

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

IN THE MATTER OF:	)	
	)	OAH No. 12-0105-CSS
H L. F	)	CSSD No. 001094862
_____	)	

**REVISED DECISION AND ORDER**

**I. Introduction**

H L. F is appealing a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 16, 2012. The obligee children are H, 14; and T, 12. The other parent and custodian of record is K D.

The formal hearing was held on three occasions, the final one occurring on July 23, 2012. Mr. F appeared in person with counsel; Ms. D participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

The proposed decision was issued on October 24, 2012. Both parties filed a proposal for action. Mr. F recommended that the proposed decision be adopted; Ms. D raised several issues in objection. On November 19, 2012, Deputy Commissioner of Revenue Angela M. Rodell returned the proposed decision to the administrative law judge for one narrow purpose, “to take additional evidence about Mr. F’s CIB entitlement for income calculations.”

On November 26, 2012, an interim order was issued for Ms. D to submit additional information and for CSSD to file a final child support calculation. Mr. F was allowed to respond either to the additional evidence or to the revised calculation. He filed a response that contained new evidence and requested an additional evidentiary hearing on the issue of financial hardship. It is outside the scope of the Deputy Commissioner’s order, so Mr. F’s request for an evidentiary hearing is denied.

Based on the record and after careful consideration, Mr. F’s child support is modified to \$50 per month for two children for the period from November 2011 through April 2012, due to unusual circumstances as established under the good cause provisions of Civil Rule 90.3(c) *for that specific period only*.

As of May 2012, Mr. F’s request for a good cause variance is denied. In May 2012, H and T became entitled to receive Children’s Insurance Benefit (CIB) payments based on his disability. Incorporating those payments into his income results in a child support amount of

\$324 per month for two children (\$240 for one child), effective May 2012. However, Mr. F is entitled to a direct credit of \$252 per month based on the CIB payments, so his out-of-pocket payment will only be \$72 per month.

CSSD is authorized, without having to initiate a modification review, to make future adjustments in Mr. F's direct credit based on changes in the CIB payments made on his behalf for the children.

## **II. Facts**

### *A. Procedural Background*

Mr. F's child support obligation for H and T was set at \$502 per month for two children (\$371 for one child) in November 2010.<sup>1</sup> On October 14, 2011, Mr. F requested a modification review.<sup>2</sup> On October 24, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. F provided income information.<sup>4</sup> On March 16, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. F's child support to \$349 per month for two children (\$258 for one child), effective November 1, 2012.<sup>5</sup> He appealed on April 17, 2012, asserting that, among other things, CSSD impermissibly imputed income to him, he is disabled and unemployed, and his child support should be set at the minimum amount of \$50 per month.<sup>6</sup>

### *B. Material Facts Pertaining to Mr. F's Petition for Modification*

Mr. F is a 56-year-old former mechanic and construction worker. In September 2010, he left his job working for No Name on the North Slope. Mr. F was having health problems that affected his ability to perform his work, so he testified that he resigned at the request of his employer due to his disability.

#### 1. Mr. F is disabled

Mr. F has chronic obstructive pulmonary disease, commonly known as COPD. COPD is a serious lung disease involving constriction of the airways and difficulty breathing. Mr. F's physician, Dr. Katherine Kolb, diagnosed him with COPD in August 2009 during his first visit to

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

her.

In order to diagnose Mr. F, Dr. Kolb utilized chest x-rays; blood tests, such as metabolic and lipid panels, and cholesterol levels; and pulmonary tests. The doctor stated Mr. F has no active acute disease such as pneumonia or cancer, but he is still unable to perform any but the least demanding physical activities.

As a result of her examination, Dr. Kolb determined Mr. F has only 45% lung capacity as compared to that of a normal person. Dr. Kolb referred Mr. F to a pulmonary specialist, who diagnosed him with “severe” COPD, which the doctor said is at the far end of the scale. Using Mr. F’s first visit to her in 2009 as a baseline, Dr. Kolb noted that Mr. F’s breathing and other symptoms have worsened, which is consistent with COPD. There is no cure for COPD and there are no medications that make COPD better. Rather, medications are used primarily for reducing a patient’s chance of getting a secondary infection.

Mr. F is disabled due to his COPD. He is not capable of performing any sort of job that demands physical exertion. He even blacks out when he bends over. Dr. Kolb thinks he might possibly be able to work part-time in a sit-down type of job, but she believes there really are not jobs that he is capable of performing. Mr. F certainly cannot work as a mechanic again because of the physical exertion involved. COPD can be stabilized, according to Dr. Kolb, especially if the patient stops smoking, but there is little chance of improvement. Dr. Kolb believes Mr. F should be restricted to normal, around the house activities that do not involve physical exertion. She stated he is not able to do any work that involves a proximity to dust or chemical fumes, or even cold weather, because it causes airway constriction and would compromise Mr. F’s condition even more. Dr. Kolb prescribed a pulmonary rehabilitation program for Mr. F, which he started because his wife’s insurance paid for part of it. However, he could not afford the \$600 per month copayment and had to leave the program.

