

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

IN THE MATTER OF: )

U R. T )

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) OAH No. 13-0733-CSS

) CSSD No. 001182913

**DECISION AND ORDER**

**I. Introduction**

This case involves the obligor U R. T's appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 12, 2013. The obligee child is L, 4. The custodian is F X.

The hearing was convened on June 12, 2013, but Mr. T did not participate. He later requested a supplemental hearing, which was held on July 30, 2013. Mr. T appeared by telephone; Ms. X did not participate in either proceeding. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. T's child support is set at \$100 per month from April 2012 through December 2012; and \$223 per month, effective January 2013, and ongoing. Mr. T's petition for a variance based on financial hardship pursuant to Civil Rule 90.3(c) is denied.

**II. Facts**

*A. Procedural Background*

Ms. X applied for and began receiving Medicaid for L in April 2012.<sup>1</sup> CSSD initiated a child support action and subsequently issued an Amended Administrative Child Support and Medical Support Order that set Mr. T's ongoing child support at \$333 per month, with arrears of \$2,232 for the period from April 2012 through April 2013.<sup>2</sup> Mr. T filed an appeal, asserting he does not work full time; he has two other children in the home; and he cannot afford the amount calculated.<sup>3</sup>

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 6.  
<sup>3</sup> Exh. 7.

*B. Material Facts*

Mr. T has been employed by a moving company since July 2012.<sup>4</sup> According to his employer, he is paid \$14 per hour<sup>5</sup> and works an average of 26.2 hour per week.<sup>6</sup> Based on this information, his estimated income for 2013 is \$19,073.60.<sup>7</sup> His 2012 income totaled \$7,908.<sup>8</sup>

Mr. T has been married for about one year. He and his wife, P, have five children in the home, K, 11, and D, 1, both of whom are Mr. T's biological children; and P's older children, who are 15, 13 and 12 years old. P is employed and brings home about \$1,600-\$1,700 per month. They share rent and utilities and she provides for her older children.

The T household has monthly expenses of \$2,980; specifically, \$1,200 for rent; \$430 for food; \$175 for natural gas; \$65 for garbage; \$50 for Internet; \$250 for electricity; \$100 for cable; \$50 for a cell phone; \$200 for a car payment; \$75 for gasoline; \$100 for car maintenance; \$85 for car insurance; and an additional \$200 for the payment on a \$5,900 debt.<sup>9</sup>

Mr. T's deductions from income include federal income taxes, Social Security and Medicare. In addition, he is entitled to a deduction from income for supporting K, a child older than L, in his home. The deduction in the 2012 calculation is \$124, which results in a child support amount in this case of \$100 per month.<sup>10</sup> The deduction for 2013 is \$278 per month, which results in a child support amount in this case of \$223.<sup>11</sup>

Nothing is known of Ms. X's circumstances. She did not submit any evidence or appear for either session of the hearing.

**III. Discussion**

Mr. T requested the hearing in this matter. As the party who filed the appeal, he has the burden under 15 AAC 05.030(h) of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order is incorrect.

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<sup>4</sup> Exh. 7 at pg. 3.

<sup>5</sup> Exh. 4 at pgs. 5-7.

<sup>6</sup> *Id.*

<sup>7</sup> \$26.2 hours per week x \$14 per hour x 52 weeks = \$19,073.60.

<sup>8</sup> Exh. 4 at pgs. 4-6.

<sup>9</sup> Exh. 10 at pg. 2. It is not clear from the form whether this is another \$200 per month debt, or the payment on Mr. T's 2001 Honda. The amounts owed and the monthly payments are the same, so it might be the same item.

<sup>10</sup> Exh. 6 at pg. 9.

<sup>11</sup> Exh. 6 at pg. 10.

A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.<sup>12</sup> 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.<sup>13</sup> In this case, Ms. X requested Medicaid for L in April 2012, so that is the first month in which Mr. T is obligated to pay support in this administrative child support action.<sup>14</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." CSSD's amended order set Mr. T's 2012 child support at \$100 per month, based on his actual income of \$7,908.<sup>15</sup> Mr. T did not challenge this amount.

For 2013, CSSD calculated Mr. T's child support at \$333 per month, based on the division's assessment that he would work full-time paid at \$14 per hour.<sup>16</sup> However, Mr. T's employer submitted a letter stating that the obligor does not work full-time, but instead gets an average of 26.2 hours of work per week.<sup>17</sup> Using that information, CSSD submitted a revised calculation prior to the hearing. It estimated Mr. T's 2013 income at \$19,073.60, and his child support obligation for 2013 at \$223 per month.<sup>18</sup>

Mr. T's child support is now correctly calculated at \$100 per month for April 2012 through December 2012; and \$223 per month, beginning in January 2013. It is from these figures that Mr. T's statement that he cannot afford the child support should be considered.

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

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<sup>12</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>13</sup> 15 AAC 125.105(a)(1)-(2).

<sup>14</sup> See Exh. 1.

<sup>15</sup> Exh. 6 at pg. 9.

<sup>16</sup> Exh. 6.

<sup>17</sup> Exh. 7 at pg. 3.

<sup>18</sup> Exh. 9. Both the 2012 and the revised 2013 calculations correctly included a deduction for supporting a prior child in the home. See Exh. 6 at pg. 9 and Exh. 9.

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

relevant evidence 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).<sup>20</sup>

The establishment of this child support order has undoubtedly created stress for Mr. T and his current family, especially given that he and his wife support a total of five children in the home. However, they have two incomes coming into the household, and since Mr. T does not work full-time, he has the flexibility to obtain additional employment.

Based on the evidence in its entirety, Mr. T 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 L were not reduced. Mr. T's child support should remain at the amounts set by CSSD based on his actual income.

#### **IV. Conclusion**

Mr. T did not meet his burden of proving by a preponderance of the evidence that CSSD's calculations were incorrect, as required by 15 AAC 05.030(h). The calculation for 2012 is based on his actual income and includes a deduction for supporting a prior child in the home. The 2013 calculation is based on the information provided by his employer and also includes the prior child deduction. Mr. T 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. CSSD's figures should be adopted.

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

- Mr. T is liable for child support for L in the amount of \$100 per month for April 2012 through December 2012; and \$223 per month, beginning in January 2013;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated April 12, 2013, remain in full force and effect.

DATED this 19<sup>th</sup> day of August, 2013.

*Signed*

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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 10<sup>th</sup> day of September, 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.]