

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

In the Matter of:	)	
	)	OAH No. 13-0737-CSS
U W. H	)	CSSD No. 001104174
_____	)	

**DECISION AND ORDER**

**I. Introduction**

U H appealed a modification of an existing child support order. Mr. H is the obligor, and J G is the custodian of record. The child subject to this modified order is M.

A hearing was held on June 17, 2013. Mr. H and Ms. G both participated by telephone. The Child Support Services Division (CSSD) was represented by Child Support Specialist Erinn Brian, who also participated by telephone.

A proposed decision was issued holding that Mr. H' child support should be set at \$417 per month for one child. Mr. H submitted a proposal for action pursuant to AS 44.64.060(e), which included a statement asserting that his monthly expenses were substantially higher than his monthly household income. The Commissioner returned this matter to the Office of Administrative Hearings to take additional evidence concerning Mr. H' finances.

A supplemental hearing was held on August 7, 2013. Mr. H and Ms. G each provided sworn testimony concerning their income and expenses. Based on the entire record, Mr. H has not shown by clear and convincing evidence that a variation of his child support obligation is required to prevent manifest injustice. Accordingly, his child support obligation should be set at \$417 per month for one child.

**II. Facts**

*A. Background*

CSSD issued a Modified Administrative Child Support and Medical Support Order on January 30, 2007. This order set Mr. H' support obligation at \$278 per month.<sup>1</sup> Ms. G submitted a request for modification on March 11, 2013.<sup>2</sup> Notice of Petition for Modification of Administrative Support Order was mailed to the parties on March 26, 2013.<sup>3</sup> A Modified

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Exhibit 3, pages 2 and 4.

Administrative Child Support and Medical Support Order was issued on April 25, 2013. This order set Mr. H' support obligation at \$478 per month effective April 1, 2013.<sup>4</sup>

Mr. H requested a hearing to contest the modification. He argued that he did not receive notice until May 11, 2013, when he was already in arrears, and that the modified support amount did not include his ongoing child support in another case.<sup>5</sup>

*B. Material Facts*

The material facts are not in dispute. Mr. H is married to N, and they live with N's 26 year old daughter and N's husband while N's daughter and the daughter's husband are attending college. Mr. H and his wife pay a substantial portion of the younger couple's household expenses to support them while they are in college.

Mr. H has four children. He is the father of M, who is in Ms. G's custody. He is also the father of an older child, S. He has been making regular payments to CSSD for M. He has also been making regular payments to Idaho Child Support Services in the amount of \$261 per month to support S. Mr. H also has a child older than S for whom he is not making support payments at that child's mother's request, and a younger child for whom he is paying child support in the amount of \$200 per month.

Mr. H earns \$33,865 per year. His wife, N, earns \$19,550 per year. Their monthly expenses are significantly higher than their monthly income. Not counting payments on outstanding debt, he has \$3,620 in rent, utility, insurance, and other household expenses.<sup>6</sup>

Mr. H owes \$900 in medical bills, and he is making payments of \$50 per month. He listed three credit cards on his expense worksheet a total amount owed of \$9,500, and monthly payments of \$520 per month. He listed three student loans totaling more than \$72,000, and current payments of \$400 per month. Mr. H is making payments on two vehicles, totaling \$497 per month. The payments on this debt totals \$1,467 per month. Thus, before taking child support and taxes into account, Mr. H has over \$5,000 in outgoing expenses each month but only \$4,400 in monthly income.

Ms. G lives with her husband, and her two teen-age girls. She was earning about \$500 per month during the summer, but does not work during the school year because the girls are

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<sup>4</sup> Exhibit 5, page 1.

<sup>5</sup> Exhibit 6.

<sup>6</sup> Exhibit 10 (the revised version of Exhibit 10 was submitted on August 5, 2013, and is the version relied on in this decision).

homeschooled. Her husband earns about \$3200 per month. Ms. G testified as to her household expenses, which total just under \$3,000 per month.<sup>7</sup> She and her husband owe debts to family members who have helped support them in the past. Those debts total about \$28,000. She also has a \$7,000 student loan, and medical related debt of \$7,000.

### III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>8</sup> 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. If the 15% change has not been met, CSSD may modify the child support obligation, but is not required to do so. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>9</sup> Finally, the person appealing CSSD’s decision has the burden of demonstrating that the decision is incorrect.<sup>10</sup>

When CSSD first recalculated Mr. H’ support obligation, it did not take into account the child support payments he is making for S.<sup>11</sup> Mr. H is entitled to a deduction from his gross income for those payments.<sup>12</sup> CSSD agreed, and recalculated his support obligation, giving Mr. H a deduction for his payments for S.<sup>13</sup> This calculation shows a support obligation of \$417 per month for one child. None of the parties dispute this calculation. Mr. H has met his burden of proving that the modified order was incorrect. The correct calculation under Civil Rule 90.3 is \$417 per month for one child.