Mr. F is currently taking several medications for his condition. He also uses an inhaler several times a day, which takes up to two hours to provide him with any relief. Mr. F is limited to only a few basic physical activities. He is able to get out of bed, but with difficulty. Any bending over results in him coughing and wheezing and gasping for air. He cannot drive first thing in the morning because it takes up to two hours for his symptoms to disappear after he wakes up. He can do basic household chores, but it takes him ten times longer than it would for a normal person. According to his wife, Mr. F can carry light groceries, do some laundry, and

feed and water the dogs. Occasionally, he is able to cook dinner. He cannot dust or vacuum or use cleaning solutions because of the fumes. He cannot walk around the mall, shovel snow, or change the oil or tires on a vehicle. She believes he does not have any marketable skills. Mr. F also is no longer capable of participating in normal recreational pursuits such as hunting and fishing.

Mr. F has applied for work online and at the Department of Labor job service, but he is not a very attractive job candidate, primarily because of his health. Mr. F also has a criminal history, including a federal conviction for criminal nonsupport. He would not be competitive for an office job because Mr. F is not computer literate and is a poor speller. It is difficult to imagine what kind of work he actually could do.

Mr. F's wife is employed full-time and her income of just slightly over \$50,000 per year primarily supports their household. Mrs. F's 20-year-old daughter lives in the home with them. She has special needs and uses a service dog.

## 2. Mr. F's income and child support calculations

In 2010, Mr. F received wages from his employment totaling \$45,830.03 and unemployment benefits of \$4,810.<sup>7</sup> In October 2010, he left his employment at No Name and has not been able to secure any other work since then. In 2011, Mr. F supported himself on unemployment benefits, receiving a total amount of \$18,426.<sup>8</sup> Adding the PFD amount of \$1,174 results in Mr. F having total annual income of \$19,600.<sup>9</sup> A child support amount calculated from this total 2011 income equals \$416 per month for two children (\$308 for one child).<sup>10</sup> This is 82.8% of his prior child support order of \$502 per month for two children, or, 17.2% less than his prior order.<sup>11</sup>

Mr. F's unemployment terminated in March 2012 when he applied for Social Security disability benefits.<sup>12</sup> His application for Social Security disability was granted and he began receiving \$874 per month as of May 2012.<sup>13</sup> On an annualized basis, this equals total income of

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<sup>7</sup> Exh. 7 at pgs. 1 & 4.

<sup>8</sup> Exh. 7 at pg. 2.

<sup>9</sup>  $\$18,426 + \$1,174 = \$19,600$ .

<sup>10</sup> Attachment A.

<sup>11</sup>  $\$416 \div \$502 = .828 \times 100\% = 82.8\%$ .  $100\% - 82.8\% = 17.2\%$ .

<sup>12</sup> Testimony of Mr. F. He received \$3,996 in unemployment benefits during the period from January through March 2012. Exh. 7 at pg. 1.

<sup>13</sup> Exh. 18. Also, unnumbered exhibit attached to Mr. F's July 2, 2012 Notice of Filing Obligor's Letter from the Social Security Administration, at pg. 1.

\$10,488, beginning in May 2012.<sup>14</sup> Also in May 2012, H and T each began receiving Social Security Children's Insurance Benefits (CIB) in the amount of \$126 per month, or \$252 per month total for both children.<sup>15</sup> This figure equals \$3,024 annually,<sup>16</sup> which is added to Mr. F's income, for a total of \$13,512 from Social Security disability and CIB payments.<sup>17</sup>

When the 2012 PFD amount of \$878 is added to Mr. F's total income from Social Security,<sup>18</sup> it results in total annual income of \$14,390.<sup>19</sup> A child support amount calculated from this income figure equals \$324 per month for two children (\$240 for one child).<sup>20</sup> The children receive CIB payments totaling \$252 per month, which is subtracted from the calculated amount by CSSD for enforcement purposes, so Mr. F will only have to pay \$72 per month out-of-pocket for the ongoing support amount as of May 2012.<sup>21</sup>

