

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

In the Matter of:)	
)	OAH No. 13-1131-CSS
B Q)	CSSD No. 001136450
_____)	

DECISION AND ORDER

I. Introduction

The obligor, B Q, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on June 6, 2013. The obligee child is L, 9. The custodial parent is R T. M.

The hearing was held on September 11, 2013. Mr. Q appeared in person; the custodian participated by telephone. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. Q's child support is modified to \$534 per month for one child, effective May 1, 2013, and ongoing. The obligor's request for a variance based on financial hardship is denied.

II. Facts

A. Procedural Background

Mr. Q's child support obligation for L was set at \$366 per month in June 2011.¹ On April 10, 2013, Ms. M initiated a modification review.² On April 18, 2013, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. Q did not provide income information. On June 6, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. Q's ongoing child support at \$443 per month, effective May 1, 2013.⁴ On June 21, 2013, Mr. Q submitted two paystubs and requested an administrative review (instead of a hearing) because "[t]he amount of income was calculated incorrectly."⁵ CSSD attempted to contact Mr. Q to conduct an administrative review, but the

¹ Exh. 4.
² Exh. 5.
³ Exh. 6.
⁴ Exh. 5.
⁵ Exh. 8.

agency could not reach him.⁶ CSSD used Mr. Q's hourly wage to calculate a revised child support amount of \$418 per month.⁷ On August 15, 2013, CSSD referred the case to the Office of Administrative Hearings (OAH) for a hearing. At the hearing, the parties agreed that Mr. Q's request for an administrative review should be construed as an appeal and request for a formal hearing to the OAH.

B. Material Facts

Mr. Q and Ms. M are the parents of L, 9 years of age. L lives full time with Ms. M.

Mr. Q is employed by No Name, where he has worked since at least the beginning of 2010.⁸ In 2010, 2011 and 2012, he earned between \$26,000 and \$28,500.⁹ However, Mr. Q has recently gotten a raise from \$12.50 per hour to \$14.50 per hour.¹⁰ As a result, his 2013 income appears to be significantly higher than in prior years. For example, his earnings during the first half of 2013 have exceeded \$9,000 during both the first and second quarters of 2013, which would suggest that his annual income may exceed \$36,000 in 2013.¹¹

After the hearing, Mr. Q submitted a printout of his paystubs from January 2013 through mid-September 2013. It shows that as of September 13th, he had received straight time wages of \$20,991.97; overtime wages of \$6,236.85; and vacation pay of \$696, for a total of \$27,924.82.¹² CSSD used these figures to estimate Mr. Q's total annual income for 2013 would be \$39,234.80.¹³ From this figure, CSSD calculated Mr. Q's modified ongoing child support at \$534 per month.¹⁴

Mr. Q lives with his girlfriend and six children.¹⁵ Only two of these children are Mr. Q's biological children, and they are both younger than L.¹⁶ The other four children in the home appear to be his girlfriend's children from another relationship.

⁶ Exh. 9. *See also* CSSD's Pre-hearing Brief at pg. 1. CSSD acknowledges that Mr. Q was not entitled to an administrative review in a modification proceeding. *See* 15 AAC 125.321.(c).

⁷ Exh. 10.

⁸ Exh. 12.

⁹ *Id.*

¹⁰ Mr. Q's hearing testimony.

¹¹ *Id.* \$9,000 x 4 = \$36,000.

¹² Exh. 14 at pg. 2.

¹³ CSSD's Second Submission to Record dated September 17, 2013.

¹⁴ Exh. 15. This figure does not include a PFD, as Mr. Q is currently not entitled to receive one.

¹⁵ Exh. 13.

¹⁶ *Id.*

Mr. Q and his girlfriend share expenses. She is employed at a local bank, but Mr. Q does not know how much she earns. He listed his regular monthly expenses as \$1,495, which includes \$500 for rent; \$250 for food; \$50 for food away from home; \$220 for cell phone service; \$110 for vehicle insurance; \$210 for gasoline and one-half of the \$310 payment on his girlfriend's 2011 Honda.¹⁷ Mr. Q did not report having any credit cards or other expenses.

III. Discussion

A. Child Support Calculation

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁸ 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. Mr. Q's child support has been \$366 per month since June 2011. Thus, a child support calculation of \$420.90 or more would be sufficient to warrant modification in this case.¹⁹

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 May 1, 2013.²⁰ In a child support matter, the person who files the appeal, in this case, Mr. Q, has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect.²¹

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,” minus mandatory deductions such as taxes and Social Security. In this case, CSSD initially modified Mr. Q's child support to \$443 per month for one child, based on the four quarters of income he received immediately prior to June 6, 2013, the date CSSD issued the modification order.²² However, those four quarters included income Mr. Q received at his lower salary in 2012, so it was reasonable to recalculate Mr. Q's 2013 modified child support based on an estimate of his 2013 income only, and not a combination of his 2012 and 2013 earnings.

¹⁷

Id.

¹⁸

AS 25.27.190(e).

¹⁹

$\$366 \times 115\% = \420.90 .

²⁰

15 AAC 125.321(d). In this case, the notice was issued on April 18, 2013. Exh. 6.

²¹

15 AAC 05.030(h); 2 AAC 64.290(e).

²²

Exh. 7 at pg. 8.

After the hearing, Mr. Q submitted a complete printout of his year-to-date income in 2013. CSSD used that information to estimate his annual income for 2013 at \$39,234.80.²³ That figure yields a modified ongoing child support amount of \$534 per month.²⁴ This figure is correct and, absent a finding of financial hardship, should be adopted.

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 based on financial hardship, 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."²⁵

Based on all the evidence, Mr. Q did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. The obligor's financial obligations are not overwhelming and he shares expenses with his girlfriend. He did not know how much she earns at the bank, so it was not possible to make a more specific finding as to his overall financial circumstances. It is possible, however, to approximate whether Mr. Q has enough money to pay his bills after his child support is garnished from his wages. This is done by comparing Mr. Q's net income after taxes and his monthly expenses. CSSD's final child support calculation indicates that Mr. Q's 2013 "adjusted annual income," also known as net income, is approximately \$32,043.46.²⁶ Dividing that figure by twelve yields monthly net income of about \$2,670.29.²⁷ When the calculated child support amount of \$534 is subtracted, Mr. Q is left with approximately \$2,136.29.²⁸ Since he listed expenses of only \$1,495, it is more likely than not that Mr. Q has enough income to pay all of his financial obligations. Thus, the evidence is insufficient to establish Mr. Q's child support should be reduced based on financial hardship, and his request for consideration of a financial hardship variance should be denied.

²³ CSSD's Second Submission to Record dated September 17, 2013.

²⁴ Exh. 15. This figure does not include a PFD; Mr. Q testified he is currently not entitled to receive one, and CSSD conceded the issue.

²⁵ Civil Rule 90.3(c).

²⁶ Exh. 15.

²⁷ $\$32,043.46 \div 12 = \$2,670.29$.

²⁸ $\$2,670.29 - \$534 = \$2,136.29$.

IV. Conclusion

Mr. Q met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, but the final child support calculation based on his year-to-date income information resulted in an increase of the child support amount to \$534 per month, which is effective May 1, 2013. Also, Mr. Q did not meet his burden of proving by clear and convincing evidence that manifest injustice will result in the absence of a variation of his child support calculation. The modified child support amount is therefore correct and should be adopted.

V. Child Support Order

- Mr. Q is liable for modified ongoing child support for L in the amount of \$534 per month, effective May 1, 2013, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated June 6, 2013 remain in full force and effect.

DATED this 15th day of October, 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 1st day of November, 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.]