

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

IN THE MATTER OF:)	
)	OAH No. 13-0452-CSS
L D. M)	CSSD No. 001183682
_____)	

DECISION AND ORDER

I. Introduction

This case involves the obligor L D. M's appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on February 26, 2013. The obligee child is B, who is one year old. The custodian is F J. K.

The hearing was held in three separate proceedings and was completed on June 5, 2013. Both parties participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Amended Administrative Child and Medical Support Order is affirmed. Mr. M's child support is set at \$1,033 per month, effective May 2012, and ongoing. Mr. M's petition for a variance based on financial hardship pursuant to Civil Rule 90.3(c) is denied.

II. Facts

A. Procedural Background

Ms. K applied for child support for B in May 2012.¹ CSSD initiated a child support action for Mr. M and subsequently issued an Amended Administrative Child and Medical Support Order that set his ongoing child support at \$1,033 per month, with arrears of \$10,330 for the period from May 2012 through February 2013.² Mr. M filed an appeal, asserting he cannot afford the amount calculated and also that he will be leaving the military in the near future and will not have employment.³

¹ Exh. 1.
² Exh. 10.
³ Exh. 11.

*B. Material Facts*⁴

Mr. M is an E-5 with 16 years of service in the military.⁵ His 2012 base pay totaled \$36,154.80.⁶ Also, he received monthly non-pay benefits consisting of Basic Allowance for Subsistence (BAS) of \$348.44; Basic Allowance for Housing (BAH) of \$1,998; and Cost of Living Allowance (COLA) of \$843.92.⁷ When annualized, all of his wages and benefits for 2012 total \$74,439.12.⁸ The PFD of \$878 brings his total gross income to \$75,317.12.⁹ Mr. M testified that he would be leaving the service in the near future.

Mr. M's deductions from income include income and Social Security taxes. In addition, Mr. M is entitled to a deduction from income for paying support for a prior child of \$631 per month.¹⁰ His adjusted annual income is thus \$61,974.92.¹¹ When inserted into CSSD's child support calculator, this income figure yields a child support amount of \$1,033 per month.¹²

Mr. M lives with his wife, C, and her six prior children. The older children are 18, 16, 14 and 12 years of age, and the two youngest are 10-year-old twins.¹³ C is not employed. She receives \$1,088 per month in food stamps for the children, and \$600-\$800 per month in child support.¹⁴ Mr. M reported regular monthly expenses of \$1,600 for food at home; \$70 for food away from home; \$120 for telephone and Internet; \$85 for cable; \$290 for four cell phones; \$430 for a 2005 Trailblazer; \$320 for a 2002 Mercury Mountaineer; \$385 for gasoline; \$250 for vehicle insurance; \$350 for personal care items; \$800 for the payments on two credit cards with balances totaling about \$6,000; and \$400 for the payments on past medical treatment for C.¹⁵

⁴ The material facts are taken from Mr. M's hearing testimony or the documentary evidence, as cited.

⁵ Exh. 8 at pg. 3. The Leave and Earnings Statement (LES) was difficult to read, so the years of service may be incorrect, but it is at least 15 years, as shown in a 2012 LES. *See* Exh. 8 at pg. 2.

⁶ Exh. 10 at pg. 10.

⁷ *Id.*

⁸ *Id.*

⁹ Exh. 10 at pg. 8.

¹⁰ Exh. 9 at pg. 9.

¹¹ Exh. 10 at pg. 8.

¹² *Id.*

¹³ Obligor's Exh. A at pg. 2.

¹⁴ Testimony of L D. M.

¹⁵ Obligor's Exh. A at pg. 2.

