24</sup> Truck loan (\$400); airfare to Anchorage (2 x \$600 = \$1,200).

Mr. H commutes to Anchorage by airplane, paying around \$600 for each round trip, and from Anchorage is flown to and from the job site by his employer.<sup>25</sup> Mr. H contributes 10% of his income to a retirement account.<sup>26</sup> Mr. H's girlfriend works as a barrista and brings home around \$1,500 per month.<sup>27</sup>

### **III. Discussion**

In his appeal notice, Mr. H did not dispute the amount of income attributed to him. He raised two issues: (1) whether he should be provided a deduction for the cost of transportation to and from Anchorage; and (2) whether the amount ordered was beyond his ability to pay.<sup>28</sup> At the hearing two additional issues were identified and considered: (3) whether the deduction for support for an older child should reflect the \$1,355 support order issued by the Maryland court in 2012, rather than the \$602 order issued by the division in 2009; and (4) whether a deduction should be provided for Mr. H's contributions to a retirement account.

#### **A. Gross Income**

In this case, Mr. H's income for 2009 through 2011 is based on the department's review of available information in databases maintained by the Department of Labor and Workforce Development,<sup>29</sup> and was not disputed by Mr. H.

#### **B. Deductions From Income**

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,<sup>30</sup> that is, total income after allowable deductions, as specified in Civil Rule 90.3(a)(1).<sup>31</sup> Allowable deductions specified in the rule include voluntary contributions to a retirement account, up to 7.5% of gross wages,<sup>32</sup> and child support payments arising from a prior relationship that are required by a court or administrative

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<sup>25</sup> See Ex. 7, p. 2. Mr. H testified that the cost ranges from \$500-\$900, and averages "at least \$600."  
<sup>26</sup> Testimony of R. H. See Ex. 16 ("Total Cash" [gross wages] = \$20,071.29; "Savings 401K" = \$2,007.13).

<sup>27</sup> Testimony of R. H.

<sup>28</sup> Ex. 13. Mr. H also asserted that Ms. D should be "held accountable for her actions." This case concerns Mr. H's child support obligation. Ms. D's alleged actions are not at issue.

<sup>29</sup> Ex. 14. See 15 AAC 125.050(a) ("[T]he department will use the best information available, including any information available to it through automated sources such as information maintained by the Department of Labor and Workforce Development, to determine the parent's total income from all sources....").

<sup>30</sup> 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

<sup>31</sup> 15 AAC 125.070(a); -.065(a).

<sup>32</sup> Civil Rule 90.3(a)(1)(B).

proceedings and are actually paid.<sup>33</sup> Civil Rule 90.3(a)(1) does not specifically identify deductions for the cost of transportation to and from a work site.

*1. Contributions to Retirement Account*

Because Mr. H contributes more than 7.5% of his gross wages to a retirement account, he is entitled to a deduction, for 2011, of 7.5% of \$87,249.98, or \$6,543.75 (\$545.31 per month).<sup>34</sup>

*2. Commuting Expense*

The deductions allowed by law are limited to those “specified” in Civil Rule 90.3(a)(1).<sup>35</sup> Absent a specific applicable provision in Civil Rule 90.3(a)(1), no deduction is available for the cost of transportation to and from Anchorage. However, a bimonthly 1,600 air mile round trip commute costing in excess of \$1,000 per month is an unusual circumstance that may, if it results in manifest injustice, be grounds for departing from the presumptive support amount.<sup>36</sup>

*3. Support of Child of Prior Relationship*

Civil Rule 90.3(a)(1)(C) provides for a deduction from gross income of “child support...payments arising from prior relationships which are required by other court or administrative proceedings and actually paid.” In this case, Mr. H is subject to two separate child support orders for his older child, L, one issued by the division, and the other issued by the Maryland Circuit Court.<sup>37</sup> But the deduction under Civil Rule 90.3(a)(1)(C) is limited to amounts “actually paid.” While there is evidence that prior to entry of the Maryland order, Mr. H made occasional voluntary payments in excess of the amount required under the Alaska order, there is no evidence that he has continued to do

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<sup>33</sup> Civil Rule 90.3(a)(1)(C).

<sup>34</sup> See Ex. 18, p. 2.

<sup>35</sup> 15 AAC 125.065(a).

<sup>36</sup> See 15 AAC 125.075, -.080.

<sup>37</sup> The Maryland order does not purport to modify the Alaska order. It is an independent order, based on the Maryland court’s jurisdiction to issue a child support order as the child’s home state, at a time when it had (through the divorce proceeding) personal jurisdiction over both parents. Under the Uniform Interstate Family Support Act (UIFSA), both the division and Maryland have continuing and exclusive jurisdiction over their own support orders so long as a party to the order continues to reside in the state. AS 25.25.205(a)(1). Since none of the parties presently lives in Maryland, that state no longer has continuing and exclusive jurisdiction over the Maryland order. UIFSA provides a set of rules for determining which of two or more independent and valid child support orders should be recognized for purposes of enforcement. See AS 25.25.207-.209. Those rules would be applied in the event that Ms. E or the Maryland or Montana child support agency brought a UIFSA action in Alaska to enforce the Maryland order.

so. Indeed, to the contrary, there is evidence that Mr. H and Ms. E had agreed on payments limited to \$500 per month.<sup>38</sup> Absent a showing by the preponderance of the evidence that after the Maryland support order became effective Mr. H paid in excess of \$602 per month for L's support,<sup>39</sup> for purposes of his obligation for arrears he is not entitled to a deduction in excess of the \$602 per month required under the Alaska order, even though he was subject to a Maryland order for more than twice that amount.<sup>40</sup> For purposes of his ongoing support obligation, if Mr. H actually makes payments for L's support in excess of the amount required under L's \$602 Alaska support order (whether voluntarily, by income withholding, or through a child support agency),<sup>41</sup> he can request modification of M-G's support order to reflect those payments up to the amount required under L's \$1,355 Maryland support order.

