

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

In the Matter of:)

M V. G)

OAH No. 13-0738-CSS

CSSD No. 001108412

DECISION AND ORDER

I. Introduction

The obligor, M V. G, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 26, 2013. The obligee children are K, 13, and H, 10. The custodian is L A. D, fka E.

The hearing was completed on August 14, 2013. Both parties appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. G's child support obligation for K and H is modified to \$250 per month for two children (\$185 for one child), effective April 1, 2013, and ongoing, pursuant to the provisions of Civil Rule 90.3(c). He is not entitled to a deduction from income for supporting his other children.

II. Facts

A. Background

Mr. G's child support obligation for K and H was set at \$327 per month in October 2004.¹ On March 23, 2013, Mr. G requested a modification review.² On March 28, 2013, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Mr. G did not provide income information. On April 26, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. G's child support to \$382 per month for two children (\$283 for one child), effective April 1, 2013.⁴ Mr. G appealed on May 14, 2013, asserting he has three other children in the home whom he is obligated to support, and that he

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 5.

pays support for another child in the amount of \$117 per month. He also stated that he works 39 hours per week at the rate of \$9.19 per hour, the minimum wage in Washington.⁵

B. Material Facts

Mr. G and Ms. D are the parents of K, 13, and H, 10. The children live with Ms. D in Alaska. Mr. G lives in Washington.

Mr. G has been employed by a company called No Name Unlimited since the fourth quarter of 2012.⁶ He is paid \$9.19 per hour as an appointment manager and works about 35-39 hours per pay period.⁷ He also receives a small bonus with each paycheck if the appointment he schedules with a salesperson yields a sale. His year-to-date gross earnings as of the end of June 2013 were \$11,922.96.⁸ Included in that gross income figure is Mr. G's year-to-date bonus total of \$2,900.

CSSD's modification order estimated Mr. G's 2013 income at \$19,115.20,⁹ which yields a child support amount of \$382 per month for two children (\$283 for one child).¹⁰ After the hearing, CSSD was asked to refine the calculation using the new information he provided at the hearing. CSSD used Mr. G's hourly rate, average hours worked per week and average bonuses to estimate Mr. G's total 2013 income at \$23,285.54.¹¹ This calculation results in a child support amount of \$449 per month for two children (\$333 for one child).¹²

Mr. G lives with his fiancée, T, and their three children, R, X and B, listed below. Mr. G explained that T, 23, is not employed because she does not have much work experience and because daycare would be too expensive for them. He added that daycare assistance is no longer available in Washington for two-parent households.

Mr. G listed regular expenses of about \$1,690 per month, which includes \$740 for rent; \$500 for food; \$160 for utilities; \$13 for home insurance; \$50 for entertainment, "if any"; \$50

⁵ Exh. 6.

⁶ Exh. 7.

⁷ Exh. 14.

⁸ Exh. 14 at pg. 4.

⁹ \$9.19 per hour x 2080 hours = \$19,115.20.

¹⁰ Exh. 5 at pg. 6.

¹¹ Exh. 15 at pgs. 1-2. With this estimated income, Mr. G would have adjusted annual (net) income of approximately \$19,957.58 per year, or, \$1,663.13 per month before child support is garnished. See Exh. 15 at pg. 1.

¹² *Id.*

for personal care items; \$60 for tobacco; and \$117 for C's child support.¹³ It should be noted, however, that the OAH copy of Mr. G's expenses worksheet is partially obscured on the right hand side. It appears he wrote that the rent is \$353 with housing assistance.¹⁴ If that is the case, the total of the expenses he listed is more along the line of \$1,303 per month. However, given that Mr. G has a toddler in the home (see below), one would assume that the household has the usual expense for diapers. This was not listed, but it may have been included in the line item for food.

Mr. G has six children for whom he is obligated to provide support:

<u>Name</u>	<u>Year Born</u>	<u>Status</u>
K (this case) 2000		Lives with Ms. D
H (this case) 2003		Lives with Ms. D
C	2004	Mr. G pays \$117 per month
R	2008	Lives in home with Mr. G
X	2009	Lives in home with Mr. G
B	2012	Lives in home with Mr. G

Mr. G was ordered to pay child support of \$117 per month for C on May 16, 2013.¹⁵ In addition to the child support payments, Mr. G testified that C spends every Friday and Saturday night and one-half of each summer with him, but the parenting agreement he filed did not mention the summer custody periods.¹⁶

Ms. D also provided some documentation of her financial circumstances. She is employed by No Name Distribution, Inc., where she earns \$17.50 per hour.¹⁷ As of the end of May 2013, her year-to-date income was \$17,901.22,¹⁸ making her estimated annual salary \$42,962.93.¹⁹ Ms. D provides health insurance for K and H, plus an individual named P D, who is identified in the documents as her spouse.²⁰ She did not submit an expenses worksheet.

¹³ Exh. 9. Apparently Mr. G does not own a car; he wrote N/A in the vehicle section of the worksheet and left the line item for gasoline and vehicle insurance blank.

