

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

| | | |
|-------------------|---|---------------------|
| IN THE MATTER OF: |) | |
| |) | OAH No. 12-0117-CSS |
| J R. H |) | CSSD No. 001052500 |
| _____ |) | |

DECISION AND ORDER

I. Introduction

The obligor parent, J R. H, has disputed the upward modification of his child support obligation for one child from \$239 per month to \$1,227 per month. E S is the custodian of record. The obligee child is S, age 17.

A hearing was held on May 24, 2012. Mr. H participated by telephone. Child Support Specialist Erinn Brian represented the Child Support Services Division (CSSD) and also participated by telephone. Ms. S was unable to participate.¹

Based on the evidence in the record, CSSD's Modified Administrative Child Support and Medical Support Order issued April 20, 2012 should be affirmed.

II. Facts

A. Background

Mr. H's child support obligation for S was set at \$239 for one child effective December 1, 2000. This amount remained undisturbed until, on March 15, 2012, Ms. S requested modification.² CSSD mailed a Notice of Petition for Modification of Administrative Support Order on March 20, 2012.³ As requested by CSSD, Mr. H timely provided income and insurance information. Using this information, CSSD determined that, because of the passage of time and the increase in support payable, there was a material change of circumstance necessitating a granting of Ms. S's modification request.⁴

¹ She was called at the phone number she provided, but the call went unanswered.
² Exhibit 2.
³ Exhibit 3.
⁴ Exhibit 4.

Mr. H appealed that decision, contending the increase in child support from \$239 per month to \$1,227 per month would be difficult for his family to absorb and that he also pays over \$1,000 a month in child support for a child younger than S, named L.⁵

B. Material Facts

Mr. H agrees that his 2012 earnings will likely exceed \$105,222.⁶ He is married and has three children, all younger than S, living in his house. Two of these children are his biological children from a prior relationship and one child is his wife's child from a prior relationship. Neither receive child support for these children. Mr. H's wife has not worked since his daughters have moved in because the daughters suffer from behavioral problems and require constant supervision.⁷ The family's monthly expenses, excluding child support, total \$3,801.⁸

Mr. H is ordered to pay child support in the amount of \$1,094 per month for L. He has not requested a modification of this support amount. If he did, it is likely that he would receive a deduction for support actually paid for S.⁹

III. Discussion

A. Applicable Law

A parent is obligated both by statute and at common law to support his or her children.¹⁰ Alaska 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."¹¹ If the newly calculated child support amount is more than a 15% change from the previous order, Alaska 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

⁵ Exhibit 5.

⁶ This amount does not include overtime (some of which has already been earned for 2012) or bonuses.

⁷ Testimony of H.

⁸ Testimony of H. The monthly expenses include \$800 rent, \$500 food, \$270.66 propane, water, trash and natural gas, \$500 electricity, \$121 cable and internet; \$453 cell phone (four phones), \$835 gas, maintenance and auto insurance; \$22 renters insurance; \$300 entertainment, personal care and other misc.

⁹ An obligor may receive a deduction for supporting a child from a prior relationship by either 1) actually paying support as required by a court order or administrative proceeding, or 2) the prior child actually lives with the parent. Alaska Civil Rule 90.3(a)(1)(C), (D).

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ AS 25.27.190(e).

served with notice that a modification has been requested.¹² Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹³

Child support is usually calculated as a percentage of the obligor parent's income.¹⁴ The obligation should be based on an estimate of what the parent will actually earn when the support obligation is due.¹⁵ In this case, that amount is \$105,222. Once child support is calculated as a percentage of the obligor's income, it is from this figure that Mr. H's request for a variance is considered.

B. Income for Purposes of Child Support

For 2012, Mr. H agrees that he should earn at minimum an annual gross wage of \$105,222. When this information is inserted into CSSD's online child support calculator, the resulting child support obligation calculated pursuant to Civil Rule 90.3(a) is \$1,227 per month for one child.¹⁶

C. Hardship Variance

As part of his appeal, Mr. H asserted that, unless the amount of child support ordered were varied, his present family would incur a hardship. 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.^[17]

"Good cause" may be found if there are unusual circumstances which require a variation in the amount of support ordered to avoid manifest injustice or a substantial hardship to subsequent children.¹⁸ Manifest injustice, in turn, requires a finding that a reasonable person would be convinced that the award is either unjustly large or unjustly small.¹⁹ 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.

¹² 15 AAC 125.321(d).

¹³ 15 AAC 05.030(h).

¹⁴ Alaska Rule Civil Procedure 90.3(a)(2).

¹⁵ Alaska Rule Civil Procedure, Commentary III.E.

¹⁶ Exhibit 5 at 6.

¹⁷ Alaska Rule Civil Procedure 90.3(c)(1).

¹⁸ Alaska Rule Civil Procedure 90.3(c)(1); 15 AAC 125.075.

¹⁹ 15 AAC 125.080.

Mr. H's monthly expenses total \$3,801 per month. His average adjusted monthly income is anticipated to be \$6,136.82.²⁰ After all monthly expenses, including outstanding child support obligations, are deducted; Mr. H's monthly expenses exceed his monthly income. However, if he desires more disposable income, he can petition for modification of the subsequent child's support order and look at curbing household expenses, such as well over \$400 in cellular expenses.

A variance is not appropriate in this instance. This is especially true when Mr. H has options available to him without asking S to bear the financial burden. Additionally, S will be 18 soon and graduated from high school. Therefore, it is possible that Mr. H's obligation to support S at the amount Mr. H is legally obligated to pay could last for no more than a year.

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

IV. Conclusion

Mr. H did not meet his burden of proving by a preponderance of the evidence that the April 20, 2012 Modified Administrative Child Support and Medical Support Order was incorrect. When calculated pursuant to Alaska Rule Civil Procedure 90.3(a), Mr. H's monthly child support obligation for one child should be \$1,227 per month effective April 1, 2012. Nor has Mr. H 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. H's ongoing child support obligation is set at \$1,227 per month, effective April 1, 2012.
- All other provisions of the April 20, 2012 Modified Administrative Child and Medical Support order remain in effect.

DATED this 13th day of June, 2012.

By: Signed _____
Rebecca L. Pauli
Administrative Law Judge

²⁰ 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.

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 2nd day of July, 2012.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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