

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

In the Matter of:	)	
	)	OAH No. 14-0290-CSS
P A. C	)	CSSD No. 001150330
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, P A. C, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 27, 2014. The obligee child is L, 8 years old. The custodian of record is N R. H.

The hearing was held on April 30, 2014. Mr. C appeared by telephone. Mr. H could not be reached and thus did not participate.<sup>1</sup> Andrew Rawls, Child Support Specialist, represented CSSD.

Based on the record as a whole and after careful consideration, Mr. C's child support for L is modified to \$146 per month, effective November and December 2013, and further modified to \$162 per month, effective January 2014 through April 2014. Mr. C's ongoing support is suspended as of May 1, 2014, because L was adopted on April 24, 2014.

**II. Facts**

*A. Procedural History*

Mr. C's child support for L was set at \$247 per month in April 2008.<sup>2</sup> On October 30, 2013, CSSD initiated a modification review of this case.<sup>3</sup> Mr. C provided limited income information.<sup>4</sup> On January 27, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order, but the order did not adjust his child support amount, which remained at \$247 per month.<sup>5</sup> The order merely added a provision allowing for a visitation credit in the event he exercised extended visitation in the future. Mr. C appealed on or about February 14, 2014, and submitted additional income information, including his 2013 federal income tax

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<sup>1</sup> In an email dated September 2, 2014, CSSD indicated that the agency does not have current contact information for Mr. H, and that this case has closed because L has been adopted, as discussed below.

<sup>2</sup> Ex. 1.

<sup>3</sup> Ex. 2.

<sup>4</sup> Ex. 3.

<sup>5</sup> Ex. 5.

return.<sup>6</sup> Prior to the hearing, CSSD submitted draft calculations of Mr. C's support obligation for the administrative law judge's consideration.<sup>7</sup>

Mr. C has two other child support cases being administered by CSSD. In a status conference in early September 2014, all of Mr. C's cases were discussed. The evidentiary record in all of the cases was closed as of September 27, 2014.

*B. Material Facts*

Mr. C worked as a sales associate at a company called No Name, LLC, for about one year, beginning in early 2013. His 2013 tax return indicates his total earnings in 2013 were \$11,153.03.<sup>8</sup> Adding the PFD for 2013 yields total annual income of \$12,053.03.<sup>9</sup>

In early 2014, Mr. C began working in the real estate field on a commission-only basis, and at the status conference he indicated he had not earned any income in that endeavor thus far. As a result, the best estimate of his 2014 income is obtained by multiplying his first quarter earnings of \$3,168.68 times four quarters, which equals \$12,674.72.<sup>10</sup>

Mr. C lives with his fiancée. She is employed full-time and brings home net income of about \$2,300 per month. Mr. C testified they have regular monthly expenses of \$1,383 for rent; \$600 for food (after their food stamps are depleted); \$100 for natural gas; \$100 for water; \$70 for trash pickup; \$100 for electricity; \$150 for telephone service; \$70 for cable; \$306 for the payment on his 2000 Chevrolet Silverado; \$260 for the payment on his fiancée's 2008 PT Cruiser; \$400 for gasoline; \$206 for vehicle insurance; \$75 for personal care items; \$150 for tobacco; and \$48 for a payment to the IRS for a former tax bill.

There are two children in the home – one of them is his fiancée's child from a previous relationship. Mr. C also has one biological child in the home, a son older than L who has been in Mr. C's custody since 2007. Mr. C is entitled to a deduction for his prior child in both the 2013 and 2014 calculations for L. The deductions are determined by calculating a child support amount for the child in the home.

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<sup>6</sup> Ex. 6.

<sup>7</sup> Exs. 9-10.

<sup>8</sup> Ex. 3.

<sup>9</sup> \$11,153.03 + \$900 = \$12,053.03.

<sup>10</sup> Ex. 7. This information was provided by the Alaska Department of Labor and Workplace Development.