¹⁴ *Id.*

¹⁵ Exh. 12 at pg. 8.

¹⁶ Exh. 11.

¹⁷ Exh. 16 at pg. 12.

¹⁸ *Id.*

¹⁹ $\$17,901.22 \div 5 = \$3,580.24 \times 12 = \$42,962.93.$

²⁰ Exh. 16 at pg. 3.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”²¹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h)²² assumes “material change in circumstances” has been established and the order may be modified. Mr. G’s child support was previously set at \$327 per month, so a child support calculation over \$376.05 would be sufficient to modify his child support obligation at this time.²³

A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of April 1, 2013.²⁴

As the person who filed the appeal in this case, Mr. G has the burden of proving by a preponderance of the evidence that the agency’s calculations are incorrect.²⁵

A. *Child Support Calculation*

On appeal, Mr. G requests a financial hardship variance under Civil Rule 90.3(c) and a deduction from income for the support he pays for his child C. He also wants his three younger children to be taken into consideration. CSSD argues that he is not entitled to a deduction for supporting any of his other children because they are all younger than K and H.

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.” Civil Rule 90.3(a)(1)(C) states that an obligor parent is entitled to a deduction from income for “child support . . . payments arising from prior relationships which are required by other court or administrative proceedings and actually paid” A companion provision of the rule, Civil Rule 90.3(a)(1)(D), provides that a parent is entitled to a deduction from income for the cost of providing support “for children from prior relationships living with the parent.”²⁶

Neither deduction is applicable in Mr. G’s case. The obligor is not entitled to a deduction from income for paying court-ordered support for C because she is younger than both K and H. Mr. G also is not entitled to a deduction for having younger children in the home. Civil Rule

²¹ AS 25.27.190(e).

²² Civil Rule 90.3 contains the guidelines for calculating child support in Alaska. The rule applies to all proceedings in which support is to be determined, whether in court or before CSSD, the administrative agency.

²³ $\$327 \times 115\% = \376.05 .

²⁴ 15 AAC 125.321(d). In this case, the notice was issued on March 28, 2013. Exh. 3.

²⁵ 15 AAC 05.030(h).

²⁶ Civil Rule 90.3(a)(1)(D).

90.3 states that in general, an obligor parent's child support obligation should not be reduced for that parent's *younger* children.²⁷ The provisions of Civil Rule 90.3 give priority to a parent's older children. That is why the rule states that a support obligation for an older child should not be reduced simply because the parent decided to have subsequent children.²⁸ One exception is that if the failure to reduce the support obligation would cause "substantial hardship" to the subsequent children, a reduction may be allowed.²⁹ Whether Mr. G may be entitled to a reduction 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."³⁰

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child(ren), 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).³¹ This factor is of special relevance in this case for two reasons. First, Ms. D's 2013 paystubs, assuming she is a full-time, year-round employee, indicate that on an annual basis, she earns nearly \$20,000 more than Mr. G;³² and second, Ms. D specifically requested leniency for Mr. G because he's been "putting in tremendous effort."³³ It is not known whether Ms. D's husband is currently employed, but apparently Ms. D requested help for Mr. G with the knowledge that her ability to support K and H would not be hampered by a reduction in Mr. G's child support obligation.

Because the child support in this case is owed directly to Ms. D, her plea on his behalf is compelling. Thus, based on all the evidence, Mr. G has proven by clear and convincing evidence that manifest injustice would result if the calculated child support amount were not varied. Mr. G's child support should be set in the amount of \$250 per month for two children (\$185 for one

²⁷ Civil Rule 90.3, Commentary VI.B.2.

²⁸ See *In re V.S.*, OAH No. 11-0271-CSS (Comm'r of Revenue 2011), pg. 4.

²⁹ Civil Rule 90.3, Commentary VI.B.2.

³⁰ Civil Rule 90.3(c).

³¹ See Civil Rule 90.3, Commentary VI.E.1.

³² See Exh. 16 at pg. 12.

³³ Testimony of Ms. D.

child). This is a reduction of \$77 per month from the child support amount Mr. G had prior to this modification. In the absence of this variation, Mr. G's younger children would likely experience "substantial hardship" because he does not have enough money to meet his child support obligations and support his younger children in the home.

Even though Mr. G's child support is being reduced at this time, he should understand that he is not guaranteed a similar result in any future modification action, and he should be planning for possible future increases in his support obligation for K and H.

IV. Conclusion

Pursuant to Civil Rule 90.3(c), Mr. G proved by clear and convincing evidence that manifest injustice would result if his child support were not varied from the amount calculated by CSSD. A modified child support amount of \$250 per month for two children (\$185 for one child) represents a balance of the parties' circumstances and should be adopted.

V. Child Support Order

- Mr. G's child support obligation for K and H is modified to \$250 per month for two children (\$185 for one child), effective April 1, 2013, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated April 26, 2013, remain in full force and effect.

DATED this 12th day of December, 2013.

Signed

Kay L. Howard
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 30th day of December, 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.]