

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

In the Matter of:)

F A. S-T)

OAH No. 12-0808-CSS

CSSD No. 001152906

DECISION AND ORDER

I. Introduction

The obligor, F A. S-T, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 5, 2012. The obligee child is M, 6 years of age. The other party is U D. D.

The hearing was held on November 15, 2012. Mr. S-T appeared in person; Ms. D did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. S-T's child support obligation for M is modified to \$534 per month, effective September 1, 2012, and ongoing.

II. Facts

A. Procedural Background

Mr. S-T's child support obligation for M was set at \$295 per month in June 2009.² On August 24, 2012, Ms. D initiated a modification review.³ On August 28, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.⁴ Mr. S-T provided financial information.⁵ On October 5, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. S-T's ongoing child support at \$556 per month, effective September 1, 2012.⁶ Mr. S-T appealed on October 22, 2012, asserting that he

¹ Two telephone calls were placed to Ms. D before the hearing was set to start, but there was no answer. A voicemail message was left for her to call the OAH, but she did not respond. Subsequently, however, Ms. D did provide information concerning her expenses. Exh. 20.

² Exh. 2.

³ Exh. 1.

⁴ Exh. 3.

⁵ Exh. 4.

⁶ Exh. 5.

did not receive a 2012 PFD, that his income is lower than the figure CSSD used in the calculation, and that he is a seasonal worker and cannot afford the amount calculated.⁷

B. Material Facts

Mr. S-T and Ms. D are the parents of M, who is 6 years old. M lives with Ms. D.

Mr. S-T works as a builder for No Name Supply (NNS), but he does not work full-time during the entire year. At the time of the hearing, he was expecting to be laid off for the winter. However, Mr. S-T does work every quarter and he earns overtime during the summer months.⁸ Also, he receives unemployment benefits when he is laid off. Mr. S-T also has experience working at the No Name as a banquet server and doing janitorial work cleaning buildings. He was planning to apply at the No Name after he was laid off from NNS.

For the one-year period from the fourth quarter of 2011 through the third quarter of 2012, Mr. S-T earned a total of \$35,833.14.⁹ In addition, he received \$2,320 in unemployment benefits, for total income during that year of \$38,153.14.¹⁰ Mr. S-T did not receive a 2012 PFD, so that should not be included in his income. He lived in Florida from December 2010 through September 2011, so he was not in Alaska for all of 2011, the qualifying year for the 2012 PFD.¹¹ A child support amount calculated from Mr. S-T's actual annual income is \$534 per month.¹²

Mr. S-T reported regular monthly expenses totaling \$2,181.68.¹³ In addition, his girlfriend, A, testified that she gives on average \$300 per month to Mr. S-T to help him cover his expenses.

Ms. D reported monthly expenses of \$2,834.¹⁴ She is a single parent and has two children in the home.¹⁵

III. Discussion

A. Child Support Calculation

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%

⁷ Exh. 6.
⁸ Exh. 8 at pg. 1.
⁹ Exh. 8 at pg. 1.
¹⁰ \$35,833.14 + \$2,320 = \$38,153.14.
¹¹ See AS 43.23.005(a)(3).
¹² Exh. 7 at pg. 1.
¹³ Exh. 10.
¹⁴ Exh. 20 at pg. 2.
¹⁵ *Id.*

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. S-T’s child support has been \$295 per month since 2009. A child support calculation of \$339.25 or more would be sufficient to warrant modification in this case.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 September 1, 2012.¹⁸ As the person who filed the appeal, Mr. S-T has the burden of proving by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect.¹⁹

Civil Rule 90.3(a)(1) provides that an obligor’s child support amount is to be calculated from his or her “total income from all sources,” minus mandatory deductions such as taxes, retirement and Social Security.

For the modification review, CSSD estimated Mr. S-T’s annual income at \$39,083.20, which was determined by multiplying his wage of \$18.79 per hour by 2,080, the number of hours a full-time employee typically works in one year.²⁰ CSSD added the 2012 PFD of \$878, which resulted in total annual income of \$39,961.20; this income figure yields a modified child support amount of \$556 per month.²¹

Mr. S-T claimed in his appeal that he did not receive a 2012 PFD. CSSD apparently verified this information, because the division submitted a revised calculation prior to the hearing that does not include the PFD. It was based on Mr. S-T’s actual income of \$38,153.14, which includes his wages earned during the previous four quarters and the unemployment benefits he received during 2012.²² The result is a child support calculation of \$534 per month.²³ Because it is based on his actual income for the most recent one-year period and does not include the 2012 PFD, this calculation is correct under Civil Rule 90.3.

¹⁶ AS 25.27.190(e).

¹⁷ \$295 x 115% = \$339.25.

¹⁸ 15 AAC 125.321(d). In this case, the notice was issued on August 28, 2012. Exh. 3.

¹⁹ 15 AAC 05.030(h); 2 AAC 64.290(e).

²⁰ 40 hours per week x 52 weeks = 2,080 hours; 2080 hours x \$18.79 per hour = \$39,083.20 annual income.

²¹ Exh. 5 at pg. 8.

²² Exh. 7 at pg. 1. Mr. S-T had wages of \$35,833.14 during the four quarters from the fourth quarter of 2011 through the third quarter of 2012, and unemployment benefits of \$2,320.

²³ *Id.*

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 based on financial hardship, 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."²⁴

Based on all the evidence, Mr. S-T did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. The obligor's other financial obligations are not overwhelming and he stated at the hearing that he planned to apply for banquet work in the event of a layoff from NNS. Mr. S-T also has regular assistance from his girlfriend.

Finally, an examination of his earnings report from the Alaska Department of Labor and Workforce Development indicates that Mr. S-T does have work at NNS during each quarter of the year, but his highest level of earnings occurs during the third quarter.²⁵ He may have to set aside some of his earnings during those times in order to have some money saved up for the leaner quarters. He may also have to make some lifestyle changes, such as getting a roommate. But on the whole, the evidence is insufficient to establish Mr. S-T's child support should be reduced based on financial hardship. Therefore, his request for consideration of a financial hardship variance should be denied.

IV. Conclusion

Mr. S-T met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. His actual annual income has been established and it results in a modified child support amount of \$534 per month, effective September 1, 2012. However, Mr. S-T did not meet his burden of proving by clear and convincing evidence that manifest injustice will result in the absence of a variation of his child support calculation. The modified child support amount is therefore correct and should be adopted.

²⁴ Civil Rule 90.3(c).
²⁵ See Exh. 8 at pg. 1.

V. Child Support Order

- Mr. S-T's child support for M is modified to \$534 per month, effective September 1, 2012, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated October 5, 2012, remain in full force and effect.

DATED this 17th day of January, 2013.

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 4th day of February, 2013.

By: Signed

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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