

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

IN THE MATTER OF:)

J A. E)

OAH No. 12-0222-CSS

CSSD No. 001122761

DECISION AND ORDER

I. Introduction

The obligor, J A. E, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on July 3, 2012. The obligee child is T, 9. The custodian is N A. K.

The hearing was held on August 9, 2012. Mr. E appeared by telephone; Ms. K was contacted 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. E's child support for T is modified to \$649 per month for one child, effective May 1, 2012. The obligor's request for a "good cause" variance under Civil Rule 90.3(c) based on a claim of financial hardship is denied.

II. Facts

A. Background

Mr. E's child support obligation for T was set at \$448 per month in 2004.¹ On April 24, 2012, he requested a modification review.² On April 26, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ On July 3, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. E's modified child support at \$782 per month, effective May 1, 2012.⁴ He appealed on July 13, 2012, and prior to the hearing submitted his most recent paystubs, which CSSD used to calculate a new draft support amount of \$700 per month.⁵

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Exh. 4.
5 Exhs. 5-7.

B. Material Facts

Mr. E and Ms. K are the parents of T, 9. T lives with Ms. K full-time.

Mr. E moved to No Name from No Name in early 2012.⁶ He had worked for the municipality there as a harbor officer earning \$23 per hour. He relocated because his fiancée had obtained a job in No Name and he did not think that No Name was a good place to raise children. Mr. E is currently working as a truck driver earning \$19 per hour. He receives up to one hour of overtime daily but testified his overtime would be significantly lower during the winter. After his relocation, Mr. E had two short-term jobs, but his earnings from each was fairly insignificant.⁷

Mr. E worked as a harbor officer at least from 2009 forward.⁸ His earnings have risen steadily, with the highest amount of \$53,280.21 being received in 2011.⁹ Mr. E received \$13,654.73 during the first quarter of 2012, after which time he moved to No Name. CSSD was asked to estimate Mr. E's total projected earnings for 2012 by adding his first-quarter 2012 wages to a projected amount he would receive through the end of the year from his current employment. After the hearing, CSSD estimated Mr. E's total 2012 income would be approximately \$46,241.32.¹⁰ A child support amount calculated from his total estimated income for 2012 yields a figure of \$649 per month for one child.¹¹

Mr. E submitted a list of his expenses. On a monthly basis, he pays \$850 for rent; \$800 for food; \$279.96 for utilities, including Internet service, cable and a cell phone;¹² \$500 for the payment on a 2008 Toyota 4Runner; \$150 for gasoline; \$83.33 for vehicle maintenance;¹³ \$100 for vehicle insurance; \$50 for credit card bills; \$275 for daycare; and \$100 for laundry.¹⁴ Mr. E did not list any regular expenses for entertainment or personal care items. It is more likely than

⁶ Unless otherwise stated, the findings of fact are based on Mr. E's hearing testimony.

⁷ Exh. 8 at pg. 1.

⁸ Mr. E's earnings have been reported by the Alaska Department of Labor and Workforce Development for the years from 2009 forward. His work history and earnings prior to that year are unknown.

⁹ In 2009, he received \$42,098.03, and in 2010 he earned \$49,375.35. Exh. 8 at pg. 1.

¹⁰ Exh. 10.

¹¹ Exh. 10.

¹² $\$59.99 + \$30 + \$19.99 + 79.99 + \$89.99 = \$279.96$.

¹³ He listed \$1,000 annually for vehicle maintenance; $\$1,000 \div 12 = \83.33 per month.

¹⁴ Exh. 9.

not that he has expenditures in these categories but doesn't recognize them as such or chose not to report them.

Mr. E has a child younger than T living in the home; her name is K and she will be six years old in December 2012. His fiancée is fully employed at a local hospital but she expends most of her earnings on her family overseas.

Since Ms. K chose not to participate in the hearing, virtually nothing is known of the financial circumstances of her household.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁵ 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. E's child support was previously set at \$448 per month, so child support calculated at \$515.20 or higher would be sufficient to modify his child support obligation.¹⁶

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, 2012.¹⁷

The person who filed the appeal, in this case, Mr. E, has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.¹⁸

A. Child Support Calculation

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.” In response to the petition for modification, CSSD set Mr. E's modified child support at \$782 per month.¹⁹ This figure was calculated based on Mr. E's full-time annual earnings at his prior job, so it overestimated his income because he is no longer working as a harbor officer.

After the hearing, CSSD made another estimate of Mr. E's expected annual income for 2012. The result, \$46,241.32, is more accurate in that it combines his actual income for the first

¹⁵ AS 25.27.190(e).

¹⁶ \$448 x 115% = \$515.20.

¹⁷ 15 AAC 125.321(d). In this case, the notice was issued on April 26, 2012. Exh. 3.

¹⁸ 15 AAC 05.030(h).

¹⁹ Exh. 4 at pg. 6.

quarter of the year, and his projected income through the end of 2012 at his current job. Other than waiting for Mr. E's year-end paystubs or tax documents, this is the best estimate of his likely 2012 income. That income figure results in a modified child support amount of \$649 per month for one child. Mr. E's modified child support is now correctly calculated. Whether he may be entitled to a reduction in that 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."²⁰ It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child, 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).²¹

Based on the evidence in its entirety, Mr. E has not 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. Mr. E has a good income and his regular monthly expenses do not appear to be unusually high. He has a younger child named K in the home and expressed concern about his ability to support her in light of a higher support amount for T. However, unless the new child support amount for T creates manifest injustice for K, her presence in his home should not cause the obligor's support amount for T to be lowered.²² In addition, Mr. E's fiancée is employed and is capable of contributing to the household financially.

Under these circumstances, Mr. E has not shown by clear and convincing evidence that his child support should be lowered from the amount calculated under the primary custody schedule in Civil Rule 90.3(a). He may have some difficulty paying all of his bills, but T is entitled to child support based on Mr. E's ability to pay. His ability to pay has been correctly

²⁰ Civil Rule 90.3(c).

²¹ See Civil Rule 90.3, Commentary VI.E.1.

²² See Civil Rule 90.3, Commentary VI.B.2.

calculated at \$649 per month pursuant to Civil Rule 90.3. There is insufficient evidence in the record to lower that amount.²³

IV. Conclusion

Mr. E met his burden of proving that the Modified Administrative Child Support and Medical Support Order was incorrect because it was not based on his most current income figures. His modified child support is now correctly calculated at \$649 per month, based on his actual income projected for the remainder of the year.

Mr. E did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his child support obligation were not varied from the amount calculated above. Thus, a “good cause” variance under Civil Rule 90.3(c) is not warranted in this case. The child support calculation of \$649 per month should be adopted.

V. Child Support Order

- Mr. E’s child support obligation for T is modified to \$649 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 July 3, 2012, remain in full force and effect.

DATED this 24th day of October, 2012.

By: Signed
Kay L. Howard
Administrative Law Judge

²³ It should also be noted that Mr. E’s child support has been \$448 per month since 2004. Exh. 1. Yet his earnings would have justified a higher support amount several years ago. See Exh. 8.

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 14th day of November, 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.]