### 3. The parties' expenses

Mr. F has regular monthly expenses as follows: \$1,010 for the mortgage payment on the family home; \$250 for the payment on land they own in No Name; \$665 for food, in addition to the food they obtain at the food bank; \$189-\$440 for natural gas; \$83.33 for wood or heating oil;<sup>22</sup> \$50 for telephone service; \$125 for dump fees; \$85 for cable television; \$100 for Internet service; \$140 for a cell phone and texting plan; \$551 for the payment on a Ford F-150 pickup; \$745 for gasoline; \$125-\$140 for vehicle maintenance; \$271.81 for vehicle insurance; \$68.48 for home insurance; \$195 for health insurance; \$20 for entertainment; \$225 for personal care items, primarily for Mrs. F's daughter; \$300 for the payments on unpaid medical bills totaling \$9,876; \$85 for the service dog; and \$450 for church tithing. In addition, Mr. F owes approximately \$9,685 for attorney fees; \$2,823.61 for property taxes on the family home; and \$95 per year for property taxes on the No Name land. Mr. F owns three vehicles but only has one regular

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<sup>14</sup> \$874 x 12 = \$10,488.

<sup>15</sup> Custodian's documents, received December 3, 2012.

<sup>16</sup> \$252 x 12 = \$3,024. CSSD calculated this total figure at \$6,048, but it appears the agency used the monthly figure of \$252 per month for each child when the notice actually states each child would receive \$252 for the first *two* months, and thereafter would receive \$126 per month. See Exh. 19 at pgs. 1-2.

<sup>17</sup> \$10,488 + \$3,024 = \$13,512.

<sup>18</sup> <http://pfd.alaska.gov>, accessed Oct. 16, 2012.

<sup>19</sup> \$13,512 + \$878 = \$14,390.

<sup>20</sup> Attachment B.

<sup>21</sup> *Id.*

<sup>22</sup> \$1,000 per year ÷ 12 months = \$83.33 per month.

monthly payment.<sup>23</sup>

Ms. D lives in New Jersey. She has four children in the home, H and T, plus two older children, who are 23 and 17. Ms. D is a high school math teacher and earned \$57,929 in 2011.<sup>24</sup> She reported net income of \$3,583 per month, which she receives for ten months out of the year.<sup>25</sup> In 2004 she inherited \$80,000, so she made a \$60,000 payment on her mortgage. Ms. D has a timeshare in Mexico, but claimed she cannot use it because of her work schedule.

Ms. D's regular monthly expenses are \$1,966.77 for the mortgage payment on her home; \$650-\$700 for food; \$275 for natural gas; \$250 for electricity; \$102 for Internet and cable service; \$145 for cellular telephone service; \$550 for gasoline; \$100 for vehicle maintenance; \$106.66 for vehicle insurance;<sup>26</sup> \$80 for health insurance, including dental; \$75 for the regular monthly payment on a MasterCard bill that totals \$4,600; \$75 for the payment on an American Express credit card bill that totals \$3,500; and \$175 for the payment on a home equity line of credit totaling \$25,000. Ms. D did not list any expenses for entertainment or personal care items and reported that she does not have a payment on her vehicle.<sup>27</sup>

### *C. Historical Facts Regarding Mr. F's Child Support Obligation*

This case has a long history, beginning thirteen years ago. Ms. D, who had previously lived in Alaska, moved to New Jersey in September 1998.<sup>28</sup> Nevertheless, she submitted an application to CSSD in Alaska for child support services for Z, the parties' oldest child, on January 15, 1999.<sup>29</sup> CSSD subsequently initiated a child support action against Mr. F and served him with notice and an administrative child support order dated March 15, 1999 that set his child support at \$527 per month for one child based on default income information.<sup>30</sup> He challenged the order and requested a formal hearing, which was held on February 9, 2000. Mr. F did not

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<sup>23</sup> Obligor's Exh. 8. The custodian's expenses list was also prepared on CSSD's blank form, which was labeled Exhibit 8 in the agency's Pre-Hearing Brief. Neither party re-numbered their completed forms, so each expenses document will simply be identified as that party's Exhibit 8.

<sup>24</sup> Exh. W at pg. 1.

<sup>25</sup> Custodian's Exh. 8.

<sup>26</sup> \$1,280 per year ÷ 12 months = \$106.66 per month.

<sup>27</sup> Custodian's Exh. 8. It is more likely than not that Ms. D has expenses in these categories but simply chose not to report them.

<sup>28</sup> Mr. F also moved away from Alaska, but he returned sometime in 2005. An earlier appeal he brought to the Office of Administrative Hearings (OAH) is currently on remand to the OAH from the Superior Court. Some of the earlier facts recited here are taken from the court's remand order. *See F v. CSSD*, 3AN-XXXCI (Alaska Superior Court 00/00/12). However, given the disparate nature of all of Mr. F's appeals, these findings are not meant to be exhaustive.

<sup>29</sup> Exh. 12. CSSD was known at that time as CSED, the Child Support Enforcement Division.

