

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

In The Matter of:)	
)	
F F S)	OAH No. 13-1456-CSS
)	CSSD No. 001172804
_____)	

DECISION AND ORDER

I. Introduction

This case involves F S's appeal of a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on October 11, 2013. CSSD's modification order increased the monthly child support payable by the obligor parent, Mr. S, from \$504 to \$882 effective August 1, 2013.¹

During the course of this administrative proceeding Mr. S obtained an opinion from his physician stating that he is disabled. Also during the course of these proceedings the No Name Superior Court issued a child support order, based on a default proceeding, setting Mr. S's child support obligation at \$318 per month effective December 1, 2013.²

This decision concludes, based on information obtained through the hearing process, that the correct amount of child support payable by Mr. S, based on his disability and inability to work, is \$128 per month from August 1, 2013 through November 30, 2013. Accordingly, CSSD's Modified Administrative Child Support and Medical Support Order dated October 11, 2013 is reversed. However, the No Name Superior Court's support order supersedes, as of its effective date (December 1, 2013), all support orders issued by CSSD and by the Office of Administrative Hearings (OAH). Accordingly, Mr. S's child support obligation for two children, based on W M C N' primary physical custody, is set at \$128 per month for August, September, October, and November 2013. Pursuant to the Superior Court's order, Mr. S's child support obligation then increases to \$318 per month effective December 1, 2013 and ongoing.

¹ Ex. 4 p. 3; Ex. 7 p. 3.

² Court documents indicate that the No Name Superior Court proceedings were default proceedings in which Mr. S did not participate. For that reason it is likely that the No Name Superior Court was not provided any evidence regarding Mr. S's medical problems, and that its decision was rendered in the absence of that evidence.

II. Facts

A. Material Facts

Mr. S and his former wife, W M C N, are the parents of J, age 14, and H, age 10.³ Ms. N has primary custody of both children.⁴

Mr. S previously worked at the No Name.⁵ He lost his job in March 2012.⁶ He began residing separately from his wife and children in September 2012. He underwent surgery during the winter of 2012 - 2013 and was unable to work for some time thereafter. Currently his only income is approximately \$400.00 per month from rental income, occasional cab driving, and gifts from relatives.⁷

Records from the State of Alaska Department of Labor and Workforce Development (DOL) indicate that Mr. S earned gross income from employment of \$20,050.17 in 2010, \$21,652.35 in 2011, and \$9,399.73 in 2012; he had no reported earnings from employment in 2013.⁸ During 2012 Mr. S also received unemployment insurance benefits (UIB) of \$5,120.⁹

Dr. Ronald A. N, M.D. is board-certified in psychiatry and neurology.¹⁰ A letter written by Dr. N dated November 20, 2013 states:

F S is disabled by a severe mood disorder. His mood disorder is only partially responsive to treatment despite aggressive treatment both in Alaska and outside Alaska. It is unlikely that his disability will change in the foreseeable future.

At some time during 2013, Mr. S's wife filed for divorce.¹¹ Mr. S did not participate in the divorce proceedings and was defaulted.¹² On December 16, 2013 the No Name Superior Court issued Findings of Fact, Conclusions of Law, a Child Support Order, and a Judgment and Decree of Divorce.¹³ The Superior Court awarded primary physical custody of the two children to Mr. S's former wife, and ordered Mr. S to pay ongoing child support of \$318.00 per month effective

³ Ex. 15 p. 1, undisputed hearing testimony. Ex. 15 was originally marked by CSSD as Ex. 11, but has been renumbered as Ex. 15.

⁴ Ex. 15 p. 2; undisputed hearing testimony.

⁵ Ex. 3 pp. 2 - 8.

⁶ All factual findings in this paragraph are based on Ex. 13 unless otherwise noted.

⁷ Ex. 3 p. 2; Ex. 8; Ex. 13.

⁸ Ex. 10.

⁹ Ex. 10.

¹⁰ Ex. 14.

¹¹ Ex. 15.

¹² Ex. 15 p. 13.

¹³ Ex. 15.

