

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

IN THE MATTER OF:	)	
	)	OAH No. 14-0688-CSS
G N	)	CSSD No. 001102634
_____	)	

**DECISION AND ORDER**

**I. Introduction**

G N appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 21, 2014. The support is for his fourteen-year-old daughter T. The other party is G U.

The telephonic formal hearing was held on May 22, 2014. Mr. N represented himself. Effort was made to contact Ms. U, but the telephone number she had provided was not functioning at the time of the hearing. Andrew Rawls, Child Support Specialist, represented CSSD. The record closed on May 30, 2014.

Based upon the record and after careful consideration, Mr. N's ongoing support obligation is set at \$444 per month, effective March 1, 2014.

**II. Facts**

*A. Facts regarding Mr. N's children and employment*

Mr. N is the father of 14-year-old T. T lives with her mother, G U. Mr. N lives with his current wife, M, and his 21-year-old daughter, who is attending post-secondary school, an eight-year-old daughter, and a five-year-old son.<sup>1</sup>

English is not Mr. N's first language. His testimony at the hearing revealed that although Mr. N understands and speaks rudimentary English fairly well, and was trying hard to understand the proceedings, many of the concepts and questions confused him.

Mr. N works at No Name as a lot porter. He makes \$14.50 per hour. He receives some overtime in winter, but little to none during the summer.<sup>2</sup> From 2011 to December 2013, Mr. N worked two jobs. In addition to work at the car lot, he worked as a personal care attendant,

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<sup>1</sup> N testimony.

<sup>2</sup> *Id.*

taking care of his elderly parents. He was paid for this work by an agency, No Name Care Services. In 2013, he earned \$27,200.26 through this second job.<sup>3</sup>

Mr. N testified, however, that having two jobs was too taxing for him, and left him with no time to spend with his children. Therefore, at the end of 2013, he gave up the personal care attendant job, which was taken over by his 21-year-old son (the twin of the 21-year-old daughter).<sup>4</sup> That son now lives with and cares for Mr. N's parents.

*B. Procedural background*

Mr. N's child support obligation for T was set at \$233 per month in March 2001. This appeal involves two more recent child support modification orders. First, in response to a request by Ms. U for a modification review, CSSD served Notices of Petition for Modification on the parties on July 16, 2013.<sup>5</sup> On September 20, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order, setting ongoing support at \$815 per month, effective August 1, 2013.<sup>6</sup> This order was based on estimated income for 2013 of \$63,124.82.<sup>7</sup>

On September 26 and 27, both Mr. N and his wife (on his behalf) called CSSD to protest this new child support obligation.<sup>8</sup> They were informed that they could file an appeal by filling out the request for appeal form.<sup>9</sup> CSSD has no record of their having done so.

On February 25, 2014, CSSD issued another Notice of Petition for Modification, based on a request from Mr. N for a modification review that was received on February 6, 2014.<sup>10</sup> This request related to the fact that Mr. N's income was now reduced because he had only one job. Based on Mr. N's reduced income, CSSD recalculated his support obligation, and on April 21, 2014, issued a Modified Administrative Child Support and Medical Support Order setting his support obligation at \$458 per month.<sup>11</sup> This amount was based on an estimated annual gross income of \$33,113.86.<sup>12</sup> Mr. N appealed, and the hearing was held on May 22, 2014. Following

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<sup>3</sup> Exhibit 20.

<sup>4</sup> N testimony. Mr. N could not remember when he stopped working as a personal care assistant, but the record indicates that he worked into early December 2013. Exhibit 14 at 2; Exhibit 20 at 1.

<sup>5</sup> Exhibit 3.

<sup>6</sup> Exhibit 6 at 1.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> Exhibit 7, 8.

<sup>9</sup> Exhibit 8.

<sup>10</sup> Exhibit 15.

<sup>11</sup> Exhibit 18 at 1.

<sup>12</sup> *Id.* at 6.

the hearing, CSSD recalculated Mr. N's gross income at \$32,015.34, which resulted in a child support amount of \$444 per month for one child.<sup>13</sup>

### III. Discussion

As the person who filed the appeal, Mr. N has the burden of proving by a preponderance of the evidence that the agency's modification order was incorrect.<sup>14</sup> Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>15</sup> If the newly calculated child support amount is more than a 15 percent change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified.

