

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

In the Matter of:)
)
 S X) OAH No. 14-0694-CSS
) CSSD No. 001194217
_____)

DECISION AND ORDER

I. Introduction

S X appealed an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on April 14, 2014. The obligee child is E, who is 16. The other party and custodial parent is D D. N.

The hearing was held on May 28, 2014. Mr. X appeared in person but Ms. N did not return the voicemail message left for her by the administrative law judge prior to the hearing. She could not be reached and thus did not participate. Russell Crisp and Andrew Rawls, Child Support Specialists, represented CSSD.

Based on the record, Mr. X's request under Civil Rule 90.3(c) for a hardship variance of his calculated child support obligation is granted. His support obligation for E should be \$250 per month, effective July 2008 through May 2015, and ongoing.

II. Facts

A. Procedural History

On September 3, 2013, CSSD received a request for child support services from Tennessee, Ms. N's state of residence.¹ CSSD initiated a child support action against Mr. X, and on January 7, 2014, issued an Administrative Child Support and Medical Support Order.² That order set Mr. X's ongoing child support at \$589 per month, with arrears of \$82,939 for the period from October 2007 through January 2014.³ Mr. X requested an administrative review, and on April 14, 2014, CSSD issued an Administrative Review Decision that affirmed its earlier order.⁴ Mr. X appealed on April 29, 2014, asserting that CSSD did not have accurate income

¹ Exh. 1.

² Exh. 2. Mr. X was served with the order on January 10, 2014. Exh. 3 at pg. 3.

³ *Id.*

⁴ Exh. 5.

information for him.⁵ Prior to the hearing, CSSD submitted an affidavit of income information that the division received from the Alaska Department of Labor and Workforce Development.⁶

B. Material Facts

Mr. X and Ms. N are the parents of E, who was born in 1998. E lives with her mother in Tennessee. Mr. X knew he was E's father even before she was born, but Ms. N did not want child support from him, so they agreed she would not seek it. Apparently, for many years she steadfastly remained true to her agreement with Mr. X and told the child support authorities in Tennessee that she did not know the identity and/or location of E's father.

The parties maintained contact over the years; in fact, E visited Mr. X in Alaska during the summers of 2007 and 2008. Mr. X also paid some cash child support for E, but he could not document any payments he may have made to Ms. N.

Ms. N received cash public assistance and/or food stamps occasionally throughout the years beginning in the calendar year 2000. In response to a request for information from CSSD during the hearing process, Tennessee submitted a document that indicated the individual months during which assistance was paid are as follows:⁷

<u>Year</u>	<u>Months Assistance was Provided</u>
2000	September, October, November
2002	June
2004	June, July, August, September, October, November, December
2005	January through December
2006	January through December
2007	January, February, March, April, May
2008	July, August, September, October, November, December
2010	July
2012	September, October, November, December
2013	January, February

At some point, Ms. N was forced to reveal Mr. X's identity, probably under a threat that she would lose benefits otherwise. On September 3, 2013, Tennessee sent a child support

⁵ Exh. 6.

⁶ Exh. 8.

request, called a “transmittal,” to CSSD, asking that a child support order be established against Mr. X.⁸ CSSD initiated an administrative action and this appeal followed.

Mr. X is married; his wife is employed full-time and earns roughly \$48,000 per year.⁹ Mr. X has had two prior children living in the home during the time at issue in this child support case.¹⁰ The oldest is S, Jr., who was born in December 1993. S, Jr.’s grandmother, J X, was S Jr.’s guardian from September 1994 until November 2009, during which time Mr. X paid support of \$311 per month to his mother.¹¹ Mr. X assumed physical custody of S, Jr. after returning home from overseas in November 2009. S, Jr. reached the age of emancipation in 2011.¹² .¹³

Mr. X’s other prior child in the home is B, who was born in October 1996. Mr. X paid support of \$340 per month on her behalf from the time she was very young until he was awarded custody of B on April 30, 2013.¹⁴ B reached the age of emancipation in October 2014.

Mr. X has a third biological child, N. He was born in 2004 and is younger than E, so he is not a prior child. Mr. X is under a court order to pay child support of \$450 per month for N.¹⁵

Mr. X was formerly in the military. He started in 1990 as a no name, and eventually he became the No Name Sergeant, in charge of all the no names in the brigade. Mr. X retired from the Army in March 2013 as an E7 with 22 years of service.¹⁶ After he retired, Mr. X began working in the private sector. He was employed at No Name briefly in 2012-2013, and in April 2013, Mr. X began working part-time at the No Name. He was still there at the time of the hearing and was earning \$15.30 per hour.

After the hearing, Mr. X provided copies of his Leave and Earnings Statement (LES) for the years from 2007 through 2012.¹⁷ CSSD used these to determine his total base pay and

7 Exh. 10 at pg. 1.

8 Exh. 1. Genetic testing had indicated that Mr. X’s probability of paternity of E is 99.99%. Exh. 1 at pg. 21.

9 Exh. 9 at pg. 1.

10 There is a third child in the home who is not Mr. X’s biological child and who is thus not considered a prior child for the purpose of calculating his support obligation.

