

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

In the matter of:	)	
	)	OAH No. 12-0177-CSS
K L. A	)	CSSD No. 001122525
_____	)	

**DECISION AND ORDER**

**I. Introduction**

K L. A appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on June 1, 2012, increasing his support obligation from \$292 to \$706 per month effective April 1, 2012. The obligee child is L M. M, born 00/00/00. The custodial parent is E M.

The hearing took place on July 30, 2012. Erinn, Brian, Child Support Specialist, represented CSSD. Mr. A and Ms. M participated by telephone. Following the hearing, the record remained open until August 10, 2012 so that CSSD could respond to new information Mr. A and Ms. M supplied during the hearing on the issue of hardship, and so that the two parents could reply to the response, if they wished. The agency submitted post-hearing materials on this issue (including exhibits Ms. M had sent to the agency on August 3); Mr. A and Ms. M elected to submit nothing further directly to this office.

Mr. A raises three issues in his appeal. First, he observes that the income calculation included the Permanent Fund Dividend (PFD) payment amount for 2011, and yet he received no PFD in 2011. Second, he is concerned that the agency has not taken into account his daughter's eligibility for Indian Health Service coverage. Third, he seeks a reduction in the modified support amount on the basis of hardship, although he acknowledges that his support payment should increase to some degree.

**II. Permanent Fund Dividend**

*A. Facts*

The agency calculated Mr. A's child support for L using standard Rule 90.3 methodology and starting from a gross income of \$53,934.90.<sup>1</sup> The bulk of this income came from

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<sup>1</sup> See Ex. 5, p. 8.

annualizing Mr. A's 2012 wages in a new, higher-paying job with No Name. Mr. A has no quarrel with the wage figure. However, CSSD added \$1,174 to the income calculation for a PFD. This amount corresponds to the 2011 PFD distribution to Alaska residents.

Mr. A did not receive a PFD in 2011. He did, however, apply for a PFD in 2012, and he expects his application to be granted. He has received no communications from the PFD Division suggesting that it will not be granted.<sup>2</sup>

### *B. Discussion*

Child support is calculated based on “the income which will be earned when the support is to be paid”—that is, actual or potential *future* income.<sup>3</sup> Mr. A expects to receive a dividend in 2012, and therefore the amount of the anticipated PFD should be included in the income on which his support obligation is calculated. Because the amount of the 2012 dividend has not yet been announced, the Department of Revenue, by longstanding practice, uses the amount of the previous year's dividend as a proxy or approximation of the likely amount of the next dividend. Bearing in mind that dividends are calculated on a multi-year rolling average of fund earnings, this is a reasonable practice.<sup>4</sup>

### **III. Medical Insurance**

Mr. A is concerned about the standard language in the order requiring him to include the L in any health insurance policy available to him at reasonable cost, and indicating that he may be billed for half of insurance costs if the other parent needs to purchase health insurance for the child. He points out that L is eligible for Indian Health Service (IHS) coverage.<sup>5</sup> It was agreed during the hearing that, assuming he is correct that L has IHS coverage, Mr. A can avoid any health insurance expense if he brings L's IHS coverage to the caseworker's attention; the order will not be construed to require him to purchase insurance in addition to IHS coverage. There is no basis to modify the terms of the support order, however, which simply reflect the health insurance requirements of AS 25.27.060(c).

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<sup>2</sup> Testimony of Mr. A.

<sup>3</sup> Civil Rule 90.3 Commentary, Part III-E.

<sup>4</sup> See *In re E.M.A.*, OAH No. 10-0094-CSS (Dep't of Revenue, adopted 2010), at 6 & n.27 (finding practice reasonable).

<sup>5</sup> The IHS coverage is confirmed by medical billing records such as Ex. 10, p. 8.

#### **IV. Hardship**

##### *A. Facts*

The modified support order calculated child support using the standard formula in Alaska Civil Rule 90.3. The facts below, drawn largely from testimony, are those that relate to possible adjustment of that result on the basis of hardship.

Ms. M has primary physical custody of L. Mr. A works one full- time job and a second part-time job. His wife, who is pregnant and already cares for four children at home, does not work. Net of taxes, Mr. A earns about \$3,700 per month. His presumptive child support obligation under Rule 93 is \$8,467 per year or \$706 per month.<sup>6</sup>

Mr. A lives in a home with four children, two (soon to be three) of which are biologically his. The other two children in the home are his wife's children by a prior relationship, whom he has not adopted. One of those children receives child support in an unknown amount.

