

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

In the Matter of:)	
)	OAH No. 12-0872-CSS
C L. T)	CSSD No. 001134006
_____)	

DECISION AND ORDER

I. Introduction

The obligor, C L. T, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 15, 2012. The obligee child is D, 12. The other party is N R. H.

The hearing was held on December 3, 2012, and January 8, 2013. Both parties appeared by telephone. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. T' child support for D is modified to \$1,202 per month, effective September 1, 2012, and ongoing. Mr. T' request for a variance under Civil Rule 90.3(c) based on a financial hardship is denied.

II. Facts

A. Procedural Background

Mr. T' child support obligation for D was set at \$513 per month in March 2005.¹ On August 23, 2012, Ms. H initiated a modification review.² On August 29, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. T provided financial information.⁴ On October 15, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. T' ongoing child support at \$1,202 per month, effective September 1, 2012.⁵ Mr. T filed an appeal on November 14, 2012, asserting primarily that the over-100% increase would create a financial burden and it does not reflect the high cost of living in rural Alaska and the fact that D spends his summers and holidays with Mr. T.⁶

¹ Exh. 2.
² Exh. 1.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.
⁶ Exh. 6.

B. Material Facts

Mr. T and Ms. H are the parents of D, who is 12 years old. D lives most of the year in No Name with Ms. H, but he spends considerable periods of time during the summer with Mr. T at his home in No Name.

Mr. T is the Executive Director of the No Name. According to the Alaska Department of Labor and Workforce Development, he earned \$80,155.62 in 2010 and \$82,968.73 in 2011.⁷ Mr. T's paystubs indicate that as of December 5, 2012, he had year-to-date income of \$91,666.74.⁸ This is consistent with CSSD's estimate that his 2012 income would total \$94,444.32.⁹

Mr. T is married. He and his wife, D, have a 5-year-old in the home.¹⁰ D earns approximately \$50,000 per year as a Policy Analyst. Their list of monthly expenses includes \$1,300 for the mortgage; \$800-\$1,000 for food; \$400-\$500 for food away from home, most likely while Mr. T is traveling; \$750 for wood; \$650 for heating oil; \$120 for water; \$80 for Internet; \$296 for electricity, on average; \$60 for telephone; \$50 for cable; \$1,000 for the payment on a boat and motor that was purchased for \$11,248 in 2012; \$600 for gasoline; \$150 for vehicle maintenance; \$100 for home insurance; \$372 for health care; \$20 for personal care items; \$100 for alcohol and/or tobacco; \$2,000 for a Visa bill totaling \$14,300; \$500 for a MasterCard bill totaling \$1,600; and \$500 per month, on average, for child care.¹¹ The total of these payments is between \$9,475 – \$9,775 per month.

Ms. H has one child in the home, the obligee, D. His primary interest at this point in his life is hockey, which he plays at the No Name level. Ms. H pays most of D's hockey expenses, and Mr. T contributes, as well, but the parties are not in agreement about how much time he should be playing because he has some difficulties keeping up with his grades.

Ms. H's list of monthly expenses¹² includes \$790 for the mortgage; \$700 for food; \$425 for gas; \$125 for water; \$25 for trash pickup; \$75 for Internet; \$170 for electricity; \$20 for telephone; \$175 for cell phone service; \$90-\$125 for gasoline; \$50 for vehicle maintenance; \$75

⁷ Exh. 8.

⁸ Received from Mr. T on December 5, 2012, and marked by the ALJ as Exh. 9, pg. 3 of 3.

⁹ See Exh. 5 at pg. 8.

¹⁰ Exh. 9 at pg. 1.

¹¹ Exh. 9 at pg. 1.

¹² Received from Ms. H on December 4, 2012, and marked by the ALJ as Exh. 10, pg. 2 of 4.

for vehicle insurance; \$59 for home insurance; \$351.50 for out-of-pocket medical coverage;¹³ \$95.90 for medical insurance premiums; \$35 for tobacco;¹⁴ \$220 for credit card bills totaling \$7,000; and \$75 on a personal line of credit. The total of Ms. H's payments is \$3,556.40 – \$3,591.40.¹⁵

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% 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. T's child support has been \$513 per month since 2005. A child support calculation of \$589.95 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. 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. T's annual income at \$94,444.32,²⁰ which was derived from the paystubs Mr. T provided. CSSD's modification order explained that

¹³ Ms. H listed a yearly total of \$4,217.99. Exh. 10 at pg. 2. That figure is rounded to $\$4,218 \div 12 = \351.50 . She also pays medical insurance premiums through her employer.

¹⁴ $\$8$ per week for cigarettes x 52 weeks = $\$416 \div 12 = \34.66 , which is rounded up to \$35.

