

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

IN THE MATTER OF:)

E R. C)

OAH No. 12-0109-CSS

CSSD No. 001138479

DECISION AND ORDER

I. Introduction

The obligor, E R. C, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 3, 2012. The obligee child is C, 7. The custodian is M N. K.

The hearing was held on May 16, 2012. Mr. C appeared by telephone; the custodian was reached by telephone but did not want to participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. C's child support is modified to \$654 per month for one child, effective January 1, 2012. His request for a variance under Civil Rule 90.3(c) based on a claim of financial hardship is denied.

II. Facts

A. Background

Mr. C's child support obligation for C was set at \$376 per month in 2006.¹ On December 9, 2011, Ms. K requested a modification review.² On December 14, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ It does not appear that Mr. C provided income information. On April 3, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. C's child support to \$791 per month, effective January 1, 2012.⁴ He appealed on April 19, 2012, asserting he pays support for other children and that he has an older child who lives in the home with him for whom he was not given credit.⁵

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

B. Material Facts

Mr. C and Ms. K are the parents of C, 7. C lives in Alaska with Ms. K; Mr. C lives in Texas.

Mr. C has five children for whom he is obligated to provide support:

<u>Name</u>	<u>Year Born</u>	<u>Status</u>
E	1996	Lives in home with Mr. C
D	2001	Lives with other parent
C (this case)	2005	Lives with Ms. K
F	2006	Lives with other parent
B	2011	Lives in home with Mr. C

In addition to E and B, who live in his home, Mr. C is under a court order to pay support for D of \$470 per month.⁶ The obligor also pays support for F in the amount of \$645 per month.⁷ According to CSSD, Mr. C is current on these orders.⁸

Mr. C is in the military and holds the rank of E-6 with 14 years of service.⁹ His base pay is \$3,498.20 per month, which equals \$41,978.40 annually.¹⁰ In addition to his base pay, he receives cash allotments of \$1,395 per month for Basic Allowance for Housing (BAH) and \$348.44 per month for Basic Allowance for Subsistence (BAS). These benefits total \$20,921.28 on an annual basis.¹¹ Mr. C's 2012 gross income is the total of his annual base salary and allotments, all of which total \$62,899.68.¹² He does not receive a PFD.

Mr. C and his spouse, who does not work,¹³ have two children in the home, E and B. He listed regular expenses of about \$3,841 per month, which includes \$1,300 for rent; \$600 for food; \$790 for utilities and other household costs, including cable and cell phones; \$450 for the payment on a 2010 Mitsubishi purchased in January 2012; \$240 for gasoline; \$60 for vehicle maintenance; \$60 for military haircuts; \$31.72 for TriCare dental premiums; and \$310 for the payments on three credit cards or loans.¹⁴

⁶ Exh. 9 at pg. 2.

⁷ Exh. 13 at pg. 1.

⁸ Submission to Record at pg. 1.

⁹ Exh. 16 at pg. 3.

¹⁰ Exh. 16 at pg. 2.

¹¹ Exh. 16 at pg. 2.

¹² Exh. 16 at pg. 2.

¹³ See Exh. 11.

¹⁴ Exh. 11.

Little is known of Ms. K's circumstances other than what can be gleaned from her list of expenses.¹⁵ She is single and has three children in the home. She is self-employed and earns about \$2,100 per month. She also barter with a local restaurant for food valued at \$245 in exchange for cleaning the restaurant. She listed her usual expenses at about \$2,970 per month, which includes \$1,379 for rent; \$450 for food; \$580 for utilities and other household costs, including a cell phone; \$160 for gasoline; \$25 for vehicle maintenance (\$299 annually divided by 12); \$78 for vehicle insurance; \$40 for home and/or business insurance; \$148 for health and life insurance; \$110 for a student loan, which is deferred; and \$25 for miscellaneous financial fees. Ms. K has a \$3,500 debt with Cornerstone Credit Services that is not being paid.¹⁶

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁷ 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. Mr. C's child support was previously set at \$376 per month, so a child support calculation over \$432.40 would be sufficient to modify his child support obligation at this time.¹⁸

A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective on January 1, 2012.¹⁹

The person who filed the appeal, in this case, Mr. C, has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.²⁰

A. *Child Support Calculation*

Mr. C is not contesting the income figures CSSD used in setting his modified child support amount. He is only challenging the calculation to the extent that it does not include deductions for all the children for whom he is obligated to pay support. CSSD gave Mr. C a deduction for paying support for D pursuant to the court order in that case. However, CSSD did not give Mr. C a deduction for supporting E in the home, most likely because the agency did not

¹⁵ Exh. 10.

