

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

In the Matter of:)	
)	OAH No. 14-0013-CSS
S G. E)	CSSD No. 001170626
_____)	

DECISION AND ORDER

I. Introduction

This case involves the obligor S G. E's appeal of an Administrative Review Decision that the Child Support Services Division (CSSD) issued on December 10, 2013. The obligee child is L, 5 years of age. The custodian of record is K G. O.

The formal hearing was held on January 21, 2014. Both parties participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on February 11, 2014.

Based on all the evidence, Mr. E's child support for L is set at \$245 per month, effective July 1, 2013, and ongoing.

II. Facts

A. Procedural History

Ms. O applied for child support services for L on or about July 27, 2013.¹ CSSD initiated the process of establishing Mr. E's child support obligation by requesting financial information from him and issuing an administrative child support order on October 10, 2013 that set his child support at \$232 per month.² He requested an administrative review and provided income information.³ On December 10, 2013, CSSD issued an Administrative Review Decision that affirmed Mr. E's child support would be set at \$232 per month.⁴ Mr. E appealed on December 30, 2013, asserting that he cannot afford the support amount and that he does not get to spend as much time with L as he used to.⁵

¹ Exh. 1 at pg. 3. CSSD's Pre-Hearing Brief states she applied on July 30, 2013, but the date stamp on the copy of her application is illegible. Her signature was notarized on July 27, 2013, so that will be the date used here.

² Exhs. 2-3.

³ Exhs. 4-5.

⁴ Exh. 6.

⁵ Exh. 7.

B. Material Facts

Mr. E and Ms. O are the parents of L, who lives with his mother full-time. The parties were never married, but Mr. E signed an affidavit of paternity and his name was affixed to L's birth certificate.⁶ Ms. O applied for child support services for L in July 2013.

Mr. E is employed at a large retail store in Anchorage, where he has worked since the end of 2012.⁷ He earns \$10.59 per hour, plus a \$1.00 per hour shift differential.⁸ In 2013, he earned a total of \$15,784.37.⁹ That income figure, when inserted into CSSD's online child support calculator,¹⁰ yields a child support amount of \$245 per month for one child for both 2013 and 2014.¹¹

Mr. E lives with his girlfriend, who is also employed. She earns about \$1200-\$1300 per month in gross wages, and they share expenses. Mr. E reported that they pay the following amounts for monthly expenses: \$995 for rent; \$50 for natural gas; \$75-\$80 for electricity; \$66 for Internet; \$140 for two cell phones; \$250 for the payment on a 2000 Honda Passport that Mr. E purchased about four months prior to the hearing; \$20 for vehicle maintenance; \$86 for insurance; \$30 for entertainment; \$80-\$90 for personal care expenses; and \$400-\$500 for gasoline.¹² In addition, Mr. E has three unpaid debts – a medical bill of \$450, a student loan of \$5000-\$8000, and a credit card bill of \$500-\$800 from his prior marriage. Finally, Mr. E testified that he cannot estimate their grocery bill because they don't have enough money to pay for food.

III. Discussion

As the person who filed the appeal, Mr. E has the burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision is incorrect.¹³ That order set his child support at \$232 per month.

⁶ Exh. 1 at pg. 2.

⁷ Exh. 7 at pg. 3.

⁸ Exh. 11.

⁹ Exh. 10.

¹⁰ <https://webapp.state.ak.us/cssd/guidelinecalc/login>

¹¹ Exh. 12.

¹² The figure Mr. E gave for gasoline expenses is very high and does not seem accurate. But on the other hand, Mr. E was not able to itemize his grocery expenses. These two items essentially offset each other.

¹³ 15 AAC 05.030(h).

A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.¹⁴ In cases established by CSSD, the agency collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child.¹⁵ Ms. O applied for child support in July 2013, so that is the first month in which Mr. E is obligated to support L through CSSD.¹⁶

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." In its original administrative order, CSSD estimated Mr. E's 2013 earnings at \$14,812.08 to calculate his child support at \$232 per month for one child.¹⁷ CSSD's administrative review merely affirmed its earlier order.

However, after the hearing, Mr. E was able to submit his 2013 W-2 that shows he earned \$15,784.37 during the year. When the PFD is added and the total income amount is inserted into CSSD's child support calculator, it results in a child support amount of \$245 per month for one child for 2013 and ongoing.¹⁸ This calculation is slightly higher than the one in CSSD's initial administrative order that was affirmed after the agency's administrative review. It is correct because it is based on Mr. E's actual income during 2013, the year his support obligation was first established.

Mr. E claims he cannot afford the child support amount. Whether he may be entitled to a reduction in the amount calculated under Civil Rule 90.3 based on a financial hardship is discussed below.

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 injustice would result if the support award were not varied."¹⁹ It is appropriate to consider all

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ 15 AAC 125.105(a)(1)-(2).

¹⁶ See Exh. 1.

¹⁷ Exh. 3 at pg. 8.

¹⁸ Exh. 12.

¹⁹ Civil Rule 90.3(c).

relevant evidence, including the circumstances of the custodian and obligee child(ren), 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).²⁰

The establishment of this child support order has undoubtedly created stress for Mr. E, especially since he is working at a lower income level. However, he lives with his girlfriend and they have two incomes coming into the household. So, Mr. E has not shown that he cannot adjust his financial obligations. Since he does not work a full 40 hours per week, he has the flexibility to obtain additional part-time employment in order to supplement his earnings. But even if he cannot do these things, Mr. E's primary legal obligation is to support L, his biological child, based on his income, and this duty takes priority over other debts and obligations.²¹

Thus, based on the evidence in its entirety, Mr. E did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for L were not reduced. Mr. E's child support should remain at \$245 per month, as set by CSSD after the formal hearing.

IV. Conclusion

Mr. E 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). There was a slight adjustment to the calculation after Mr. E's actual income for 2013 was obtained, but it was insufficient to establish that the earlier calculation was incorrect. Neither did Mr. E prove that manifest injustice would result if his support obligation were not reduced from the amount calculated under Civil Rule 90.3. He is thus not entitled to a variance and CSSD's calculation of \$245 per month should be affirmed.

V. Child Support Order

- Mr. E is liable for child support for L in the amount of \$245 per month, effective July 2013, and ongoing;

²⁰ See Civil Rule 90.3, Commentary VI.E.1.

²¹ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

- All other provisions of the Administrative Review Decision dated December 10, 2013 remain in full force and effect.

DATED this 27th day of February, 2014.

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 17th day of March, 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.]