<sup>30</sup> Exh. 11.

appear because, as he argued, he was not properly served with notice of the hearing. The hearing officer issued a corrected decision on April 27, 2000.<sup>31</sup>

In October 2000, Ms. D pursued a modification, but the record is unclear whether it went forward due to issues regarding service on Mr. F.<sup>32</sup> In September 2001, Mr. F pursued modification of his child support amount and CSSD issued an order adding T, the parties' youngest child, but he was never served so the modification was abandoned by CSSD.<sup>33</sup>

Ms. D applied for child support services in New Jersey sometime in 2002, after Mr. F's unsuccessful petition for modification in Alaska.<sup>34</sup> New Jersey notified CSSD, which closed its case and notified Ms. D on October 25, 2002.<sup>35</sup> The New Jersey child support agency subsequently referred Mr. F's case to federal authorities. Mr. F was arrested in 2007, charged and convicted in federal court of failure to pay child support.<sup>36</sup> On April 9, 2009, Mr. F was sentenced to five years' probation and ordered to pay restitution of \$78,827.66.<sup>37</sup> The federal judge ordered Mr. F to pay the restitution to the State of New Jersey, but with the understanding that the payments could be transferred to Alaska if it seemed appropriate.<sup>38</sup>

In 2008, Mr. F filed a Motion to Vacate Default Order with CSSD.<sup>39</sup> On May 6, 2010, the agency issued an administrative review decision, which both Mr. F and Ms. D appealed.<sup>40</sup> The first of a two-part hearing was held on September 1, 2010 before Administrative Law Judge (ALJ) Jeffrey Friedman.<sup>41</sup>

On September 9, 2010, after the first Alaska hearing on Mr. F's motion to vacate his default order, Ms. D filed a complaint in the Superior Court for New Jersey.<sup>42</sup> It was titled

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<sup>31</sup> *F v. CSSD* at pg. 5.

<sup>32</sup> *Id.*

<sup>33</sup> *F v. CSSD* at pgs. 5-6.

<sup>34</sup> Exh. I at pg. 10.

<sup>35</sup> Exh. O.

<sup>36</sup> Custodian's Exh. N at pg. 9. The record does not show the source of the child support order or accounting that was used as the basis for the criminal complaint.

<sup>37</sup> *Id.* at pg. 12. The question as to the source of the arrears identified in Mr. F's criminal case and the November 3, 2010 court order has never really been answered. That deficiency is not fatal to this decision, but upon reflection, it is possible that the state of New Jersey pursued Mr. F for child support on the basis of the Alaska default order that was issued in Mr. F's case on March 15, 1999, and later affirmed by the hearing officer on April 27, 2000. A child support amount of \$527 per month, tallied from May 1998, would have yielded amounts due that were substantially similar to the arrears in the criminal case, especially if the second child was added. *See* Exh. 11 at pg. 1.

<sup>38</sup> *Id.* at pg. 17.

<sup>39</sup> *F v. CSSD* at pg. 6.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Exh. N at pg. 6.

Complaint for Child Support, Change of Venue, Parenting Time/Visitation Rights, Custody. A cover sheet attached to the complaint states it is an application for “post-disposition relief” of an order issued on April 27, 2002.<sup>43</sup> In the brief attached to the complaint, Ms. D’s attorney asserted that “[i]n 2002, a docket number existed in Atlantic County, New Jersey regarding child support for the children. That docket has since been closed and the matter, according to Court personnel, was transferred to Louisiana in 2002.”<sup>44</sup> Ms. D’s authority for filing the complaint was the Uniform Child Custody Jurisdiction and Enforcement Act, known as the UCCJEA.<sup>45</sup>

The second hearing on Mr. F’s default action in Alaska was held on October 25, 2010. Thereafter, ALJ Friedman issued a child support decision on November 19, 2010 and it was later adopted as a final decision by the Deputy Commissioner of Revenue.<sup>46</sup> In brief, the decision denied Mr. F’s request to vacate his default arrears and modified his ongoing monthly child support amount prospectively.

A hearing was held on Ms. D’s New Jersey complaint on November 3, 2010.<sup>47</sup> Mr. F appeared telephonically, but only for the purpose of objecting to the court’s assertion of jurisdiction over the child support issue.<sup>48</sup> The same day as the hearing, the New Jersey court issued an order that stated Mr. F owes arrears in the amount of \$75,418.80.<sup>49</sup> The order also states:

Under the UCCJEA, the state of New Jersey has jurisdiction over the minor children for custody and parenting time issues. Child Support Enforcement may take steps to enforce the judgment entered through the United States Federal District Court in Alaska. The state of New Jersey Probation Department shall contact the Child Support Enforcement Agency in Alaska to determine whether any double payment is taking place. Any motion to modify child support, save for an application to the Federal Court in Alaska, must be made in New Jersey.<sup>[50]</sup>

Mr. F appealed ALJ Friedman’s decision to the Alaska Superior Court after it was adopted by the Deputy Commissioner. The court recently issued an order finding that the child support decision issued by the hearing officer on April 27, 2000 was void because Mr. F was not

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<sup>43</sup> Exh. N at pg. 5. The record does not contain a copy of a New Jersey child support order issued on April 27, 2002. In fact, there is no New Jersey child support order in the record of this appeal.

