

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

|                   |   |                     |
|-------------------|---|---------------------|
| In the Matter of: | ) |                     |
|                   | ) | OAH No. 13-0229-CSS |
| K E. O            | ) | CSSD No. 001182598  |
| _____             | ) |                     |

**DECISION AND ORDER**

**I. Introduction**

K E. O appealed an Amended Administrative Child Support and Medical Support Order that CSSD issued on January 10, 2013. The obligee child is F, 6. The hearing was held on March 13, 2013 and April 24, 2013. Mr. O appeared in person for the second hearing; the custodian of record, B N. T, participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD.

Based on the record and after careful consideration, Mr. O's child support is set at \$376 per month for November and December 2011, and \$307 per month for 2012 and 2013, based on income averaging. Mr. O's request for a hardship variance is denied because the child support for 2012 and 2013 is calculated using income averaging as provided for in Civil Rule 90.3.

**II. Facts**

*A. Procedural History*

Ms. T began receiving public assistance in her state of residence in November 2011.<sup>1</sup> That state submitted a UIFSA petition for child support to CSSD on March 16, 2012.<sup>2</sup> CSSD initiated a child support action against Mr. O, and ultimately issued an Amended Administrative Child and Medical Support Order on January 10, 2013.<sup>3</sup> That order set Mr. O's ongoing child support at \$552 per month, with arrears of \$5,278 for the period from November 2011 through January 2013.<sup>4</sup> Mr. O provided supplemental income information and filed an appeal on February 14, 2013.<sup>5</sup>

*B. Material Facts*

Mr. O and Ms. T are the parents of F, who is six years of age. F lives full-time with Ms. T. Before CSSD began charging Mr. O with support, he paid a total of \$2,650 to Ms. T for F's

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<sup>1</sup> Exh. 1 at pg. 14.  
<sup>2</sup> Exh. 1.  
<sup>3</sup> Exh. 8.  
<sup>4</sup> *Id.*  
<sup>5</sup> Exhs. 9-11.

support via personal check.<sup>6</sup> CSSD has already credited Mr. O with those payments and they are not in dispute in this appeal.<sup>7</sup>

Mr. O is married to D X-O. They have children older than F in the home, plus Mr. O pays \$150 per month for support of an older child. In a separate action, Mr. O asked CSSD to reduce his withholding due to financial hardship.<sup>8</sup> He also requested that the child support amount be reduced due to financial hardship. His wife is not working outside the home at this time. Her last employment was as a billing assistant at an OB-GYN office. She earned about \$18,000 in 2012.<sup>9</sup>

Mr. O is a concrete finisher. He typically does not work during the winter months and was unemployed at the time of the hearing. Mr. O has worked for several employers during the past few years and his income fluctuates significantly from year to year. For example, in 2010, he earned \$25,343.78 in wages, but in 2012, he earned \$57,126.18.<sup>10</sup> CSSD compiled a table of Mr. O's earnings, UIB and PFD receipts for the years 2009 through 2012. His total income from all sources, including unemployment benefits and the PFD, was \$39,047.01 in 2009; \$35,292.78 in 2010; \$42,082.78 in 2011; and \$64,572.18 in 2012.<sup>11</sup> When these figures were averaged for the three-year period from 2010 – 2012, they yielded a child support calculation of \$414 per month.<sup>12</sup> When these figures were averaged for the four-year period from 2009 – 2012, they yielded a child support calculation of \$307 per month.<sup>13</sup>

### III. Discussion

The person who files the administrative appeal has the burden of proving that the order CSSD issued is incorrect.<sup>14</sup> CSSD issued an Amended Administrative Child and Medical Support Order on January 10, 2013.

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<sup>6</sup> Exh. 11.

<sup>7</sup> Exh. 8 at pg. 11.

<sup>8</sup> Exh. 12.

<sup>9</sup> Testimony of D X-O.

<sup>10</sup> Exh. 19.

<sup>11</sup> See CSSD's Submission to Record dated May 2, 2013, at pg. 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 15 AAC 05.030(h); 2 AAC 64.290(e).

A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.<sup>15</sup> 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." The commentary to Civil Rule 90.3 specifically allows CSSD to use an obligor's average income for child support calculations.<sup>16</sup> Typically, the period of time for averaging is three years, but longer periods of time are allowed. Also, a parent who supports an older child in the home is entitled to an additional deduction from income.<sup>17</sup> The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.<sup>18</sup>

CSSD calculated Mr. O's child support at \$414 per month using the three-year average of his income, and \$307 per month using the four-year average. In this case, the four-year average should be used because Mr. O's arrears go back to 2011, so there is a longer period of time to be averaged. This period of time also takes into consideration the fact that Mr. O's 2012 income was significantly higher than the earlier years and would effectively overpower a three-year averaging time period. The averaged income amount of \$307 per month should be used for 2012 and 2013, with the 2011 calculation remaining at \$376 per month.

The child support calculation is now correct. Whether Mr. O 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."<sup>19</sup> It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child(ren), to

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<sup>15</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>16</sup> Civil Rule 90.3, Commentary III.E.

<sup>17</sup> Civil Rule 90.3(a)(1)(D).

<sup>18</sup> *Id.*

<sup>19</sup> Civil Rule 90.3(c).

determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).<sup>20</sup>

Based on the evidence in its entirety, Mr. O did not prove 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. O's wife is capable of working and bringing additional income into the home. In addition, Mr. O is entitled to a deduction for supporting his prior children in the home. No further adjustments in his child support order are therefore necessary.

#### **IV. Conclusion**

Mr. O met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order was incorrect. His child support is correctly calculated pursuant to Civil Rule 90.3 at \$376 per month for 2011 and \$307 per month for 2012 and 2013, based on income averaging. Mr. O 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 these correct amounts. No variance under Civil Rule 90.3(c) is warranted.

#### **V. Child Support Order**

- Mr. O is liable for child support for F in the amount of \$376 per month for November and December 2011; and \$307 per month from January 2012 through June 2013, and ongoing;
- If CSSD has not already credited Mr. O with direct payments, he is entitled to a credit for direct payments made to Ms. T in the amount of \$2,650 from November 2011 through November 2012;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated January 10, 2013, remain in full force and effect.

DATED this 28<sup>th</sup> day of May, 2013.

*Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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<sup>20</sup> See Civil Rule 90.3, Commentary VI.E.1.

**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 14<sup>th</sup> day of June, 2013.

By: Signed  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge  
Title

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