#### A. *Mr. N did not appeal from the September 2013 modification*

The first question is whether Mr. N's appeal relates back to the modification order CSSD issued on September 20, 2013. If Mr. N intended to appeal from that order, he was required to file a written notice of appeal within 30 days of the order.<sup>16</sup> Both he and his wife called CSSD to register their concern after he received the modification, and he was informed that he could appeal the order by filing the appropriate form. However, Mr. N did not file an appeal of the September order.

A person with difficulty understanding the English language may understandably be confused by CSSD's administrative processes.<sup>17</sup> In a previous case, the Commissioner recognized that it could be an injustice if an appeal deadline was enforced against an adult with low capacity to understand the process.<sup>18</sup> Yet here, as in the previous case, the evidence does not establish that Mr. N's struggles with English meant he had low capacity and did not sufficiently understand the process. He was questioned closely about filling out forms, and he said he filled out every form he was given. He was able to communicate his request for a review in February, and in April he filled out his appeal of the second modification.

Here, although CSSD told Mr. N in September that he would need to file a written appeal, he did not do so. He waited until after he left his second job to pursue further administrative

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<sup>13</sup> Exhibit 22 at 1.

<sup>14</sup> 15 AAC 05.030(h).

<sup>15</sup> AS 25.27.190(e).

<sup>16</sup> 15 AAC 05.010(b)(6); 15 AAC 125.118(f).

<sup>17</sup> *In re J.C.E.*, OAH No. 07-0606-CSS (Department of Revenue 2008) (noting that obligor's "English language issues" may have accounted for his failure to make payments as ordered).

<sup>18</sup> *In re M.J.Y.*, OAH No. 05-0426-CSS (Department of Revenue 2005).

remedies. A reasonable inference from this action is that Mr. N waited for a significant change in circumstances to request further adjustment of his support obligation. On this record, no evidence supports a finding that Mr. N intended to appeal the September order, and no injustice would result from a finding that the 30-day deadline for appeal of the September order should be strictly enforced. Thus, the September modification order should remain in effect as issued.

*B. The April 2014 modification order should be adjusted*

The April support order setting Mr. N's obligation at \$458 per month would be effective on March 1, 2014. A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.<sup>19</sup>

The only argument raised by Mr. N in this appeal of the April order is that he cannot afford this amount because he has so many other children to support. Under Civil Rule 90.3, no deduction is allowed for children born after the child at issue ("subsequent children"). Although Civil Rule 90.3(c) does allow for a variance from the strict application of the usual child support formula, a variance is allowed only upon "proof by clear and convincing evidence that manifest injustice would result." The commentary to Civil Rule 90.3 makes clear that subsequent children would generally not constitute good cause to vary the guidelines.<sup>20</sup> Here, no evidence indicates that the subsequent children would be harmed by application of the standard child support formula. Therefore, Mr. N has failed to prove that he is entitled to a variance.

Civil Rule 90.3(a)(1) provides, however, that the child support obligation is to be calculated based on "total income from all sources." After the testimony from Mr. N revealed his pay rate, and how much overtime his employer actually permitted, CSSD recalculated his income and his support obligation, and submitted this calculation into the record as Exhibit 22. The calculated support obligation of \$444 is consistent with the requirements of Civil Rule 90.3, and is supported by the evidence. Mr. N will be required to pay \$444 per month for the support of T.

#### **IV. Conclusion**

Mr. N did not meet his burden of proving by clear and convincing evidence that manifest injustice would result from application of the usual formula for calculation of a child support obligation under Civil Rule 90.3. CSSD's final recalculation of the support amount at \$444 per

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<sup>19</sup> 15 AAC 125.321(d).

<sup>20</sup> Civil Rule 90.3, Commentary VI.B.2.

month, based on the agency's best estimate of his total income, is accepted. This is not a variance under Civil Rule 90.3(c).

**V. Child Support Order**

- Mr. N's child support obligation for T is modified to \$444 per month, effective March 1, 2014.
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated April 21, 2014 remain in full force and effect.

DATED this 22<sup>nd</sup> day of July, 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 8<sup>th</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.]