<sup>44</sup> Exh. N at pg. 7.

<sup>45</sup> Exh. N at pg. 8. The UCCJEA has been adopted in Alaska. *See* AS 25.30.300-.901. The UCCJEA addresses jurisdictional and procedural issues involving interstate child custody matters only, not child support.

<sup>46</sup> *F v. CSSD* at pg. 7.

<sup>47</sup> Exh. N at pg. 1.

<sup>48</sup> Testimony of Mr. F.

<sup>49</sup> Exh. G at pg. 3.

<sup>50</sup> Exh. G at pg. 4.



properly served with notice of the February 9, 2000 hearing.<sup>51</sup> The appeal was remanded to the OAH for a new hearing in place of the one held on February 9, 2000.<sup>52</sup> That matter will proceed separately from this appeal, which arose from Mr. F's petition for modification in October 2011.<sup>53</sup>

### **III. Discussion**

#### *A. Alaska Has Continuing, Exclusive Jurisdiction*

The first issue raised in this appeal concerns a Motion to Dismiss filed by the custodian on June 21, 2012. Ms. D styled it as a Motion to Dismiss for Issue Preclusion, arguing that this appeal should be dismissed because Alaska does not have the jurisdiction to hear and decide Mr. F's child support obligation. However, as the issue has been narrowed and clarified by the parties' briefing and oral argument, Ms. D's motion is more appropriately styled and will be decided as a Motion to Dismiss for Lack of Jurisdiction.

Essentially, Ms. D claims that New Jersey, not Alaska, is the state with continuing, exclusive jurisdiction to issue child support orders in this case. Ms. D asserts that any child support order originally issued by Alaska was registered for enforcement in New Jersey in 2002, which makes that state the one with jurisdiction to modify Mr. F's child support obligation. In the alternative, she claims that in November 2010, Mr. F's child support was litigated and decided by a Superior Court judge who ruled that any modification of his child support must be addressed in New Jersey.<sup>54</sup>

The jurisdictional issue in this appeal is controlled by the Uniform Interstate Family Support Act, commonly referred to as UIFSA. It was developed to determine the jurisdiction of and consistent procedures for different states that are involved in establishing, modifying or enforcing child support orders that involve the same parties. Alaska has adopted UIFSA,<sup>55</sup> as has Ms. D's state of New Jersey.<sup>56</sup> UIFSA states in relevant part:

(a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order

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<sup>51</sup> *F v. CSSD* at pg. 1.

<sup>52</sup> *Id.*

<sup>53</sup> *See* Exh. 2.

<sup>54</sup> Motion at pg. 1.

<sup>55</sup> AS 25.25.

<sup>56</sup> N.J. Rev. Stat. §§ 2A:4-30.65 – 2A:4-30.122.

(1) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state under a law substantially similar to this chapter.

(c) If a child support order of this state is modified by a tribunal of another state under a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state and may only

(1) enforce the order that was modified as to amounts accruing before the modification;

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(d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order under a law substantially similar to this chapter.<sup>[57]</sup>

Alaska issued the first child support order involving these parties in 1999. The order was issued under Civil Rule 90.3, the law governing child support calculations in this state.<sup>58</sup> Thus, pursuant to AS 25.25.205(a), Alaska had continuing, exclusive jurisdiction of Mr. F’s child support obligation at that time.

The question remaining now is whether Alaska *maintains* continuing, exclusive jurisdiction. Under AS 25.25.205(a), the only other requirement for Alaska to have continuing, exclusive jurisdiction is that “this state remains the residence of the obligor . . . .”<sup>59</sup> Mr. F apparently was absent from the state during the early 2000s, but he returned in 2005. So as of the date the most recent petition for modification was filed, he remained a resident of Alaska. This therefore satisfies the requirement of AS 25.25.205(a), and as a result, Alaska has continuing, exclusive jurisdiction over Mr. F’s child support order.

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<sup>57</sup> AS 25.25.205(a) – (d).