Mr. H sought a reduction from this award. A parent’s support obligation may be varied “for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied.”<sup>14</sup> Proving something by clear and convincing evidence is a higher standard of proof, and requires a showing that the facts asserted are highly probable.<sup>15</sup>

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<sup>7</sup> She did not include any amount for clothing or personal care items, or miscellaneous school supplies.

<sup>8</sup> AS 25.27.190(e).

<sup>9</sup> 15 AAC 125.321(d).

<sup>10</sup> 15 AAC 05.030(h).

<sup>11</sup> See Exhibit 5, page 12.

<sup>12</sup> Civil Rule 90.3(a)(1)(C).

<sup>13</sup> Exhibit 9.

<sup>14</sup> Civil Rule 90.3(c)(1).

<sup>15</sup> *DeNuptiis v. Unocal Corporation*, 63 P.3d 272, 275 n. 3 (Alaska 2003).

In this case, Mr. H has the burden of proving it is highly probable that a support obligation of \$417 per month is unjust.<sup>16</sup>

While Mr. H' expenses exceed his income, a significant amount of those expenses are due to the decision to help support his step daughter and her husband while they attend college. Two of the three credit cards, one of the car loans, and two of the student loans (the two that are actually being paid) are for his step-daughter and son in law. The \$800 per month in food expense supports a four person household; not just Mr. H and his wife. If his step-daughter and son in law were paying their own loan payments and half the living expenses,<sup>17</sup> Mr. H' monthly expenses would likely be less than the household's monthly income. Mr. H' support of his entire family is laudable, but Mr. H' obligation to his minor children comes first.

In addition, even if all of his expenses were unavoidable, it would still be necessary to look at any impact a reduction in support would have on Ms. G's household. She is currently just able to meet household expenses, but only because she obtained loans from relatives who are not insisting on being repaid, and because she is minimizing expenses where possible.<sup>18</sup> Ms. G has two children living in her home. Mr. H does not have any children living at home. Any reduction in Mr. H' child support obligation would have a direct impact on Ms. G's children while providing little or no direct benefit to Mr. H' other minor children. Mr. H has not proven by clear and convincing evidence that it would be manifestly unjust to require him to pay the full child support obligation based on his actual income.<sup>19</sup>

The effective date of a modification is the first day of the month following service of the notice that a petition for modification has been filed.<sup>20</sup> Mr. H asserted that he did not receive notice until May of 2013. However, the notice was served in March. CSSD asserted in its pre-hearing brief and at the hearing that notice had been sent to Mr. H' address of record, and that Mr. H had not informed CSSD that he had moved. Mr. H did not dispute that assertion at the hearing and did not present any evidence concerning this issue. Thus, he has not met his burden

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<sup>16</sup> See *In re L.J.M.*, OAH No. 12-0064-CSS (Commissioner of Revenue 2012). Available on line at <http://aws.state.ak.us/officeofadminhearings/Documents/CSS/CSS120064.pdf>.

<sup>17</sup> They are paying one half of the \$1500 monthly rent, and Mr. H only included one half of the rent on his expense statement.

<sup>18</sup> For example, she is only paying \$53 per month for internet and phone service, compared to Mr. H' expense of \$366 per month for cable, phone, and internet. This is not meant to suggest Mr. H' spending is extravagant, but there do appear to be more opportunities for cost reductions in his household than in Ms. G's.

<sup>19</sup> Pursuant to Civil Rule 90.3, the support calculation is based on his income alone, and does not include his wife's income.

<sup>20</sup> 15 AAC 125.321(d).

of proving that the effective date of service was in May rather than March. Accordingly, the modified order is effective as of April 1, 2013.

**IV. Conclusion**

The modified order issued by CSSD failed to account for the payments made for Mr. H' older child, S. The correct child support obligation in this case is \$417 per month for one child, and is effective April 1, 2013. This child support calculation was made pursuant to the guidelines in Civil Rule 90.3.

**V. Child Support Order**

- Mr. H' child support obligation is set at \$417 per month for one child effective April 1, 2013.
- All other provisions of the April 25, 2013 Amended Administrative Child and Medical Support order remain in effect.

DATED this 9<sup>th</sup> day of August, 2013.

*Signed* \_\_\_\_\_  
Jeffrey A. Friedman  
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 21<sup>st</sup> day of August, 2013.

By: *Signed* \_\_\_\_\_  
Signature  
Angela M. Rodell  
Name  
Acting Commissioner  
Title

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