

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

In the Matter of:)
)
K L. G) OAH No. 13-1771-CSS
) CSSD No. 001162014
_____)

DECISION AND ORDER

I. Introduction

K L. G appealed a modification of an existing child support order. Mr. G is the obligor, and O L. J is the custodian of record. The child subject to this modification is E.

A hearing was held on January 7, 2014. Mr. G appeared by telephone and represented himself. Ms. J was not available by telephone at the time set for the hearing. Child Support Specialist A.J. Rawls represented the Child Support Services Division (CSSD).

For the reasons discussed below, Mr. G's child support obligation should be set at \$921 per month for one child.

II. Facts

A. Background

A Modified Administrative Child Support and Medical Support Order was issued on December 6, 2012, setting Mr. G's support obligation at \$792 per month for one child.¹ A Notice of Petition for Modification of Administrative Support Order was issued and mailed to both parents on October 16, 2013.² CSSD granted the requested modification, and issued a new Modified Administrative Child Support and Medical Support Order, setting Mr. G's support obligation at \$993 per month.³

Mr. G requested a hearing to contest the upward modification. He argued that CSSD should not have included his overtime income when calculating his support obligation.⁴ He has no objection to paying child support, but wants the calculated amount to be correct.

B. Material Facts

Mr. G works on the North Slope and has a two week on/two week off schedule.⁵ His 2012 W-2 statement shows he earned \$56,974.91.⁶ His employer set his annual base salary for

¹ Exhibit 1.
² Exhibit 3.
³ Exhibit 6. This order did not contain an effective date.
⁴ Exhibit 7.

2013 at \$55,120, based on 2080 hours per year at \$26.50 per hour.⁷ Mr. G is also able to earn overtime wages by working additional time at the end or beginning of some of his shifts.⁸ In 2013, he worked a significant amount of overtime to pay his child support arrears and other bills.⁹ With overtime, he had earned \$18,611.99 in the first quarter of 2013, \$22,507.50 in the second quarter, and \$15,827.32 in the third quarter.¹⁰ He had earned \$16,174.41 in the fourth quarter of 2012.¹¹ Based on the earnings from these four quarters, Mr. G was on track to earn \$73,121.22 in 2013. Given his base salary of \$55,120, this represents approximately \$18,000 in overtime income.

According to CSSD's records, Mr. G was able to reduce the arrears owed for E by about \$7,000 during 2013. He started the year owing in excess of \$14,000, and ended owing a little more than \$7,000.¹² Mr. G testified that overtime work is not guaranteed, and he hopes to work less overtime during 2014 so he can spend more time with his family.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹³ 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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁴ 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

⁵ Testimony of Mr. G.

⁶ Exhibit 4, page 5.

⁷ Exhibit 4, page 9.

⁸ Testimony of Mr. G.

⁹ Testimony of Mr. G.

¹⁰ Exhibit 8, chart showing income reported to the Department of Labor.

¹¹ Exhibit 8.

¹² Statements by Mr. Rawls based on his review of CSSD's records. Mr. G testified that he believed his arrears started the year at about \$12,000 and was reduced to \$6,000. CSSD's figures are more advantageous to Mr. G, and will be used in this decision.

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁴ AS 25.27.190(e).

with notice that a modification has been requested.¹⁵ Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁶

Mr. G's appeal is based on the inclusion of his overtime income in calculating his support obligation.¹⁷ In calculating child support, CSSD looks at all income the obligor parent can expect to earn, which includes "salaries and wages, including overtime and tips."¹⁸ In estimating Mr. G's income for 2014, it is appropriate to look at the amount he earned during 2013.¹⁹ The child support may be varied from the amount calculated under the Civil Rule 90.3(a) guidelines only if it is shown by clear and convincing evidence that manifest injustice would result if the award is not varied from the amount otherwise determined based on total income.²⁰

In most cases income from overtime or a second job will be counted as adjusted annual income under Rule 90.3(a). However, the court has discretion not to include this income when, for example, the extra work is undertaken to pay off back child support.²¹

Here, it is undisputed that Mr. G worked a significant amount of overtime to pay off child support arrears. He also used his overtime payment to support his current household, including subsequent children and children from his current wife's former relationship.²² The need to support subsequent children can also be used to vary the child support obligation, but only in unusual circumstances, and then only if the failure to do so would cause "substantial hardship" to the subsequent children.²³

Mr. G has not met his burden of proving that it is necessary to exclude his overtime income that was spent to support his current household. He has not shown that paying child support based on this portion of his overtime earnings would cause substantial hardship to his current household. He has, however, met his burden of proving that manifest injustice would result if the overtime income that went to pay child support arrears was not excluded. Mr. G

¹⁵ 15 AAC 125.321(d).

¹⁶ 15 AAC 05.030(h).

¹⁷ There was testimony about Mr. G's other children. His other biological children are all younger than E. The older children he supports are his current wife's from her prior relationship. Thus, he does not receive a deduction for supporting these children when calculating the support obligation for E. *See* Civil Rule 90.3(a)(1)(C) and (D).

¹⁸ 15 AAC 125.020(a)(1). *See* Civil Rule 90.3(a) (calculation based on total annual income from all sources).

¹⁹ 15 AAC 125.050(c)(2).

²⁰ 15 AAC 125.075; Civil Rule 90.3(c).

²¹ Civil Rule 90.3 Commentary VI.B.9.

²² Testimony of Mr. G.

²³ Civil Rule 90.3 Commentary VI.B.2.

would have worked 179 overtime hours to earn an additional \$7,000.²⁴ He worked that extra time, and spent less time with his current family, to pay that debt. It would be unjust not to account for that extra work here.

When the prior four quarters of income, including overtime pay, are used to estimate Mr. G's 2014 income, his child support obligation was correctly calculated by CSSD at \$993 per month for one child.²⁵ However, as discussed above, \$7,000 of his overtime income should be excluded in calculating his obligation. With that adjustment, Mr. G's annual wages can be estimated at \$66,121.22. He also is expected to receive a Permanent Fund Dividend, and \$5,000 in Native Corporation dividends.²⁶ Using these income amounts results in a child support obligation of \$921 per month for one child.²⁷ This is more than a 16% change from the prior obligation, and is therefore a material change in circumstances.

IV. Conclusion

Mr. G worked a substantial amount of overtime during 2013 in order to reduce the child support arrears owed for E. Earnings that were devoted to reducing that debt should be excluded when estimating his income for 2014, and establishing his ongoing support obligation. His child support obligation should be set at \$921 per month.

This child support calculation was made pursuant Civil Rule 90.3(c)(1).

V. Child Support Order

- Mr. G's ongoing child support obligation is set at \$921 per month for one child effective November 1, 2013.
- All other provisions of the November 27, 2013, Modified Administrative Child Support and Medical Support order remain in effect.

DATED this 8th day of January, 2014.

Signed _____
Jeffrey A. Friedman
Administrative Law Judge

²⁴ At time and one half, his hourly overtime wage is \$39.75 per hour.

²⁵ Exhibit 6, page 6.

²⁶ Exhibit 4, page 10.

²⁷ Attachment A.

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 27th day of January, 2014.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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