

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

In the Matter of:)	
)	OAH No. 14-0291-CSS
P A. C)	CSSD No. 001182206
_____)	

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, 2 years old. The custodian of record is J M. B. The hearing was held on April 30, 2014. Both parties appeared by telephone. 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 \$93 per month, effective November 1, 2013. This amount is further modified to \$104 per month, effective January 1, 2014, and further modified to \$130 per month, effective May 1, 2014, and ongoing.

II. Facts

A. Procedural History

Mr. C's child support for L was set at \$192 per month in July 2012.¹ On October 30, 2013, CSSD initiated a modification review of this case.² Mr. C provided limited income information.³ 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 \$192 per month.⁴ 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 return.⁵ Prior to the hearing, CSSD submitted Mr. C's recent income information provided by the Alaska Department of Labor and Workforce Development (DOL), and draft calculations of

1 Ex. 1.
2 Ex. 2.
3 Ex. 3.
4 Ex. 5.
5 Ex. 6.

Mr. C's support obligation for the administrative law judge's consideration.⁶

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 \$11,153.03.⁷ Adding the PFD for 2013 yields total annual income of \$12,053.03.⁸

In early 2014, Mr. C began working in the real estate field on a commission-only basis, and 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 \$12,674.72.⁹

Mr. C lives with his fiancée. She is employed full-time and brings home net income of about \$2,300 per month. She has custody of a child from a prior relationship. 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.

Ms. B is a single parent and has three children in the home, including L. Her other two children are twins. She is employed full-time and brings home net income of about \$2,300 per month. Ms. B also receives Medicaid benefits and food stamps. She testified that her regular monthly expenses are \$1,000 for rent; \$400 for food after her food stamps are depleted; \$100 for natural gas; \$80-100 for electricity; \$90 for cell phone service; \$284 for the payment on a 2003 Ford Explorer; \$300 for gasoline; \$50 for vehicle maintenance; \$85 for vehicle insurance; \$142 for health insurance; \$100 for personal care items; \$40 for tobacco; \$50 for the payment on a bill

⁶ Exs. 8-9.

⁷ Ex. 8.

⁸ $\$11,153.03 + \$900 = \$12,053.03$.

⁹ Ex. 7. The obligor's income information from the Alaska Department of Labor and Workplace Development was updated to show that he earned \$3,168.68 in the first quarter of 2014.

of \$2,300 for past medical costs; and \$81 as her copay amount for child care. Ms. B has student loans, but currently they are being deferred.

Mr. C has three children older than L, the oldest of whom lives in Mr. C's home. Mr. C has also been paying support for his next older child, who was adopted effective May 1, 2014. Finally, Mr. C has one other child older than L. Mr. C is entitled to a deduction for all three of these prior children. These deductions have been calculated using Mr. C's actual 2013 income, plus the estimate of his 2014 income that was extrapolated from his income during the first quarter of 2014.

For the calendar year 2013, the deduction for the child in Mr. C's home is \$182 per month. He is ordered to pay support for the other two children of \$146 and \$116, respectively (\$262 total), so when inserted into the child support calculation, these three deductions result in a modified child support amount for L in November and December 2013 of \$93 per month.¹⁰

For the calendar year 2014, the deduction for the child in Mr. C's home is \$203 per month. His support orders for the other two children increased to \$162 and \$130, respectively (\$292 total), so when inserted into the child support calculation, these three deductions result in a modified child support amount for L of \$104 per month for January through April.¹¹

For the time period effective May 1, 2014, Mr. C is no longer obligated to pay support for one of his prior children, because she was adopted on April 24, 2014. Therefore, his deductions for prior children consist of \$203 per month for the child in his home, and \$162 per month for the remaining child for whom he is ordered to pay support. These deductions result in a modified ongoing child support amount for L of \$130 per month, effective May 1, 2014.¹²

II. Discussion

A. Child Support Calculations

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹³ 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

¹⁰ Attachment A.
¹¹ Attachment B.
¹² Attachment C.
¹³ AS 25.27.190(e).

set at \$192 per month in 2012; 15% of that amount is \$28.80.¹⁴ Thus, a child support calculation lower than \$163.20¹⁵ 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.¹⁶ In this case, the notice was issued on October 30, 2013, so the modification is effective November 1, 2013.¹⁷

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order was incorrect.¹⁸ 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.¹⁹

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 and Social Security. Other deductions concern 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. In addition to the deduction for supporting prior children in the home, Civil Rule 90.3(a)(1)(C) states that an obligor parent is entitled to a deduction from income for "child support . . . payments arising from prior relationships which are required by other court or administrative proceedings and actually paid" Both of these deductions are applicable in Mr. C's case, and they have been included in the calculations. However, the deduction for the child support he has paid for his child who was adopted on May 1, 2014 may be included only through April 2014. Hence the new ongoing calculation as of May 2014.

Mr. C's child support for L is now correctly calculated at \$93 per month for November and December 2013; \$104 per month for January through April 2014; and \$130 per month, effective May 1, 2014, and ongoing.

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.

¹⁴ \$192 x 15% = \$28.80.

¹⁵ \$192 - \$28.80 = \$163.20.

¹⁶ 15 AAC 125.321(d).

¹⁷ Ex. 4.

¹⁸ 15 AAC 05.030(h).

¹⁹ 2 AAC 64.290(e).

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."²⁰

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. Although dealing with his support obligation has undoubtedly created stress for Mr. C, he did not provide sufficient evidence to establish that paying support for L 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 about \$2,300. 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 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 and also for paying support for prior children. Mr. C's child support for L is correctly calculated at \$93 per month for November and December 2013; \$104 per month for January through April 2014; and \$130 per month, effective May 1, 2014, and ongoing. These figures should be adopted.

V. Child Support Order

- Mr. C is liable for modified child support for L in the amount of \$93 per month for November and December 2013; \$104 per month for January through April 2014; and \$130 per month, effective May 1, 2014, and ongoing;

²⁰

Civil Rule 90.3(c).

- 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 20th day of October, 2014.

Signed

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 7th 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.]