<sup>58</sup> See Exh. 11 at pg. 1. “[Civil] Rule 90.3 applies to all proceedings involving child support, whether temporary or permanent, contested or non-contested, including without limitation actions involving separation, divorce, dissolution, support modification, domestic violence, paternity, Child in Need of Aid and Delinquency.” Civil Rule 90.3, Commentary I.C.

<sup>59</sup> AS 25.25.205(a)(1).

Ms. D disagrees. She insists that New Jersey acquired jurisdiction of this child support matter because the 1999 Alaska support order was registered in New Jersey in 2002 and that subsequently a “docket number existed” in that state.<sup>60</sup> She claims that New Jersey acquired jurisdiction because Alaska’s CSSD closed its child support case in 2002.

Under UIFSA, registration of a child support order requires that the initiating state (Alaska) send certified copies of the child support order to the responding state (New Jersey), along with a request for registration and information about the parties.<sup>61</sup> The responding state must then file the order as a foreign judgment.<sup>62</sup>

Contrary to Ms. D’s assertions, the record in this appeal contains no evidence that the Alaska order was ever registered in New Jersey. CSSD’s representative confirmed this during the supplemental hearing, stating that the agency has no knowledge its 1999 child support order was ever registered in New Jersey. Merely closing its case would not have conferred jurisdiction of Mr. F’s child support matter to another state. Registration of the order in a responding state in compliance with its procedures is required under UIFSA.

Ms. D was given the opportunity to supplement the record with proof that the Alaska order was registered in her state, but the only order she filed was the New Jersey Superior Court’s order of November 3, 2010.<sup>63</sup> The order purported to require that any request for modification of Mr. F’s child support be filed in New Jersey, but the court specifically stated its authority was the UCCJEA, not UIFSA.<sup>64</sup> The UCCJEA involves only interstate child *custody* issues, not child *support*.<sup>65</sup> Accordingly, the New Jersey court’s November 3, 2010 order has no authority under UIFSA to prevent Mr. F from seeking modification of his ongoing child support amount in Alaska.

There is one other way in which New Jersey could have obtained continuing, exclusive jurisdiction of Mr. F’s child support obligation. Under UIFSA, if an out of state tribunal modifies a child support order of the state with continuing, exclusive jurisdiction under a law

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<sup>60</sup> Exh. N at pg. 7.

<sup>61</sup> AS 25.25.602(a).

<sup>62</sup> AS 25.25.602(b).

<sup>63</sup> Exh. G at pgs. 3-4.

<sup>64</sup> See Exh. G. at pg. 4.

<sup>65</sup> See AS 25.30.300-.900. Obviously, any child custody matters regarding the children in this case would have to be brought in New Jersey, the children’s home state pursuant to the UCCJEA. See AS 25.30.300(a)(1). Under the UCCJEA, a child’s “home state” is defined as “the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months . . . .” AS 25.30.909(7). Mr. F has not voiced a dispute that for child *custody* purposes, New Jersey is the home state of H and T.

substantially similar to UIFSA, the latter state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order it has issued.<sup>66</sup> The modifying state then obtains continuing, exclusive jurisdiction and the initial state must recognize the continuing, exclusive jurisdiction of the modifying state.<sup>67</sup>

Ms. D claims this is what happened in Mr. F's case – she maintains that the New Jersey Superior Court *modified* Mr. F's 1999 Alaska child support order on November 3, 2010, and in doing so obtained continuing, exclusive jurisdiction of the child support issue as between her and Mr. F. However, the November 3, 2010 New Jersey order is not a “support order” consistent with the requirements of AS 25.25.205(a). It recites the total amount of Mr. F's arrears, apparently for collection purposes,<sup>68</sup> but it does not calculate or determine a new monthly ongoing child support amount that is prospective in nature.<sup>69</sup> Thus, it is not a modification of Mr. F's 1999 Alaska order and it does not have the effect of conferring continuing, exclusive jurisdiction of Mr. F's child support case to New Jersey. Alaska retains continuing, exclusive jurisdiction and as a result, Mr. F's current modification request is properly before the Alaska tribunal.

### C. *Child Support Calculations*

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>70</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.<sup>71</sup> A modification is effective beginning the first of the next month after the parties are served with notice that a modification has been requested, so this modification is effective as of November 1, 2011.<sup>72</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.” Civil Rule 90.3 specifically provides that, in addition to income from wages, disability payments received by the retired or disabled parent are

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<sup>66</sup> AS 25.25.205(c).

<sup>67</sup> AS 25.25.205(d).

<sup>68</sup> See Exh. G at pg. 3.

<sup>69</sup> See Civil Rule 90.3(h).

<sup>70</sup> AS 25.27.190(e).

<sup>71</sup> 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. 15 AAC 05.030(h).

