

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

IN THE MATTER OF:)

K E. B)

OAH No. 12-0154-CSS

CSSD No. 001104550

DECISION AND ORDER

I. Introduction

The obligor, K E. B, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on May 30, 2012. The obligee child is S, 11. The custodian is F A. T.

The hearing was held on July 3, 2012. Mr. B appeared by telephone; the custodian could not be reached by telephone and did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. B's child support is modified to \$300 per month for one child, effective May 1, 2012. His request for a variance under Civil Rule 90.3(c) based on a claim of financial hardship is granted.

II. Facts

A. Background

Mr. B's child support obligation for S was set at \$50 per month in 2001.² On March 26, 2012, Ms. T requested a modification review.³ On April 3, 2012, CSSD issued a Notice of Petition for Modification of Administrative Support Order.⁴ Mr. B did not provide income information.⁵ On May 30, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. B's child support to \$538 per month.⁶ He appealed on June 12, 2012, asserting he cannot afford the higher amount.⁷

¹ Ms. T's telephone contact number was called, but it was out of service, so she did not participate, nor has she called the Office of Administrative Hearings to inquire about the appeal.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ CSED's Pre-Hearing Brief at pg. 1.

⁶ Exh. 4.

⁷ Exh. 7.

B. Material Facts

Mr. B resides in rural Alaska, in the village of No Name. He has been employed by the No Name Traditional Council for at least the last three years.⁸ His wages have increased steadily during the course of his employment there. In 2009, he earned \$17,717.45; in 2010 he received \$27,202.65; and in 2011, his wages were \$37,787.19.⁹ During the first quarter of 2012, he earned \$8,952.82, which is on track to yield annual income in 2012 of \$35,811.28.¹⁰

Mr. B lives with his fiancé, M, 25. They have three children in the home – Mr. B’s oldest child, K, 15, and their two children, B, 5, and S, 2. M is not employed. Mr. B has regular expenses of about \$2,130 per month, which includes \$106 for rent; \$600 for food; \$120 for average electricity costs;¹¹ \$255 for fuel oil;¹² \$120 for telephone; \$50 for cable; \$243 for the payment on a snow machine; \$173 for gasoline;¹³ \$8 for entertainment; \$150 per personal care items; \$30 for tobacco; \$200 for a Discover card; and \$75 for a Capital One card. Mr. B also uses a JC Penney card for purchases of about \$300-\$400 per year.

Nothing is known of Ms. T’s circumstances other than what can be gleaned from two child support guidelines affidavits she submitted to CSSD on April 12, 2012. She listed her total 2011 income at \$22,660, which includes earnings of \$18,745 and unemployment benefits of \$3,915, but does not include the Permanent Fund dividend.¹⁴ For 2012, she reported zero income, but wrote on the top of the sheet that she had “provided all paystubs for this year so far.”¹⁵ Apparently she is or was working at some point in 2012, but did not specify her year-to-date income and CSSD has not filed the paystubs to which she was referring. Ms. T’s child support guidelines affidavits indicated she has three children in the home – S, the child in this case, C, 9, and L, 1½.

⁸ Exh. 6.

⁹ *Id.*

¹⁰ \$8952.82 x 4 = \$35,811.28.

¹¹ Mr. B pays between \$140-\$180 during the winter and \$80 per month during the summer.

¹² Mr. B pays between \$300-\$400 during the winter and about five gallons per week in the summer. Fuel oil is currently \$7.40 per gallon, according to Mr. B.

¹³ Mr. B pays between \$90-\$100 during the summer and \$250 per month in the winter.

¹⁴ Exh. 9 at pg. 1.

¹⁵ Exh. 9 at pg. 2.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁶ 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. B’s child support was previously \$50 per month, so a child support calculation over \$57.50 would be sufficient to modify his child support obligation.¹⁷

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 May 1, 2012.¹⁸

The person who filed the appeal, in this case, Mr. B, has the burden of proving by a preponderance of the evidence that the agency’s calculations are incorrect.¹⁹

A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.²⁰ 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.” A parent who supports an older child in the home is entitled to an additional deduction from income.²¹ The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.²²

Mr. B’s child support was set at \$50 per month in 2001.²³ CSSD set the modified child support amount at \$538 per month, but filed a corrected calculation after the hearing. The agency recommends that Mr. B’s child support be set at \$436 per month. This calculation is based on Mr. B’s total estimated income and includes the proper mandatory deductions for federal income taxes, Social Security and Medicaid, and for supporting one prior child in the home.²⁴

16 AS 25.27.190(e).

17 $\$50 \times 1.15 = \57.50 .

18 15 AAC 125.321(d). In this case, the notice was issued on April 3, 2012. Exh. 3.

19 15 AAC 05.030(h).

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

21 Civil Rule 90.3(a)(1)(D).

22 *Id.*

23 Exh. 1.

24 Exh. 7.

CSSD's calculation is now correct. Whether Mr. B 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."²⁵ 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).²⁶

Based on the evidence in its entirety, Mr. B has proven by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. In applying the legal standard to Mr. B's case, a primary factor to be taken into consideration is that he and his fiancé have three children in the home and their monthly expenses just equal his take home pay without including child support. M is not working, but there is little opportunity for employment for her in No Name. If she were employed, they would have to pay child care, at least for the youngest child.

Thus, Mr. B should be granted some relief under Civil Rule 90.3(c). Still, his child support should be increased, given the fact that his income has increased over the years since his last child support calculation. Under these circumstances, Mr. B's modified child support should be set at \$300 per month. This amount will relieve some of the financial burden on Mr. B yet it will also provide Ms. T with at least a modest increase in financial support for S.

IV. Conclusion

Mr. B met his burden of proving 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 prior to the hearing. A modified ongoing child support amount of \$300 per month represents a balance of the totality of the circumstances in this case and should be adopted. This

²⁵ Civil Rule 90.3(c).

²⁶ See Civil Rule 90.3, Commentary VI.E.1.

represents a variation under Civil Rule 90.3(c) from the \$436 per month calculated by CSSD from Mr. B's income.

V. Child Support Order

- Mr. B's child support obligation for S is modified to \$300 per month for one child, effective May 1, 2012, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated May 30, 2012, remain in full force and effect.

DATED this 23rd day of July, 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 10th day of August, 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.]