

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

In the Matter of:	)	
	)	OAH No. 14-0299-CSS
M W. W	)	CSSD No. 001114587
_____	)	

**DECISION AND ORDER**

**I. Introduction**

M W. W appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 24, 2014. The obligee child is T, 12 years of age. The custodian is F M. O.

The hearing was held on March 18, 2014, followed by a supplemental hearing on May 8, 2014. All of the parties participated by telephone, including Russell Crisp, Child Support Specialist, for CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. W's child support obligation for T is modified to \$500 per month, effective October 1, 2013. His request for a variance based on financial hardship is denied.

**II. Facts**

*A. Procedural History*

Mr. W's child support obligation for T was set at \$257 per month in 2008.<sup>1</sup> On September 13, 2013, Ms. O requested a modification review.<sup>2</sup> On September 19, 2013, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On January 24, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that increased Mr. W's child support to \$492 per month, effective October 1, 2013.<sup>4</sup> Mr. W appealed on February 21, 2014.<sup>5</sup>

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<sup>1</sup> Exh. 3.  
<sup>2</sup> Exh. 4.  
<sup>3</sup> Exh. 5.  
<sup>4</sup> Exh. 7.  
<sup>5</sup> Exh. 8.

*B. Material Facts*

Mr. W has been employed by No Name Associates (NNA) for the last several years. In 2013, his employer reported to the Alaska Department of Labor and Workforce Development (DOL) that Mr. W's earnings for the year were \$34,618.60.<sup>6</sup> However, his final 2013 paystub indicated his earnings from the company were \$36,500.<sup>7</sup> The reason for the difference is unknown, but it is likely the result of Mr. W having tax-deferred income that his employer did not report to the State. CSSD filed a revised child support calculation based on the higher income listed on his final 2013 paystub. This resulted in a support amount of \$500 per month.<sup>8</sup>

Mr. W has been married to his wife, C, for seven years. She is not currently employed, nor has she been for eight months, as she has been diagnosed with a chronic medical condition called lupus. Mr. W testified that C occasionally works for an office temp agency, but that she is usually not employed long enough by any individual employer for her to get past the probation period and qualify for health insurance. Mr. W said that she continues to look for work but is not successful.

Mr. W was given the opportunity to submit a letter from C regarding her medical condition. After the supplemental hearing, she submitted a letter dated May 8, 2014 that states:

I was diagnosed with systemic lupus in 2011 and have had a difficult time remaining employed because of frequent doctors' appointments and frequent absences from work during bad flair ups.<sup>[9]</sup>

Mr. W submitted monthly expenses that consist of \$900 for rent; \$450 to \$500 for food; \$533.07 for utilities, which include natural gas, water, trash pickup, Internet Services, electricity, telephone, and cell phone; \$374.84 for the payment on a 2004 Dodge truck purchased in 2012; \$400 for gasoline; \$40.00 for gasoline for his motorcycle; \$140 per quarter for vehicle maintenance; \$312.50 for vehicle insurance (\$1,875 every six months); \$97.14 for health insurance; \$200 for personal care items; \$35 for a credit card with a balance of \$563.71; and payments on Alaska and federal student loans.<sup>10</sup>

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<sup>6</sup> Exh. 10.

<sup>7</sup> Exh. 11 at pg. 1.

<sup>8</sup> Exh. 12.

<sup>9</sup> Mr. W's documents received May 14 2014, and marked as Exh. 17.

<sup>10</sup> Exh. 17 at pg. 1. Mr. W's payment on his student loans is confusing. His expense worksheet lists a payment of \$52.50 on his Alaska student loan and no current payment on his federal student loans, but he testified that \$300 was being garnished from his wages for student loans.

Ms. O also submitted an expense worksheet. She reports monthly expenses of \$850 for rent; \$800 for food; \$557.66 for utilities; \$306.73 for the payment on a 2002 Jeep Liberty purchased in 2010; \$140 for gasoline; \$45 for quarterly vehicle maintenance; \$133.60 for vehicle insurance; \$50 for entertainment; \$100 for personal care items; \$50 for monthly medication expenses for T; \$200 for the total payment on three credit cards; and one payment of \$100 on a fourth credit card that she reports she is currently not paying.<sup>11</sup>

### **III. Discussion**

#### *A. Modifications in General*

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>12</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. W’s child support has been \$257 per month since 2007. Thus, a child support calculation of \$295.55 or higher would be sufficient to warrant modification in this case.<sup>13</sup>

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>14</sup> In this case, the notice was issued on September 19, 2013, so any modification of Mr. W’s child support obligation for T would be effective as of October 1, 2013.<sup>15</sup>

In a child support matter, the person who files the appeal has the burden of proving that CSSD’s order was incorrect.<sup>16</sup> Mr. W filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated January 24, 2014 is incorrect.<sup>17</sup>

#### *B. Child Support Calculation*

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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<sup>11</sup> Exh. 16.  
<sup>12</sup> AS 25.27.190(e).  
<sup>13</sup>  $\$257 \times 1.15 = \$295.55$ .  
<sup>14</sup> 15 AAC 125.321(d).  
<sup>15</sup> See Exh. 5.  
<sup>16</sup> 15 AAC 05.030(h).  
<sup>17</sup> 2 AAC 64.290(e).

and Social Security. CSSD initially calculated Mr. W's child support at \$492 per month, based on the income reported by his employer in 2013 to the Alaska Department of Labor and Workforce Development.<sup>18</sup> During the hearing process however, Mr. W submitted a year-end 2013 paystub that indicated his income for the year was \$36,500.<sup>19</sup> From that income figure, CSSD revised the child support calculation to \$500 per month.<sup>20</sup> Because it was based on his actual income for 2013, CSSD's calculation is correct. Whether Mr. W may be entitled to a reduction in the calculated amount based on a financial hardship is discussed below.

*C. Financial Hardship*

Mr. W claimed in his appeal that the calculated child support amount is too high, especially given the fact that his wife has a chronic medical condition that prevents her from being fully employed.

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>21</sup>

Based on all the evidence, Mr. W did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. The upward modification of this child support order has undoubtedly created stress for Mr. W and his wife, especially since it appears that she is not able to work all of the time. However, C's letter and Mr. W's testimony did not provide sufficient evidence to establish that increasing his child support by only \$243 per month would result in "manifest injustice." An obligor's burden of proof by "clear and convincing evidence" is a high standard. The statement in C's letter was sketchy, at best, and did not provide the in-depth level of information necessary to show how her condition may have impacted the household's financial circumstances. Further, Mr. W's expenses list seemed overstated; for example, he listed a gasoline expense of \$400 per month, yet he is the only one in his home who is employed and has to leave the house on a daily basis.

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<sup>18</sup> Exh. 7.  
<sup>19</sup> Exh. 11 at pg. 1.  
<sup>20</sup> Exh. 12.  
<sup>21</sup> Civil Rule 90.3(c).

Mr. W may have to make difficult budgeting changes, such as selling his motorcycle, or take on a part-time job, in order to make ends meet. But based on the evidence in its entirety, Mr. W 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 T 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. W met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated January 24, 2014 is incorrect, and the child support amount has been corrected to \$500 per month. However, he 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 T were not reduced. Mr. W's request for a variance under Civil Rule 90.3(c) is denied.

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

- Mr. W's child support obligation for T is modified to \$500 per month, effective October 1, 2013;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 24, 2014, remain in full force and effect.

DATED this 4<sup>th</sup> day of August, 2014.

*Signed*  
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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 22<sup>nd</sup> day of August, 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.]