<sup>72</sup> 15 AAC 125.321(d). In this case, the notice was issued on October 24, 2011. Exh. 3.

considered income and must be included in his or her child support calculation.<sup>73</sup> Similarly, Children's Insurance Benefits (CIB) are considered income to the parent on whose behalf they are paid.<sup>74</sup> The CIB payments are then credited to the obligor parent as child support.<sup>75</sup>

An obligor who claims he or she cannot work or pay child support because of a disability or similar impairment must provide sufficient proof of the medical condition, such as testimony or other evidence from a physician.<sup>76</sup> Mr. F met his burden of proving that he suffers from COPD and that he is disabled from work. This finding is based primarily on the evidence received from Mr. F's physician, Dr. Katherine Kolb, who appeared at the hearing and gave extensive testimony about his medical condition and the bleak prospect of his employability.<sup>77</sup> Mrs. F also provided testimony corroborating her husband's disability and the difficulties it creates for him even in the simple activities of daily living. Finally, Mr. F testified about his medical condition.<sup>78</sup> His testimony was straightforward and credible and his statements about the effect COPD has on him were consistent with Dr. Kolb's diagnosis of him and her testimony about his condition.

Ms. D argues that Mr. F is voluntarily and unreasonably unemployed or underemployed. If a parent is found to be voluntarily and unreasonably unemployed, his or her child support may be calculated from that parent's "potential income," which should be based on his or her "work history, qualifications and job opportunities."<sup>79</sup> After careful consideration, Ms. D's request to have Mr. F found voluntarily and unreasonably unemployed is denied. Mr. F admitted he voluntarily left his last job, but Dr. Kolb's testimony that Mr. F is essentially unemployable in North Slope conditions due to his medical condition supports a finding that his decision was not unreasonable. His child support should be calculated from his actual income.

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<sup>73</sup> Civil Rule 90.3, Commentary III.A.10-11.

<sup>74</sup> Civil Rule 90.3, Commentary III.A.

<sup>75</sup> *Id.* See also *Pacana v. State*, 941 P.2d 1263 (Alaska 1997).

<sup>76</sup> *Id.* at 1371.

<sup>77</sup> Ms. D was suspicious of Dr. Kolb's testimony and requested that an independent doctor be appointed to evaluate his condition. She also requested that Mr. F be forced to sell his land in No Name. Both requests must be denied – there is no authority for them in an administrative child support hearing.

<sup>78</sup> Mr. F's breathing problems were evident even to the administrative law judge during the hearing. During times when he was sitting quietly and listening to the proceedings, he was wheezing and had difficulty breathing. When he got up from his chair to leave the room, he had to wait for a moment to catch his breath before walking. Mr. F's movements around the hearing room did not seem forced or exaggerated.

<sup>79</sup> Civil Rule 90.3(a)(4).

In response to the petition for modification, CSSD calculated Mr. F's child support at \$349 per month for two children or \$258 per month for one child.<sup>80</sup> This calculation was based not on Mr. F's actual income, but on the minimum wage. Now that Mr. F's total actual income from unemployment in 2011 has been established, his 2011 child support has been correctly calculated at \$416 per month for two children (\$308 for one child).<sup>81</sup> This figure is effective from November 2011 and into 2012 because he was still receiving unemployment benefits for the first few months of this year.

As of May 2012, however, Mr. F's financial circumstances changed significantly when he became eligible for disability benefits. His monthly benefit is \$874, which yields an annualized income of \$10,488. With the addition of the CIB payments totaling \$3,024 annually and the 2012 PFD, Mr. F's total annual income is \$14,390, which yields a child support calculation of \$324 per month for two children (\$240 for one child).<sup>82</sup> When the children's CIB payments of \$252 per month are credited to Mr. F by CSSD, he will only have to pay \$72 per month out-of-pocket for the ongoing child support amount as of May 2012.<sup>83</sup>

Mr. F's child support is now correctly calculated at \$416 per month for two children (\$308 for one child), effective from November 2011 through April 2012; and \$324 per month for two children (\$240 for one child), effective as of May 2012, and ongoing. Whether Mr. F may be entitled to a reduction in the amounts calculated under Civil Rule 90.3 based on a financial hardship is discussed below.

#### *D. 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."<sup>84</sup> It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child(ren), to

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<sup>80</sup> Exh. 5 at pg. 8.

<sup>81</sup> Attachment A.

<sup>82</sup> Attachment B.