C. Unusual Circumstances

The support obligation may be reduced if the amount as calculated under 15 AAC 125.070 would result in manifest injustice due to unusual circumstances.<sup>42</sup> The obligor must provide clear and convincing evidence of manifest injustice.<sup>43</sup> Manifest injustice is shown when "a reasonable person would be convinced that the award is either unjustly large or unjustly small after carefully evaluating the award amount with reference to the considerations set out in the Commentary to Alaska Rule of Civil Procedure 90.3 and 15

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<sup>38</sup> See Ex. 15, p. 1. Moreover, Mr. H testified that L will be living with him in Ketchikan from July until December, and it is likely Ms. E will not insist that he continue to make child support payments during that time. Because Mr. H will have to bear additional expenses for L's support during that time, however, there is no reason to disregard the existing support order for purposes of calculating Mr. H's support obligation.

<sup>39</sup> As noted above, Mr. H and Ms. E asserted that he was paying \$1,296 per month previously. See note 6, *supra*. However, Mr. H did not provide evidence of direct payments for child care (which Ms. E asserted was the reason for the payments) or of the identity of the recipient of various cash withdrawals and transfers shown in his bank records. The only specific reference to a payment to Ms. E shown in the bank records is a single payment of \$300 on May 11, 2011. Ex. 4, p. 41. There is also evidence that he purchased children's toys valued at \$297.87 in November, 2010. Ex. 4, p. 17.

<sup>40</sup> As the division notes, Mr. H has not provided a copy of the final order issued by the Maryland court. However, there is no indication in the record that either party objected to the master's recommended order, and Mr. H testified that a final order in that amount was issued.

<sup>41</sup> UIFSA provides for enforcement and modification, in Alaska, of the Maryland order by registration. See AS 25.25.601-.614. It also provides for direct enforcement (but not modification) without registration. See AS 25.25.501-.507.

<sup>42</sup> 15 AAC 125.075(a)(2).

<sup>43</sup> 15 AAC 125.075(a); see Civil Rule 90.3(c)(1).

AAC 125.075(a)(2) and (b).”<sup>44</sup> In determining whether manifest injustice exists, all of the relevant circumstances should be considered.<sup>45</sup>

In this case, Mr. H’s current net take home pay is approximately \$4,319 per month. Notwithstanding his unusually high monthly commuting expense, Mr. H did not testify or otherwise establish that his current monthly living expenses (including plane fare to and from Anchorage) exceed \$2,000, which means that he has approximately \$2,319 per month in disposable income. That is an amount sufficient to meet his two Alaska child support obligations ( $\$602 + \$894 = \$1,496$ ) at his current income. Mr. H asserted that the only reason he can make ends meet is that he is living rent free with his parents, and does appear that if he were not living in his parents’ residence, his income might be insufficient to meet his needs and to pay child support in addition. However, Mr. H’s girlfriend is employed and brings home a substantial income that is likely sufficient for rent for the couple, should he wish to live independently. Moreover, he is presently contributing 10% of his income to a retirement account, and could increase his disposable income by reducing that contribution to the standard amount of 7.5%.

The case does include one factor that is identified in the Commentary to Civil Rule 90.3 and in 15 AAC 125.075 as an appropriate consideration in weighing whether the support obligation calculated under 15 AAC 125.070 is manifestly unjust, namely that the division’s initial order established arrears for a somewhat extended period (thirteen months), most of which transpired before Mr. H was served with a copy of the notice initiating the support proceeding; retroactive establishment of a support obligation for a lengthy period of time is unusual and can result in unfairness.<sup>46</sup> However, the length of time for which arrears are being established prior to notice is not unduly long, particularly in light of the evidence that the division encountered difficulty in attempting to obtain service.<sup>47</sup>

#### **IV. Conclusion**

Mr. H did not dispute the amount of income attributed to him. Deductions from income were provided by the division in its Exhibit 18, pages 1-3, in accordance with

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<sup>44</sup> 15 AAC 125.080.

<sup>45</sup> See 15 AAC 125.080.

<sup>46</sup> See Civil Rule 90.3, Commentary at VI(E)(1).

<sup>47</sup> See Ex. 1, p. 6 (“He is evading service when not on the slope.”).

law. Mr. H has not shown by clear and convincing evidence that it would be manifestly unjust to set his support obligation for arrears in accordance with 15 AAC 125.070, as shown in Exhibit 18, pages 1-3. Because Mr. H did not show that his 2012 income will vary by 15% or more from his 2011 income, arrears for 2012 and ongoing support are maintained at the amount set for 2011.<sup>48</sup>

### **CHILD SUPPORT ORDER**

The Amended Administrative Child Support and Medical Support Order dated March 6, 2012, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated March 6, 2012, is **AFFIRMED**:

1. Mr. H's monthly arrears are set \$606 effective February 1, 2010 through December 31, 2010, and at \$894 effective January 1, 2011, through July 31, 2012.
2. Amended ongoing child support is set at \$894 per month, effective August 1, 2012.

DATED: July 26, 2012.

*Signed* \_\_\_\_\_  
Andrew M. Hemenway  
Administrative Law Judge

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<sup>48</sup> See 15 AAC 125.105(e).



## 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 August, 2012.

By: Signed  
Signature  
Terry L. Thurbon  
Name  
Chief Administrative Law Judge  
Title

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