

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

In the Matter of:	)	
	)	OAH No. 13-1455-CSS
K M. K	)	CSSD No. 001117186
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, K M. K, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 24, 2013. The obligee child is H, 14. The custodian is E N. S.

The hearing was held on November 5, 2013 and December 10, 2013. Both parties appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. Record closure occurred on December 12, 2013, with the receipt of CSSD's final Submission to Record.

Based on the evidence and after careful consideration, CSSD's Modified Administrative Child Support and Medical Support Order is affirmed. Mr. K's child support order for H is modified to \$394 per month, effective August 1, 2013, and ongoing. He is not entitled to a deduction from income for paying arrears for his prior child, L, but he is entitled to a deduction for paying support of \$267.62 per month for his other prior child, N. Finally, Mr. K's request for a hardship variance under Civil Rule 90.3(c) is denied.

**II. Facts**

*A. Background*

Mr. K's child support obligation for H was set at \$212 per month in 2003.<sup>1</sup> On July 8, 2013, he verbally requested a modification review. On July 17, 2013, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>2</sup> Mr. K provided income information.<sup>3</sup> On September 24, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. K's child support to \$394 per month for one child,

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

effective August 1, 2013.<sup>4</sup> Mr. K appealed on October 21, 2013, asserting CSSD used incorrect income, he was not given visitation credit, he cannot afford the child support amount, and he has other children to support.<sup>5</sup>

*B. Material Facts*

Mr. K and Ms. S are the parents of H, 14, who lives with his mother. Mr. K lives out of state.

Mr. K works in the optometry field. He has been with the same employer since the end of 2012.<sup>6</sup> He provided paystubs for the modification process and from these, CSSD estimated his total annual income for 2013 at \$33,814.04, and calculated a modified child support amount of \$394 per month for one child.<sup>7</sup>

The annual income figure CSSD used is comparable to the wage data kept on file by the Alaska Department of Labor and Workforce Development (DOL) and accessed by CSED. The DOL reported that he had earned \$25,737 through the end of the third quarter of 2013.<sup>8</sup> When averaged, this equals \$8,579 per quarter,<sup>9</sup> which, when multiplied by four quarters, yields an estimated income figure of \$34,316 for the year.<sup>10</sup> Since CSSD's estimate of Mr. K's income is so close to the estimate derived from the DOL, the agency's annual income figure for Mr. K reasonably reflects his annual income for 2013.

Mr. K lives with his wife, Z, and her 18 year-old daughter from a prior relationship. Z brings home \$1,500 per month.<sup>11</sup> Mr. K listed regular household expenses of about \$3,173 per month.<sup>12</sup> He testified that when he and Z were married two years ago, he moved into her home and they now share expenses. However, Mr. K is not a legal owner of the home, nor is his name on the mortgage. In addition, Mr. K does not own a vehicle – he drives one of his wife's two cars. The obligor also acknowledged that most of the \$20,400 credit card debt listed on his expenses worksheet is actually for his wife's two credit cards. Mr. K has one credit card with a

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<sup>4</sup> Exh. 4.

<sup>5</sup> Exh. 5.

<sup>6</sup> Exh. 6, earnings data from the Alaska Department of Labor and Workforce Development.

<sup>7</sup> Exh. 9.

<sup>8</sup> Exh. 6 at pg. 1.

<sup>9</sup>  $\$25,737 \div 3 = \$8,579$ .

<sup>10</sup>  $\$8,579 \times 4 = \$34,316$ .

<sup>11</sup> Mr. K's expenses worksheet received on November 12, 2013, marked by the undersigned as Exh. B.

<sup>12</sup> *Id.*

\$1,200 balance. Z's daughter is in college, but the Ks do not contribute to her tuition, just her room and board.

Mr. K has two prior children, L, 21, and N, 16. Mr. K pays arrears on his former child support obligation for L, but he does not pay any ongoing support because L has emancipated.<sup>13</sup> Mr. K has a court order to pay ongoing support for N and he has been paying \$267.62 per month on the order, which is administered by CSSD. The order for N is also in the modification process, and will also be effective on August 1, 2013, the same as this administrative support order for H. CSSD estimated that the order for N will be modified to \$444 per month, although that will not be certain until the court issues it. Because he is paying on more than one order, Mr. K may not be able to actually pay more support for N, even though her order may be modified upward.