The deduction for the child in Mr. C's home is \$182 per month in 2013.<sup>11</sup> Using that amount in the deductions section yields a child support amount for L of \$146 per month for November and December 2013.<sup>12</sup> The deduction for the older child in Mr. C's home for 2014 is \$203 per month,<sup>13</sup> with the resulting support amount being calculated at \$162 per month for January through April 2014.<sup>14</sup> L was adopted by Mr. H's parents on April 24, 2014, so Mr. C's obligation to pay support is suspended as of May 1, 2014.<sup>15</sup>

## II. Discussion

### A. Child Support Calculations

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>16</sup> 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. Mr. C's child support obligation for L was set at \$247 in 2008; 15% of that amount is \$37.05.<sup>17</sup> Thus, a child support calculation lower than \$209.95<sup>18</sup> would be sufficient for a downward modification in this case.

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.<sup>19</sup> In this case, the notice was issued on October 30, 2013, so the modification is effective November 1, 2013.<sup>20</sup>

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order was incorrect.<sup>21</sup> Mr. C filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.<sup>22</sup>

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," minus mandatory deductions such as taxes

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11 Attachment A.  
12 Attachment B.  
13 Attachment C.  
14 Attachment D.  
15 See Ex.11.  
16 AS 25.27.190(e).  
17  $\$247 \times 15\% = \$37.05$ .  
18  $\$247 - \$37.05 = \$209.95$ .  
19 15 AAC 125.321(d).  
20 Ex. 4.  
21 15 AAC 05.030(h).

and Social Security. Another deduction concerns child support paid for prior children. Civil Rule 90.3(a)(1)(D) states that a parent is entitled to a deduction from income for supporting prior children living in the parent's home. This deduction is applicable in Mr. C's case, and it has been included in the calculations.

Mr. C's child support for L is now correctly calculated at \$146 per month for November and December 2013; and \$162 per month for January through April 2014. L was adopted on April 24, 2014, so Mr. C's support obligation for her has been suspended effective May 1, 2014, and shall remain suspended due to the child's adoption.

*B. Financial Hardship*

Mr. C claimed in his appeal that he cannot afford the child support amount in this case. Whether his support obligation for L should be reduced is discussed below.

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 based on financial hardship, 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."<sup>23</sup>

Based on all the evidence, Mr. C did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced in addition to the lower child support amount. The monthly support obligation in this case has been reduced significantly, and Mr. C's duty to support L has been suspended following her adoption in April 2014. Although dealing with his child support obligation has undoubtedly created stress for Mr. C, he did not provide sufficient evidence to establish that paying support for L for only six more months would result in "manifest injustice." An obligor's burden of proof by "clear and convincing evidence" is a high standard. Further, Mr. C lives with his fiancée, who is employed full-time and brings net income of approximately \$2,300 into the household. Mr. C may have to make difficult financial decisions, including finding employment that will provide him with an actual income.

Based on the evidence in its entirety, Mr. C did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil

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<sup>22</sup> 2 AAC 64.290(e).

<sup>23</sup> Civil Rule 90.3(c).

Rule 90.3 for L were not reduced. Therefore, his request for a variance under Civil Rule 90.3(c) based on a financial hardship should be denied.

#### **IV. Conclusion**

Mr. C met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated January 27, 2014 is incorrect. Mr. C is entitled to a deduction for supporting a prior child in the home. Thus, Mr. C's actual income yields a child support obligation for L of \$146 per month for November and December 2013; and \$162 per month for January through April 2014. The child support obligation should be suspended effective May 1, 2014, and ongoing, due to L's adoption.

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

- Mr. C is liable for modified child support for L in the amount of \$146 per month for November and December 2013; and \$162 per month for January through April 2014;
- Mr. C's ongoing support obligation for L is suspended as of May 1, 2014, due to her adoption, but he is still liable for the arrears that were incurred prior to L's adoption;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 27, 2014 remain in full force and effect.

DATED this 20<sup>th</sup> day of October, 2014.

*Signed*  
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Rebecca L. Pauli  
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 7<sup>th</sup> day of November, 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.]