Ms. K is also in the military, but she provided a copy of orders indicating that she would be leaving the service in June 2013.¹⁶ Ms. K said she would be unemployed until she found other work. She reported regular expenses of \$1,698 for rent; \$500 for food; \$270 for electricity; \$68 for cable; \$120 for Internet; \$140 for cell phone service; \$340 for gasoline; \$270 for vehicle maintenance; \$200 for personal care items; \$200 for the co-pay for medical treatment for B; and \$120 for the payment on a credit card.¹⁷

III. Discussion

Mr. M filed the appeal in this matter. As the party who filed the appeal, he has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order is incorrect.¹⁸

A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.¹⁹ By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).²⁰ In this case, Ms. K requested child support services in May 2012, so that is the first month in which Mr. M is obligated to pay support in this administrative child support action.²¹

Civil Rule 90.3 specifically provides that a military parent's total income from all sources includes "Armed Service Members base pay plus the Obligor's allowances for quarters, rations, COLA and specialty pay."²² The base pay figure is put into the worksheet in the taxable income section.²³ The other benefits go into the non-taxable income section.²⁴ If the soldier lives off base, the BAH benefit used is the actual monetary amount included in the soldier's pay and reflected in the Leave and Earnings Statement (LES). If the soldier lives rent-free in base housing, the housing allowance is treated as an in-kind contribution, and its value, for child

¹⁶ Exh. C at pg. 7.

¹⁷ *Id.*

¹⁸ 15 AAC 05.030(h).

¹⁹ *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

²⁰ 15 AAC 125.105(a)(1)-(2).

²¹ *See* Exh. 1.

²² Civil Rule 90.3, Commentary III.A.29 (emphasis added).

²³ *See* Exh. 10 at pg. 2.

support purposes, is considered to be the same amount the soldier would receive for BAH while living off base.²⁵ The reason for including the non-pay benefits in the calculation, especially the BAH, is because they reduce the parent's living expenses and allow a military member to use the remainder of his or her cash pay to cover other expenses.

The Amended Administrative Child and Medical Support Order revised Mr. M's child support calculation from \$1,247 per month, which was set forth in the original administrative order, to \$1,033 per month.²⁶ The second amount is correct because it is based on Mr. M's actual 2012 income and calculated pursuant to Civil Rule 90.3, the rule that directs how child support is to be calculated in Alaska.

B. Financial Hardship

Mr. M's primary appeal issue is that he cannot afford the child support amount calculated by CSSD. His child support is now correctly calculated at \$1,033 per month, beginning in May 2012. It is from this figure that Mr. M's request to lower the support amount based on financial hardship should be considered. In response, CSSD opposes any reduction in Mr. M's calculated child support amount.

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."²⁷

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).²⁸

The establishment of this child support order has undoubtedly created stress for Mr. M and his family, especially given that he and his wife support her prior children in the home.

²⁴

Id.

²⁵

See Civil Rule 90.3, Commentary III.A.19.

²⁶

See Exhs. 7 & 10.

²⁷

Civil Rule 90.3(c).

²⁸

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

However, C makes a significant contribution to the household finances through the food stamps and child support she receives for the children. Also, it appears that she could be employed if she wanted to. All of the children are of school age, and if necessary, the older children could help with child care. In contrast, Ms. K is the only adult present in her household to earn an income, and she is also leaving the military.

Mr. M obviously feels a moral imperative to support his stepchildren, but he has a legal obligation to support his biological child, B. Mr. M's duty to his biological child takes priority over other debts and obligations he assumed later.²⁹ B is entitled to receive child support in an amount commensurate with Mr. M's ability to pay, as calculated pursuant to Civil Rule 90.3. That obligation has been correctly determined.

Based on the evidence in its entirety, Mr. M did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for B were not reduced. Mr. M's child support should not be reduced.

IV. Conclusion

Mr. M did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). The calculation is based on his actual 2012 income and includes a deduction for the support he pays for a prior child. Mr. M did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced, and he is thus not entitled to a variance from the amount calculated. Mr. M's child support is correct at \$1,033 per month, effective May 2012 and ongoing. This figure should be adopted.

V. Child Support Order

- CSSD's Amended Administrative Child and Medical Support Order dated February 26, 2013, is AFFIRMED.

DATED this 25th day of June, 2013.

Signed

Kay L. Howard

Administrative Law Judge

²⁹ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

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 12th day of July, 2013.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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