

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

In the Matter of:)	
)	OAH No. 13-1861-CSS
M M. N)	CSSD No. 001164100
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DECISION AND ORDER

I. Introduction

This case involves the obligor, M M. N’s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on July 23, 2013. This is a division initiated modification to recognize that one of the children, E, was emancipated in April 2013. The remaining obligee child is Z, 17. Ms. N had been paying \$84 per month support for Z under a divided custody arrangement. The emancipation changed the support calculation from a divided custody calculation to a primary custody calculation. The July 2013 Modified Administrative Child Support and Medical Support Order, using a primary custody calculation, modified Ms. N’s child support obligation upward to \$249 per month effective June 1, 2013.

The formal hearing was held on January 22, 2014. Ms. N did not participate.¹ S H, the custodian, appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed February 2, 2014.²

Based on the record and after careful consideration, CSSD’s Modified Administrative Child Support and Medical Support Order dated July 23, 2013 is affirmed.

II. Facts

CSSD was enforcing a May 2011 Modified Administrative Child Support and Medical Support Order requiring Ms. N to pay \$84 per month for two children based on divided custody.³ One child, E, emancipated in April 2013, converted this to a primary custody matter.

¹ A current mailing address must be provided to the department with the request for appeal, and any change in mailing address after the request for appeal is filed must be reported to the department immediately. If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department.

15 AAC 05.010. The Notice of Telephonic Hearing was delivered using certified return receipt mail. Ms. N accepted delivery January 10, 2014. Ms. N received notice and the hearing proceeded in her absence.

² As required by regulation, the record remained open for 10 days to provide Ms. N with an opportunity to show reasonable cause for her failure to participate. 15 AAC 05.030(j).

Recognizing that this change in custody could be a material change, CSSD sought to modify the May 2011 order. Having received no income information from Mr. H or Ms. N, CSSD concluded that Ms. N's child support should be based upon a minimum wage calculation.⁴ Using the minimum wage and standard child support deductions, Ms. N's child support obligation was determined to be \$249 per month for one child.⁵

Ms. N appealed because she makes no money and has no job. She has also suffered the tragic loss of her infant daughter. Ms. N wrote "please help me reduce my child support payments . . ."⁶

A formal hearing was held as requested by Ms. N, but she did not participate. Other than her appeal statement, she provided no evidence regarding her current financial circumstances. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear. The person who filed the appeal, in this case, Ms. N, has the burden of proving by a preponderance of the evidence, that CSSD's support order is incorrect.⁷ Her appeal statement, without more, is insufficient to meet her burden of proof.

III. Discussion

A. Child support calculation

Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."⁸ If the newly calculated child support amount is less than 15% higher or lower than the previous order, the Rule considers that a material change in circumstances has not necessarily occurred.⁹

Here modification is appropriate on two related grounds. First, "because divided custody is an 'unusual circumstance,' the court must consider whether the support amount should be varied under [90.3(c)(1)]."¹⁰ The change from a *per se* unusual circumstance (divided custody) to a primary custody calculation under 90.3(a) is sufficient to be considered good cause and a

³ Exh. 1.
⁴ Exh. 4.
⁵ *Id.*
⁶ Exh. 5.
⁷ 15 AAC 05.030(h).
⁸ AS 25.27.190(e).
⁹ Civil Rule 90.3(h).
¹⁰ Civil Rule 90.3(b)(2).

material change in circumstance. Next, modification is appropriate when a primary custody calculation results as it does here, in a newly calculated child support amount that exceeds the presumptive 15% threshold.

Child support, calculated using a primary custody calculation, results in a newly calculated child support amount, \$249, which is almost 300% higher than the prior amount, \$84.

B. Financial hardship

Ms. N's written statement that she would like help to reduce her child support payments is taken as a request for a hardship variance from the \$249 child support amount discussed in the preceding section.

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."¹¹ The presence of "unusual circumstances" in a particular case may be sufficient to establish "good cause" for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children . . . ^[12]

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).¹³

Here, CSSD did not calculate child support from actual income figures. Because it had no current income data for Ms. N, CSSD calculated gross income using Alaska's minimum wage, \$7.75 per hour for a person working full time, 2,080 hours and adding the permanent fund dividend. This calculation results in a gross income amount totaling \$16,998. When CSSD calculated child support in 2011, it used Ms. N's actual income. In 2011 she had a gross income

¹¹ Civil Rule 90.3(c).

¹² Civil Rule 90.3(c)(1).

¹³ See Civil Rule 90.3, Commentary VI.E.1.

totaling \$19,596.¹⁴ It would seem that if income decreased over the years, the amount of support owed would have a similar downward trend. Here, any increase is the result of the primary custody calculation.

The substantial increase in the amount of child support does query whether a variance in the amount of support ordered is appropriate. However, Ms. N did not participate in the hearing process. Had she participated, she could have answered questions that could possibly have provided evidence sufficient to meet her burden of proving by clear and convincing evidence that “manifest injustice” would result if the \$249 child support amount were not varied. However, her lack of participation does not add to the record presented. The evidence in this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3 to warrant varying her child support.

This decision does not preclude Ms. N from seeking a hardship variance by requesting modification.

IV. Conclusion

Ms. N did not appear at the hearing. The record presented establishes that it is more likely than not that CSSD’s July 2013 Modified Administrative Child Support and Medical Support Order was correct. The appeal should be denied.

V. Child Support Order

CSSD’s Modified Administrative Child Support and Medical Support Order issued on July 23, 2013 is affirmed: Ms. N is liable for child support for Z in the amount of \$249 per month effective June 1, 2013 and ongoing.

DATED this 11th day of February, 2014.

Signed

Rebecca L. Pauli
Administrative Law Judge

¹⁴ Exh. 1 p. 6.

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 3rd day of March, 2014.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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