



She appealed on May 23, 2012, asserting she cannot afford the amount calculated due to her limited income.<sup>6</sup>

*B. Material Facts*

Ms. H has previously worked as a personal care attendant (PCA) for elderly clients. She has been paid \$15 per hour, but not for full-time work.<sup>7</sup> A paystub dated June 29, 2012, indicates her year-to-date income is \$1,698.75.<sup>8</sup> Ms. H quit her PCA job because the friend who was providing the obligor transportation to her client's home has moved out of state and there is no bus service available to that location. Ms. H lives 10 miles from that former client's home.

In addition to her wages, Ms. H receives Social Security Disability benefits in the amount of \$738 per month. She should be receiving \$928 per month, but the Social Security Administration is currently penalizing her for overpayment, which will last for approximately one year. The monthly amount she is currently receiving yields a total of \$8,856 annually.

Ms. H has suffered back injuries from lifting paralyzed patients. Beginning in late 2011 and continuing into early 2012, Ms. H was on a workers' compensation claim and received benefits through February 14, 2012.<sup>9</sup>

Based on her income from wages, Social Security Disability payments and the workers' compensation claim, CSSD correctly estimated Ms. H's 2012 income at \$10,277.50.<sup>10</sup> A child support amount calculated from this income figure equals \$231 per month for two children (\$171 per month for one child).<sup>11</sup>

The obligor has minimal expenses every month. The rent is \$940, of which \$718 is her portion. The remainder is provided through housing assistance. Currently, Ms. H is behind on her rent and is making payments of \$200 per month. She lives alone and pays \$80 per month for food and in addition receives food from the local food bank. Currently, her landlord helps her with utilities costs over about \$40 per month. Her cell phone and Internet service cost \$100 per month, in addition to her house telephone, which is \$80 per month. Ms. H spends about \$50-\$100 per month on taxi service. Her driver's license is currently suspended.

---

<sup>6</sup> Exh. 7.

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

<sup>8</sup> Received from the obligor on July 5, 2012.

<sup>9</sup> Exh. 9 at pg. 1.

<sup>10</sup> Exh. 6 at pg. 6.

### III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>12</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. 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 as of February 1, 2012.<sup>13</sup>

The person who filed the appeal, in this case, Ms. H, has the burden of proving by a preponderance of the evidence that the agency’s calculations are incorrect.<sup>14</sup>

#### A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.<sup>15</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 are considered income and must be included in an obligor’s child support calculation.<sup>16</sup>

CSSD calculated Ms. H’s child support that \$231 per month for two children or \$171 per month for one child.<sup>17</sup> This is a correct calculation of her child support obligation. Whether Ms. H may be entitled to a reduction in the calculated amounts 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

---

11

*Id.*

12

AS 25.27.190(e).

13

15 AAC 125.321(d). In this case, the notice was issued on January 31, 2012. Exh. 4.

14

15 AAC 05.030(h).

15

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

16

Civil Rule 90.3, Commentary III.A.10-11.

17

Exh. 6 at pg. 6.

injustice would result if the support award were not varied.”<sup>18</sup> 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).<sup>19</sup>

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. H did not prove by clear and convincing evidence that manifest injustice would result if the child support amounts calculated under Civil Rule 90.3 were not varied. She was previously off work and receiving workers’ compensation benefits, but that situation ended in February 2012. Ms. H testified that she quit her job after the friend who provided her transportation left the state, but the evidence is not sufficient to prove that she had no other options for getting to work. Moreover, she testified that she utilizes taxi service regularly. Her rent is rather steep for her income, but Ms. H is currently paying only \$200 per month. Obviously, Ms. H’s finances are extremely tight, but under the circumstances of her case, she has not established that manifest injustice will result in the absence of a variance. Ms. H is free to return to work at any time. Thus, she has not proven by clear and convincing evidence that she is entitled to a variance based on financial hardship.

#### **IV. Conclusion**

Ms. H did not meet her burden of proving by a preponderance of the evidence that her modified child support amount was incorrect. Neither did she prove by clear and convincing evidence that manifest injustice would result if her modified child support amount calculated under Civil Rule 90.3 were not varied. CSSD correctly calculated Ms. H’s child support pursuant to Civil Rule 90.3, without a hardship variation. The Modified Administrative Child Support and Medical Support Order should be affirmed.

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

- CSSD’s Modified Administrative Child Support and Medical Support Order dated May 15, 2012, is affirmed;
- Ms. H’s child support obligation for L and O is modified to \$231 per month for two children (\$171 per month for one child), effective February 1, 2012.

---

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

<sup>19</sup> See Civil Rule 90.3, Commentary VI.E.1.

DATED this 8<sup>th</sup> day of August, 2012.

By: 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 12<sup>th</sup> day of September, 2012.

By: Signed  
Signature  
Angela M. Rodell  
Name  
Deputy Commissioner  
Title

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