

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

In The Matter of:)
)
 U B. T) OAH No. 13-0573-CSS
) CSSD No. 001186852
_____)

DECISION AND ORDER

I. Introduction

This case involves obligor U B. T's appeal of an Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on March 18, 2013. The child in this case is R, age one. The custodian of record is T L. H.

Based on the new evidence obtained at hearing, the support award previously calculated under Civil Rule 90.3(a) should be reduced to \$50 per month (\$600 per year) pursuant to Civil Rule 90.3(c)(1-3). Accordingly, CSSD's Administrative Child Support and Medical Support Order dated March 18, 2013 is reversed. Mr. T's child support obligation for one child, based on primary custody, is set at \$50 per month from April 2012 through March 2013, and ongoing.

II. Facts

A. Relevant Procedural History

Ms. H applied to CSSD to initiate proceedings to establish paternity and child support on August 30, 2012.¹ On February 7, 2013, Mr. T acknowledged paternity and provided financial information.² On March 18, 2013, CSSD issued an Order Establishing Paternity and an Administrative Child Support and Medical Support Order.³ The support order established arrears in the amount of \$2,112 for the period of April 1, 2012 through March 31, 2013, and required Mr. T to pay ongoing child support in the amount of \$176 per month effective April 1, 2013.⁴ The support order was based on Mr. T's receipt of \$878 per month (\$10,536 per year) of Social Security Disability Income (SSDI).⁵

Mr. T requested an administrative review of CSSD's initial determination.⁶ On April 22, 2013, CSSD issued an Administrative Review Decision (ARD) which affirmed all aspects of the

¹ Ex. 1 p. 1.

² Ex. 3.

³ Exs. 4, 5.

⁴ Ex. 5 pp. 1 - 2.

⁵ Ex. 5 p. 9.

⁶ Ex. 6 p. 1.

original Administrative Child and Medical Support Order, except as concerned imposition of fees for establishment of paternity, which fees were reversed.⁷

Mr. T appealed CSSD's Administrative Review Decision on April 22, 2013.⁸ Mr. T stated the bases for his appeal as follows:⁹

1. I currently receive [SSDI] as my sole source of income. I receive \$10,536 a year It is not sufficient to cover shelter, food, and child support. This judgment puts me at risk of being homeless.
2. R H is eligible to receive benefits under Social Security. I have asked the mother . . . to apply for [these] benefits. She has not done this. As the non-custodial parent, I can not apply for these benefits
3. This order of child support would also prevent me from visitation with my child. Because I live in another state, I would have to travel to Alaska to visit my child. It is very expensive to do so I estimate [travel to Alaska] to be approximately \$1,000 per visit.
4. I also have another child. This order does not take into account any responsibilities that I have regarding my other child.

Mr. T's formal hearing was held on May 13, 2013. Mr. T and Ms. H participated by telephone, represented themselves, and testified. Child Support Specialist Russell L. Crisp participated by telephone and represented CSSD.

The hearing record was reopened on June 17, 2013 to determine the current status of R's application for children's Social Security benefits. A supplemental hearing was held on June 28, 2013. Mr. T could not be reached. Ms. H and Child Support Specialist A.J. Rawls participated by telephone. The record closed at the end of the supplemental hearing.

*B. Material Facts*¹⁰

Mr. T and Ms. H are the parents of R, age one. Ms. H has physical custody of R. Mr. T has a second, older child from a prior relationship. That child does not live with him. However, under the laws of the state in which the older child resides, Mr. T does not have to pay child support for that child because of his low income level.

Mr. T is physically disabled, does not work, and receives SSDI (disability benefits) totaling \$878 per month. These disability benefits are his sole source of income. Mr. T's primary monthly living expenses consist of \$400 for housing and \$250 - \$300 for food. He also has smaller, fluctuating expenses for his electricity and cell phone. Friends help him out occasionally by giving him food, clothing, and personal care items.

⁷ Ex. 6.

⁸ Ex. 7.

⁹ Ex. 7.

In addition to R Ms. H has a second, older child from a prior relationship who lives with her.¹¹ Ms. H is currently employed.¹² She earns \$18.75 per hour. She normally works 45 - 55 hours per week, so she typically receives overtime pay. She lives with other family members and does not pay rent. Ms. H's primary monthly living expenses consist of \$400 for food, \$350 for clothing and personal care items, a \$300 car payment, \$150 for car insurance, \$50 for gas and oil, a \$100 student loan payment, and \$120 for cell phone service. She also has outstanding medical bills but is not currently able to make payments on them.

Mr. T testified that, as a result of his disabled status, R is eligible for children's benefits from the Social Security Administration (SSA) if Ms. H would just apply for them.¹³ He suggested that these benefits would satisfy his child support obligation. Ms. H testified at the first hearing that she was in the process of applying for the social security benefits for R and that these benefits were expected to be about \$150 per month. At that time Ms. H testified that R's eligibility might extend back to April 2012, so there might be an initial lump sum payment consisting of about 15 months of "back benefits." At the second hearing Ms. H testified that she had applied to SSA for children's benefits, that a hearing had been held, and that she was awaiting SSA's decision. At the second hearing she thought it likely that R would receive prospective benefits, but she was less confident that R would receive back benefits.