Mr. A's household lives an average to modest lifestyle for an urban family. They rent a home for \$1500 per month, including utilities. They spend \$1400 per month on food (a relatively high figure), but only about \$140 per month on entertainment and Internet. They share one vehicle, a Hyundai, which they purchased in 2007. Gasoline and maintenance cost \$450 per month. They have a relatively small personal care budget of \$100 per month for the whole family. Nothing is spent on alcohol or tobacco.

Mr. A's total monthly expenses, exclusive child support and of any payment on his debts apart from the car loan, exceed his take-home pay by several hundred dollars. With a child support obligation of \$706, his expenses exclusive of debt payments will exceed his take home pay by well over \$1000. This figure is ameliorated to a degree by the child support paid for one of his wife's children, which is presumably used to contribute to household expenses.

Ms. M lives in No Name in a household consisting of herself and L. They pay no rent because they live in a house owned by a family member, but they have heating and electric expenses of about \$600 per month. The quality of the housing apparently is not high. They operate a vehicle appropriate to the location. They spend \$700 per month on food, of which \$600 is covered by Food Stamps at this time. Their discretionary expenses such as entertainment, cable, and Internet come to a similar total as those of the A household. Nothing is

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<sup>6</sup> See Ex. 5, p. 8.

spent on alcohol or tobacco. Ms. M's monthly income is generally less than these expenses.<sup>7</sup> She has considerable debts, apparently including a debt for medically-related travel for L, although it may be that some of the medical debt could be covered by others.<sup>8</sup>

*B. Discussion*

A child support obligation may be varied from the standard calculation if unusual circumstances exist and those circumstances make application of the usual formula unjust.<sup>9</sup> The injustice, characterized as "manifest injustice" in the rule, must be demonstrated by clear and convincing evidence.<sup>10</sup> The tribunal must consider the circumstances of the custodial parent when making the evaluation of whether there would be manifest injustice in applying the usual formula.<sup>11</sup> The rule goes on to permit the tribunal to weigh the "amount of support which is just and proper for the parties to contribute toward the nurture and education of their children."<sup>12</sup> This inquiry is not limited to the child subject to the order: the tribunal "should reduce child support if the failure to do so would cause substantial hardship to the 'subsequent' children" of the obligor.<sup>13</sup> Finally, the Alaska Supreme Court has noted that

debts of the obligor, even if substantial, normally will not justify a reduction in support. The obligation to provide child support is more important than the obligation to fulfill most other obligations.<sup>14</sup>

In keeping with this last principle, even though Mr. A has substantial debts, his obligation to make payments on those debts has not been considered in this evaluation, apart from debt service to retain his single vehicle.

In this case, the two households currently live in similar circumstances. CSSD's original proposed support amount would place Mr. A's household into a serious monthly deficit situation, perhaps dramatically so. A difficulty is that the exact magnitude of the shortfall is

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<sup>7</sup> See Ex. 10, p. 3.

<sup>8</sup> See Ex. 10. There is not enough information to determine whether the providers will truly look to Ms. M of for payment.

<sup>9</sup> Civil Rule 90.3 Commentary, Part VI-B.

<sup>10</sup> Alaska R. Civ. P. 90.3(c)(1).

<sup>11</sup> Civil Rule 90.3 Commentary, Part VI-B.

<sup>12</sup> Alaska R. Civ. P. 90.3(c)(1).

<sup>13</sup> Civil Rule 90.3 Commentary, Part VI-B-2.

<sup>14</sup> Civil Rule 90.3 Commentary, Part VI-B-4.

undeterminable because we do not know the child support paid to one of the children living in the A household.

CSSD does not disagree that Mr. A has carried his burden to show that his support should be “slightly” lower.<sup>15</sup> Because the law places such a high burden on a party seeking to depart from the guidelines, it is not possible on the present limited record to justify a large departure. A reduction of the support amount to \$585 per month may help to make financial solvency an attainable goal for Mr. A’s household, while still doubling the \$292 in monthly support that has previously been available to L. A reduction below \$585 has not been justified by clear and convincing evidence.

**V. Conclusion**

Mr. A proved that his child support obligation for L should be modified to \$585 per month beginning in April 2012. The child support amount was not calculated using a formula in Civil Rule 90.3(a) or (b) because unusual circumstances were shown, as detailed above.

**VI. Child Support Order**

1. K L. A is liable for child support in the amount of \$585 per month for one child effective April 1, 2012 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated June 1, 2012 remain in full force and effect.

DATED this 17<sup>th</sup> day of August, 2012.

By: Signed  
Christopher Kennedy  
Administrative Law Judge

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<sup>15</sup> CSSD’s Post-Hearing Brief.

**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 within 30 days after the date of this decision.

DATED this 10<sup>th</sup> day of September, 2012.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Administrative Law Judge  
Title

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