Ms. S also documented her financial circumstances. She earns \$3,212 per month and is responsible for all of her household expenses of about \$3,000 per month.<sup>14</sup> She has a boyfriend named B who lives with her and H. B works in the gold mining industry and is currently unemployed for the winter, but he uses his savings to pay his own expenses.

### **III. Discussion**

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>15</sup> If the newly calculated child support amount is more than 15% different than the previous order, Civil Rule 90.3(h)<sup>16</sup> assumes “material change in circumstances” exists and the order may be modified. Mr. K's support was set at \$212 per month in 2003. A child support calculation of \$243.80 or higher would be sufficient to modify his child support obligation at this time.<sup>17</sup> 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 August 1, 2013.<sup>18</sup>

As the person who filed the appeal in this case, Mr. K has the burden of proving by a

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<sup>13</sup> See Mr. K's documents received by the OAH on October 29, 2013, and marked by the undersigned as Exhibit A. The order for L is Exh. A, pg. 3.

<sup>14</sup> Testimony of E N. S. Ms. S's expenses worksheet was received on November 14, 2013, and marked by the undersigned as Exhibit C.

<sup>15</sup> AS 25.27.190(e).

<sup>16</sup> 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.

<sup>17</sup>  $\$212 \times 115\% = \$243.80$ .

<sup>18</sup> 15 AAC 125.321(d). In this case, the notice was issued on July 17, 2013. Exh. 2.

preponderance of the evidence that the agency's Modified Administrative Child Support and Medical Support Order is incorrect.<sup>19</sup>

*A. Child Support Calculation*

On appeal, Mr. K requests a financial hardship variance under Civil Rule 90.3(c) and a deduction from income for the entire amount of support he pays for his older children L and N. CSSD argues that he is not entitled to a deduction for paying L's support because the child has emancipated and all of the funds Mr. K is currently paying are just for the arrears he accrued while L was still a minor. CSSD agrees that Mr. K is entitled to a deduction from income for the support he actually pays for N and has included a deduction of \$267.62 in his calculation.

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." As stated above, CSSD's estimation of Mr. K's income was comparable to the estimated income derived from his DOL wage data, so the agency's estimate is a reasonable income figure to use.

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 . . . ." This deduction is applicable in Mr. K's case and he has been given this deduction in CSSD's calculation. Mr. K contests this one deduction, claiming that he pays a significantly higher amount of support due to the arrears he is still paying for L. Mr. K is not entitled to a deduction for the arrears payments he makes on L's case, even though L is older than H. The purpose of Civil Rule 90.3(a)(1)(C) is to give an obligor parent a deduction for supporting prior children to whom he or she owes a *current* support obligation during the same time as the child in the case at issue. To give an obligor a deduction for arrears payments is merely giving the parent a credit for paying a past debt, not for actually supporting a prior child at the same time.

*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

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<sup>19</sup> 15 AAC 05.030(h).

injustice would result if the support award were not varied.”<sup>20</sup> It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child, 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>21</sup>

The upward modification of his child support order for H has undoubtedly created stress for Mr. K. However, there are two incomes coming into his household, but just one in Ms. S’s home. Based on the evidence in its entirety, Mr. K did not prove by clear and convincing evidence that manifest injustice would result if the child support order for H were not varied from the amount calculated under Civil Rule 90.3. Mr. K’s child support should remain at \$394 per month, the amount set by CSSD in its modification order.

#### **IV. Conclusion**

Mr. K did not meet his burden of proving by a preponderance of the evidence that CSSD’s calculation was incorrect, as required by 15 AAC 05.030(h). The calculation for 2013 is based on his actual income and includes a deduction for paying support for his prior child, N. Neither did Mr. K 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 calculation should be affirmed.

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

- CSSD’s Modified Administrative Child Support and Medical Support Order dated September 24, 2013 is affirmed;
- Mr. K’s child support obligation for H is modified to \$394 per month, effective August 1, 2013, and ongoing.

DATED this 31<sup>st</sup> day of December, 2013.

Signed  
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Kay L. Howard  
Administrative Law Judge

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<sup>20</sup> Civil Rule 90.3(c).

<sup>21</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 17<sup>th</sup> day of January, 2014.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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