III. Discussion

A. Mr. T has the Burden of Proof

Mr. T appeals CSSD's Administrative Review Decision dated April 22, 2013 on the basis that CSSD's child support award of \$176 per month is excessive. As the person who filed the appeal in this case, Mr. T has the burden of proving, by a preponderance of the evidence, that the child support amount established in CSSD's Administrative Review Decision is incorrect.¹⁴

B. The Legal Basis of Mr. T's Child Support Obligation

A parent is obligated both by statute and at common law to support his or her children.¹⁵ A parent's duty of support begins on the child's date of birth.¹⁶ In those cases in which the child

¹⁰ All information in this section is taken from Mr. T's hearing testimony unless otherwise noted.

¹¹ Ms. H's hearing testimony.

¹² All findings in this paragraph are derived from Ms. H's hearing testimony.

¹³ Under social security rules minor children are entitled to receive benefits when a parent receives SSDI benefits. See 42 U.S.C. § 402(d); Social Security Bulletin, Vol. 71 No. 1, 2011. Each child may generally receive up to one-half of the parent's full disability benefits. *Id.*

¹⁴ 15 AAC 05.030(h).

¹⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

¹⁶ *State of Alaska, Department of Revenue, Child Support Enforcement Division ex rel. Hawthorne v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997).

support obligation is determined by CSSD, the agency collects support from the date a parent requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.¹⁷

In Alaska, the rules for calculating child support are contained in Civil Rule 90.3. How support is calculated depends upon the type of custody exercised by the parents of the children.¹⁸ The type of custody involved in this case, in which Ms. H has physical custody of the child more than 70% of the time, is known as "primary physical custody."¹⁹

Calculating child support in primary physical custody situations is usually a two step process. First, the noncustodial / obligor parent's income is calculated, and any applicable deductions are applied.²⁰ Second, the resulting income figure (adjusted income) is multiplied by a certain percentage, depending on how many children are involved.²¹ Where (as here) there is only one child, the noncustodial / obligor parent's adjusted income is multiplied by 20% (.20).²² In this case, CSSD correctly followed these steps by multiplying Mr. T's income (\$878 per month) by .2 to arrive at a monthly child support obligation of \$176.00.²³

C. Should the Amount of Child Support be Reduced Based on Unusual Circumstances?

In this case Mr. T has asserted that, based on his low income level, injustice will result if the support award is not decreased.²⁴ This constitutes a request for a variance in the child support award under Civil Rule 90.3(c)(1). Such a variance can be granted only where there is proof, by clear and convincing evidence, that unusual circumstances exist and that manifest injustice will result if the support award is not varied.

Mr. T has proven clearly and convincingly that this case involves unusual circumstances justifying variance of the amount of child support which Mr. T would otherwise be required to pay. First, Mr. T is disabled, his income is very low, and the cost of the necessities of life consumes virtually his entire income. Second, Ms. H's income is comparatively high, and her living expenses are not excessive. Third, although it is not absolutely certain, the preponderance of the evidence indicates that R will soon be receiving children's Social Security benefits of about \$150 per month. While these benefits cannot be considered as entirely replacing a child support award, it is

¹⁷ 15 AAC 125.105(a)(1)-(2).

¹⁸ Civil Rule 90.3(a), (b) (recognizing four types of custody [primary, shared, divided, and hybrid] and identifying a calculation for each type). *See also* Civil Rule 90.3(f) (defining types of custody).

¹⁹ Civil Rule 90.3(f)(2). Mr. T did not dispute that Ms. H has primary physical custody of R.

²⁰ Civil Rule 90.3(a).

²¹ Civil Rule 90.3(b)(2); Ex. 4, p. 8.

²² Civil Rule 90.3(a)(2)(a).

²³ Ex. 5 p. 8.

appropriate to consider them in determining whether a variance should be granted. Considering the totality of the circumstances, the support award calculated under Civil Rule 90.3(a) should be reduced to \$50 per month (\$600 per year) under Civil Rule 90.3(c)(1-3).

IV. Conclusion

CSSD's Administrative Child Support and Medical Support Order dated March 13, 2013, and its Administrative Review Decision dated April 22, 2013, were correct based on the information and arguments then available to CSSD. However, important additional information was brought forth through the hearing process. Through that process Mr. T proved, by clear and convincing evidence, that the \$176 support award, which would otherwise be payable, would be manifestly unjust based on the parties' financial circumstances. Accordingly, CSSD's Administrative Review Decision dated April 22, 2013, which affirmed CSSD's Administrative Child and Medical Support Order dated March 18, 2013, is reversed. Mr. T's child support obligation is set at \$50 per month from April 1, 2012 through March 31, 2013 and ongoing. There was a request for a variance under Civil Rule 90.3(c) in this appeal, and that request was granted.

V. Child Support Order

- CSSD's Administrative Review Decision dated April 22, 2013 is reversed -- Mr. T is liable for child support for R in the amount of \$50 per month from April 1, 2012 through March 31, 2013 and ongoing;
- All other provisions of the Administrative Child and Medical Support Order dated March 18, 2013 remain in full force and effect.

DATED this 1st day of July, 2013.

Signed

Jay D. Durych
Administrative Law Judge

²⁴ Ex. 7 p. 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 29th day of July, 2013.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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