December 1, 2013.¹⁴ The Superior Court's child support award was based on imputed income of \$7.25 per hour and a 40 hour work week.¹⁵ Because the Superior Court's order, judgment, and decree were entered based on Mr. S's default, the Court was not aware of Dr. N's opinion of November 20, 2013 at the time its decision was issued.

B. Relevant Procedural History

Mr. S's former wife applied for services from the Child Support Services Division (CSSD) In December 2010.¹⁶ On March 14, 2011 CSSD issued an Administrative Child Support and Medical Support Order which required Mr. S to pay child support in the amount of \$412 per month beginning April 1, 2011.¹⁷ On May 31, 2011 Mr. S requested administrative review of CSSD's decision.¹⁸ On August 8, 2011 CSSD issued an Administrative Review Decision and an Amended Administrative Child Support and Medical Support Order.¹⁹ Instead of lowering his child support, CSSD increased Mr. S's ongoing child support obligation to \$504 per month.²⁰ CSSD's amended support order was based on Mr. S receiving an adjusted annual income of \$22,398.69 in 2010.²¹

On July 15, 2013 Mr. S requested modification of CSSD's 2011 determination.²² On October 11, 2013 CSSD issued a Modified Administrative Child Support and Medical Support Order.²³ Again, instead of lowering his child support obligation, CSSD increased Mr. S's child support obligation to \$882 per month, based on presumed gross income of \$48,719.20.²⁴

Mr. S appealed CSSD's decision of October 11, 2013 on October 15, 2013.²⁵ In his appeal papers, Mr. S stated that he was unemployed, was not receiving unemployment benefits, and was surviving on handouts from his mother and brother.²⁶

Mr. S's hearing was held on November 12 and December 30, 2013. Mr. S participated by telephone, represented himself, and testified on his own behalf. Ms. N was contacted but chose not to participate. Russell Crisp participated by telephone and represented CSSD at the first hearing;

¹⁴ Ex. 15 pp. 2, 11, 14.

¹⁵ Ex. 15 pp. 11, 14.

¹⁶ Ex. 4 p. 9.

¹⁷ Ex. 1 pp. 1 - 2.

¹⁸ Ex. 3 p. 1.

¹⁹ Ex. 4.

²⁰ Ex. 4 pp. 1, 3.

²¹ Ex. 4 p. 8.

²² Ex. 5.

²³ Ex. 7.

²⁴ Ex. 7. pp. 3, 7.

²⁵ Ex. 8.

²⁶ Ex. 8.

Errin Brian represented CSSD at the second hearing. The record was held open for post-hearing filings through January 21, 2014, at which time the record closed.

III. Discussion

A. *Mr. S Bears the Burden of Proof in This Proceeding*

Mr. S appeals CSSD's Modified Administrative Child Support and Medical Support Order dated October 11, 2013 on the basis that CSSD's ongoing child support award of \$882 per month is excessive. As the person who filed the appeal in this case, Mr. S has the burden of proving, by a preponderance of the evidence, that the child support amount established in CSSD's Administrative Review Decision is incorrect.²⁷

B. *The Legal Basis of Mr. S's Child Support Obligation*

A parent is obligated both by statute and at common law to support his or her children.²⁸ A parent's duty of support begins on the child's date of birth.²⁹ In those cases in which the child support obligation is determined by CSSD, the agency collects support from the date a parent requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.³⁰

In Alaska, the rules for calculating child support are contained in Civil Rule 90.3. How support is calculated depends upon the type of custody exercised by the parents of the children.³¹ Under Civil Rule 90.3(a)(1), where the custodial parent has primary physical custody of the child, the first step in calculating child support is to determine the non-custodial parent's total income from all sources. The record indicates that Mr. S's income totals about \$400.00 per month, not counting the Alaska Permanent Fund Dividend (PFD). The second step is to subtract any applicable deductions from the gross income; the resulting number is referred to as adjusted income. Based on the information provided by Mr. S, no deductions are applicable. The third step is to multiply the non-custodial parent's adjusted income by the percentage specified in Civil Rule 90.3 applicable to the number of children for whom support must be paid.³² In order to calculate a child support

²⁷ 15 AAC 05.030(h).

²⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

²⁹ *State of Alaska, Department of Revenue, Child Support Enforcement Division ex rel. Hawthorne v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997).

³⁰ 15 AAC 125.105(a)(1)-(2).

³¹ Civil Rule 90.3(a), (b) (recognizing four types of custody [primary, shared, divided, and hybrid] and identifying a calculation for each type). *See also* Civil Rule 90.3(f) (defining types of custody).

³² Civil Rule 90.3(a)(2).

award for two children, the non-custodial parent's adjusted income must be multiplied by 27%.³³ In this case, multiplying Mr. S's income by 0.27 results in a monthly child support award of \$128.00 (see Ex. A, attached).

C. *Mr. S Satisfies the Criteria for Modification*

Under Civil Rule 90.3, a child support award may be modified upon a showing of a material change of circumstances.³⁴ A material change of circumstances will be presumed if the monthly child support payment, as calculated under Civil Rule 90.3, is more than 15 percent greater or less than under the previous child support order.³⁵ Modifications are generally effective on the first day of the month following the date on which a motion for modification, or a notice of petition for modification, is served on the opposing party.³⁶

Mr. S's current child support obligation (as calculated above) is more than 15% less than under CSSD's previous child support order. Accordingly, Mr. S is entitled to modification of his support obligation. Because Mr. S's modification request was received by CSSD on July 15, 2013, the modification becomes effective on August 1, 2013.

D. *Alternatively, the Support Obligation Should be Decreased Under Civil Rule 90.3(c)*

In this case Mr. S has asserted that, based on his low income level, injustice will result if the support award is not decreased. This constitutes a request for a variance of the child support award under Civil Rule 90.3(c)(1). Such a variance can be granted only where there is proof, by clear and convincing evidence, that unusual circumstances exist and that manifest injustice will result if the support award is not varied.

Based on Dr. N's letter dated November 20, 2013, which is unrebutted, Mr. S has proven clearly and convincingly that this case involves unusual circumstances justifying variance of the amount of child support which he might otherwise be required to pay based on imputed income. Considering the totality of the circumstances, *even were the support award calculated under Civil Rule 90.3(a) greater than \$128 per month*, the support obligation should be reduced to \$128 per month pursuant to Civil Rule 90.3(c)(1-3).

³³ Civil Rule 90.3(a)(2)(B).

³⁴ Civil Rule 90.3(h)(1).

³⁵ Civil Rule 90.3(h)(1).

³⁶ 15 AAC 125.321(d).

IV. Conclusion

CSSD's Modified Administrative Child Support and Medical Support Order dated October 11, 2013 was correct based on the information then available to CSSD. However, important additional information was brought forth through the hearing process. Through that process Mr. S proved, by clear and convincing evidence, that the \$882 support award, which would otherwise be payable, would be manifestly unjust based on his current disability. Accordingly, CSSD's Modified Administrative Child Support and Medical Support Order dated October 11, 2013 is reversed. Mr. S's child support obligation for two children, based on Ms. N' primary physical custody, is set at \$128 per month for August, September, October, and November 2013. Pursuant to the No Name Superior Court's decree dated December 16, 2013, Mr. S's child support obligation then increases to \$318 per month effective December 1, 2013 and ongoing.

There was a request for a variance under Civil Rule 90.3(c) in this appeal, and it was granted.

V. Child Support Order

- Mr. S is liable for child support for J and H in the amount of \$128 per month for August, September, October, and November 2013.
- Pursuant to the No Name Superior Court's decree dated December 16, 2013, Mr. S's child support obligation then increases to \$318 per month effective December 1, 2013 and ongoing.
- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order dated October 11, 2013 remain in full force and effect.

DATED this 18th day of February, 2014.

Signed _____
Jay D. Durych
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 7th day of March, 2014.

By: Signed
Signature
Jay D. Durych
Name
Administrative Law Judge
Title

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