¹⁶ Exh. 10.

¹⁷ AS 25.27.190(e).

¹⁸ $\$376 \times 115\% = \432.40 .

¹⁹ 15 AAC 125.321(d). In this case, the notice was issued on December 14, 2011. Exh. 3.

²⁰ 15 AAC 05.030(h).

yet know she lives with him. As to F, for whom he pays support, and B, who lives with him, CSSD's position is that Mr. C is not entitled to a deduction for supporting either of them.

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(a)(1)(C) states that an obligor parent is entitled to a deduction from income for "child support . . . payments arising from prior relationships which are required by other court or administrative proceedings and actually paid" A companion provision of the rule, Civil Rule 90.3(a)(1)(D), provides that a parent is entitled to a deduction from income for the cost of providing support "for children from prior relationships living with the parent."²¹

Both deductions are applicable in Mr. C's case. The obligor is entitled to a deduction from income for paying court-ordered support for D. The deduction was previously \$767 per month, but it was modified downward to \$470 per month in 2007.²² That amount should be inserted into the deductions section of the child support worksheet.

Mr. C is also entitled to a deduction from income for supporting his oldest child, E, in the home. The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child to someone else.²³ CSSD calculated the deduction for Mr. C and the result is \$934 per month.²⁴ That amount should also be included as a deduction from income in the obligor's child support calculation.

After the hearing, CSSD ran a new calculation of Mr. C's obligation to support C. It reflects both the \$470 payment Mr. C makes for D, and the \$934 deduction CSSD calculated for him having E in the home. The result is a modified child support amount for C of \$654 per month.²⁵ This calculation is based on Mr. C's total estimated income and includes the proper mandatory deductions for federal income taxes, Social Security and Medicaid, for supporting his oldest child in the home, and for paying support for the other child who is older than C. CSSD recommends that Mr. C's child support be modified to this amount.

CSSD's calculation is correct. Mr. C is entitled to a deduction for supporting both E and D, but not for F and B. Civil Rule 90.3 states that in general, an obligor parent's child support

²¹ Civil Rule 90.3(a)(1)(D).

²² See Exh. 9 at pg. 2.

²³ *Id.*

²⁴ Exh. 16 at pg. 1.

²⁵ Exh. 17 at pg. 1.

obligation should not be reduced for that parent's *younger* children.²⁶ However, if the failure to reduce the support obligation would cause "substantial hardship" to the subsequent children, a reduction is allowed.²⁷ Whether Mr. C may be entitled to a reduction in the calculated amount based on a financial hardship is discussed below.

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."²⁸ 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).²⁹

Based on the evidence in its entirety, Mr. C has not proven by clear and convincing evidence that manifest injustice would result if the calculated child support amount were not varied. In applying the legal standard to Mr. C's case, a primary factor to be taken into consideration is that he has options for changing his financial circumstances, such as having the person he lives with find employment and contribute to the household monetarily. Another thing Mr. C can do is to have his support obligation for F modified downward to reflect the fact that his oldest child lives in the home with him and also that he is paying support ordered by either a court or an administrative agency (CSSD) for two children older than F, not just one. And although not a specific part of the analysis, it should be noted that Mr. C purchased a vehicle in January 2012, *after* the notice that a modification had been requested was distributed on December 14, 2011.³⁰

Thus, Mr. C is not entitled to relief based on manifest injustice under Civil Rule 90.3(c). His child support should be modified to \$654 per month, effective January 1, 2012.

²⁶ Civil Rule 90.3, Commentary VI.B.2.

²⁷ Civil Rule 90.3, Commentary VI.B.2.

²⁸ Civil Rule 90.3(c).

²⁹ See Civil Rule 90.3, Commentary VI.E.1.

³⁰ See Exh. 3.

IV. Conclusion

Mr. C met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order that CSSD issued on April 3, 2012, was incorrect. The calculation has now been corrected to \$654 per month, which reflects the support he provides for both children older than C. This figure should be adopted.

Mr. C has not proven by clear and convincing evidence that manifest injustice would result if his child support obligation were not varied from the revised amount calculated by CSSD after the hearing. A modified ongoing child support amount of \$654 per month represents a balance of the totality of the circumstances in this case and should be adopted. A variation under Civil Rule 90.3(c) was requested by Mr. C, but not granted.

V. Child Support Order

- Mr. C's child support obligation for C is modified to \$654 per month for one child, effective January 1, 2012, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated April 3, 2012, remain in full force and effect.

DATED this 5th day of December, 2012.

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 7th 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.]