¹⁵ One aspect of Ms. H's expenses is a mystery – she listed the exact same figure, \$4,217.99, as the cost of providing both D's medical coverage and his hockey expenses. See Exh. 10 at pgs. 2 & 3. She reported her hockey expenses total \$4,218, Exh. 10 at pg. 3, but the individual numbers total \$4,217.99, the identical amount of her cost for D's medical coverage, to the penny. Without seeing the documentation of these costs, it would be difficult to believe this wasn't an error in her arithmetic. In any event, there is no calculation being performed on Ms. H's information, so any mistake in these numbers has no significant impact on the decision.

¹⁶ AS 25.27.190(e).

¹⁷ $\$513 \times 115\% = \589.95 .

¹⁸ 15 AAC 125.321(d). In this case, the notice was issued on August 29, 2012. Exh. 3.

¹⁹ 15 AAC 05.030(h); 2 AAC 64.290(e).

²⁰ Exh. 5 at pg. 8.

his year-to-date income from a paystub dated September 19, 2012, was divided by 18 pay periods to get the average amount for each pay period, then multiplied by 24 pay periods to estimate his total annual income.²¹ CSSD added the 2012 PFD of \$878, which resulted in total annual income of \$95,322.32; this income figure yields a modified child support amount of \$1,202 per month.²² Because it is based on Mr. T' actual income for the most recent calendar year, this calculation is correct under Civil Rule 90.3.

B. Financial Hardship

Mr. T claimed in his appeal that the calculated child support amount is too high, especially given the cost of living in No Name and the amount of time D spends with him. 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."²³

Based on all the evidence, Mr. T did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. Mr. T' annual income is in excess of \$90,000, and together, he and his wife earn over \$140,000 per year. The obligor has unusually high living expenses, given in part where he lives, but they are not insurmountable, given the household income. Also, it appears that Mr. T' actual financial obligations may be lower than the expenses he listed on his worksheet. For example, he wrote that his payment on a credit card bill of \$14,300 is \$2,000 per month, and his payment on a bill of \$1,600 is \$500 per month. Not only are those monthly payments unusually high, but Mr. T acknowledged during the hearing that those payments are not the actual minimum amounts required, which means essentially that Mr. T' financial circumstances are not as he represented on his expenses worksheet. Therefore, his request for a variance under Civil Rule 90.3(c) based on a financial hardship should be denied.

²¹ See Exh. 5 at pg. 6.

²² Exh. 5 at pg. 8.

²³ Civil Rule 90.3(c).

C. Visitation Credit

Mr. T asserted that during the summer, D spends a significant amount of time with him in No Name. Under Civil Rule 90.3(a)(3), an obligor parent may be entitled to a credit of up to 75% of the child support amount for visitations that exceed 27 consecutive days. The summer of 2012 occurred before Mr. T' modification took effect, so he is not able to avail himself of that provision of Civil Rule 90.3 in this appeal. Mr. T may be entitled to the credit for future visitations, upon application to CSSD.

D. Medical credits

Finally, the issue of health care premiums paid on D's behalf was raised. It was not clear at the hearing what the status is of D's health care coverage. This matter is being referred to the parties' caseworker at CSSD. The Medical Support portion of an administrative child support order requires the purchase of medical insurance when it is available at a reasonable cost.²⁴ The procedure set out in the order allows each parent to provide proof of insurance and the cost of that insurance. The order then directs CSSD to provide appropriate credits and debits based on the cost of insurance.²⁵ Pursuant to this order, CSSD has the authority to administratively change the credit or debit amount as the cost of insurance changes, without issuing a new order.²⁶ The current amount of any credit or debit is not set in this child support decision, but CSSD will be making the proper adjustment to Mr. T' child support amount once it has proof of the insurance coverage for D and the amount that is paid for it.

IV. Conclusion

Mr. T did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. CSSD correctly estimated his actual annual income and calculated his modified child support amount at \$1,202 per month, effective September 1, 2012. Mr. T did not present clear and convincing evidence that manifest injustice would result in the absence of a variation of this amount, so the Modified Administrative Child Support and Medical Support Order CSSD issued on October 15, 2012 is therefore correct and should be adopted, without variation under Civil Rule 90.3(c).

²⁴ Exh. 5 at pg. 4 (section II.A.1 of the order).

²⁵ Section II.B & C of the order.

²⁶ Section II.D of the order.

V. Child Support Order

- Mr. T' child support for D is modified to \$1,202 per month, effective September 1, 2012, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated October 15, 2012, remain in full force and effect.

DATED this 28th 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 15th day of February, 2013.

By: Signed

Signature
Jeffrey A. Friedman

Name
Administrative Law Judge

Title

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