<sup>83</sup> *Id.*

<sup>84</sup> Civil Rule 90.3(c).

determine if the support amount should be set at a different level than provided for under the primary custody schedule in Civil Rule 90.3(a).<sup>85</sup>

Based on the evidence presented, Mr. F has proven by clear and convincing evidence that manifest injustice would result if the child support amounts calculated under Civil Rule 90.3 were not varied for the period from November 2011 through April 2012. His child support should be calculated at \$50 per month for those six months. Mr. F is disabled due to the effects of COPD, a serious lung disease. He has been diagnosed as having “severe” COPD and his physician has little hope that he will ever again be able to join the work force. He has been granted disability benefits by Social Security, and it is possible he will not be able to pay the total balance of his child support arrears during his lifetime.<sup>86</sup> Lowering his payments to \$50 per month for the six months from November 2011 through April 2012 is warranted in this case.

The finding that Mr. F is entitled to a good cause variance for this period of time also reflects the consideration given to Ms. D’s situation. Ms. D is employed as a high school math teacher. She received \$57,929 in 2011 and has sufficient income and assets, such as a home and a timeshare in Mexico, to support herself and her family. Ms. D has four children in the home, but the oldest is 23, and although he is in college, he is old enough that he should be able to contribute somewhat to his own financial support and not rely entirely on the custodian. Also, Ms. D should be receiving the restitution that Mr. F was ordered to make in his criminal child support case. Those payments would be separate and distinct from any garnishment collected by CSSD for the administrative arrears that have accrued since his conviction, so it is possible she is receiving payments from more than one source.<sup>87</sup>

Mr. F should not receive a good cause variance as of May 2012. Limiting the time period for the variance under Civil Rule 90.3(c) to November 2011 through April 2012 seems incongruous, given the fact that Mr. F is disabled and practically unemployable. However, the obligees H and T became eligible to receive Children’s Insurance Benefits (CIB) in May 2012, when Mr. F became eligible for Social Security disability.<sup>88</sup> The CIB payments of \$252 paid to

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<sup>85</sup> See Civil Rule 90.3, Commentary VI.E.1.

<sup>86</sup> Ms. D allowed during the hearing that Mr. F has paid about \$40,000 in child support so far, apparently toward the restitution ordered in federal court. It is not possible to know the exact amount of his arrears, but with interest accruing regularly, the total still must be substantial.

<sup>87</sup> The recognition of two possible payments is not meant to suggest the custodian is getting a windfall. From the record it appears that Mr. F did not pay support for many years, and his financial circumstances suggest the arrears payments would be quite small.

<sup>88</sup> See 15 AAC 125.475.

Ms. D for the children entitle Mr. F to a dollar-for-dollar credit against his monthly ongoing child support order of \$324 per month, so his out-of-pocket payment will only be \$72 per month. He should not receive a good cause variance from \$72 per month. It would only be a reduction of \$22 per month because child support orders cannot go below \$50 per month in primary custody situations, pursuant to Civil Rule 90.3(c)(3).

#### **IV. Conclusion**

Mr. F met his burden of proving that the Modified Administrative Child Support and Medical Support Order was incorrect because the modified child support amount was not calculated from his actual income. His child support has been corrected, as discussed above, and yields two amounts, as reflected in Attachments A and B, because he is now receiving disability benefits. Further, Mr. F met his burden of proving by clear and convincing evidence that manifest injustice would result if the modified child support amount of \$416 per month calculated under Civil Rule 90.3 were not varied. Based on his disability and the unusual circumstances in this case, Mr. F's child support for November 2011 through April 2012 should be set at \$50 per month, based on Civil Rule 90.3(c) for this specific time period only.

Mr. F's ongoing support as of May 2012 is now correctly calculated at \$324 per month for two children (\$240 for one child). These figures include in his income the \$252 per month CIB payments that Ms. D receives on behalf of the children. Based on the CIB payments, Mr. F is entitled to a direct credit in the amount of \$252 per month, resulting in an out-of-pocket payment of \$72 per month, effective May 2012.

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

- Mr. F's child support obligation for H and T is modified to \$50 per month for two children, effective November 2011, based on the good cause provisions of Civil Rule 90.3(c);
- Mr. F's child support is further modified to \$324 per month for two children (\$240 for one child), effective May 2012, and ongoing;
- Mr. F is entitled to a direct credit in the amount of \$252 per month based on the CIB payments H and T receive;
- CSSD is authorized, without having to initiate a modification review, to make future adjustments in Mr. F's direct credit based on changes in the CIB payments made on his behalf for the children;
- All other provisions of the prior child support order issued in Mr. F's case, *In the*



*Matter of H L. F*, OAH No. 10-0287/10-0303-CSS (Comm'r of Revenue 2010), remain in full force and effect.

DATED this 3<sup>rd</sup> day of January, 2013.

Signed

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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 7<sup>th</sup> day of January, 2013.

By: Signed

\_\_\_\_\_  
Signature

Angela M. Rodell

\_\_\_\_\_  
Name

Deputy Commissioner

\_\_\_\_\_  
Title

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