11 Exh. 25 at pg. 5 (this exhibit was unnumbered when filed; it has been marked as Exh. 25 by the OAH).

12 Exh. 16.

13 Testimony of S X.

14 Exh. 14 at pg. 2.

15 Exh. 15.

16 Exh. 11 at pg. 16.

17 Exh. 11.

benefits for those years.¹⁸ However, none of the new calculations included any deduction from income for the support of prior children in the home. CSSD was later directed to determine the applicable prior child deductions, based on Mr. X's documents and testimony, and file revised child support calculations. The division's latest results are as follows:¹⁹

<u>Year</u>	<u>Total Income</u>	<u>Monthly Child Support</u>
2007	\$59,905.36	\$624
2008	\$84,064.16	\$880
2009	\$86,677.92	\$937
2010	\$89,972.04	\$969
2011	\$91,462.48	\$997
2012	\$95,564.12	\$1139
2013	\$67,724.01	\$744
2014 and ongoing	\$55,112.96	\$589

Finally, Mr. X submitted a list of household expenses totaling \$7,379.25 per month.²⁰ Specifically, the expenses he identified are: \$2,229.25 for the mortgage; \$450 for food at home; \$300 for eating out; \$335 for gas; \$93 for water; \$40 for trash; \$248 for electricity; \$105 for the telephone; \$126 for cable; \$233 for cell phones; \$437 on a 2009 Audi purchased in 2011; \$255 on a 2011 Suzuki purchased in 2011; \$200 for gasoline; \$200 for vehicle maintenance; \$200 for recreational vehicles; \$316 for combined vehicle and homeowner's insurance; \$45 for health insurance; \$225 for entertainment; \$200 for personal care items; \$982 for credit card debt with a balance of \$18,822; and \$160 for the payment on a hot tub.

III. Discussion

Mr. X filed the appeal, so he has the burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision affirming the Administrative Child Support and Medical Child Support Order dated January 7, 2014 is incorrect.²¹

¹⁸ Exh. 12.

¹⁹ Exhs. 17-22. CSSD titled this document "Sixth Submission to Record," but it was actually the fifth. CSSD was apparently including the Pre-Hearing Brief in this count.

²⁰ Exh. 9.

²¹ 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.²² A noncustodial parent is required by law to reimburse the State for public assistance paid on behalf of a child to whom the parent owes a duty of support.²³ By policy and statute, however, CSSD may collect child support arrears for no more than six years prior to the date the obligor was first served with notice of paternity and/or child support documents.²⁴

Mr. X was served with the Administrative Child Support and Medical Child Support Order on January 10, 2014.²⁵ CSSD's initial child support order established Mr. X's arrears as of October 2007, more than six years prior to the date he was served.²⁶ At the hearing, CSSD was unable to identify specifically why the arrears began in October 2007, so the division was directed to investigate the issue.²⁷ In a post-hearing filing, CSSD stated Tennessee had reported that during the period up to and including six years prior to January 10, 2014, public assistance benefits were not actually paid on E's behalf until July 2008.²⁸ Based on this additional evidence, CSSD proposed that Mr. X's arrears begin in July 2008. This is the appropriate date, based on the fact that public assistance in 2014 started in July. Thus, Mr. X is obligated in this administrative child support action to pay support for E as of July 2008.

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. The rule specifically addresses a military member's income. It provides that the soldier's total income includes "Armed Service Members base pay *plus* the Obligor's allowances for quarters, rations, COLA and specialty pay."²⁹ The base pay figure is put into the worksheet in the taxable income section.³⁰ The other benefits go into the non-taxable income

²² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

²³ AS 25.27.120(a). The noncustodial parent is also referred to as the "obligor."

²⁴ AS 09.10.120(a).

²⁵ Exh. 3 at pg. 3. .

²⁶ Exh. 2 at pg. 2.

²⁷ It's reasonable to conclude that CSSD sent Mr. X a communication of some sort in October 2013 after receiving the transmittal from Tennessee, but there is no evidence of that in the record, and CSSD's own representative did not know why the arrears were slated to begin in October 2007.

²⁸ See Exh. 10 at pg. 1.

²⁹ Civil Rule 90.3, Commentary III.A.29 (emphasis added).

³⁰ See Exh. 10 at pg. 2.

section.³¹ If the soldier lives off base, the BAH benefit used is the actual monetary amount included in the soldier's pay and reflected in the Leave and Earnings Statement (LES). If the soldier lives rent-free in base housing, the housing allowance is treated as an in-kind contribution, and its value, for child support purposes, is considered to be the same amount the soldier would receive for BAH while living off base.³²

In addition to mandatory deductions such as taxes and Social Security, Alaska law provides for two other deductions from an obligor parent's income regarding his or her support obligations for older children. First, Civil Rule 90.3(a)(1)(C) states that an obligor 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" Second, Civil Rule 90.3(a)(1)(D) states that a parent is entitled to a deduction from income for supporting prior children who are living in the parent's home. Both of these deductions are available to Mr. X here and should be incorporated into his child support calculations regarding his prior children, S, Jr. and B, who were born in 1993 and 1996, respectively. Since July 2008, Mr. X has paid support for both children and had custody of both children in his home.

Mr. X initially objected to CSSD's calculation because his income figures were incorrect. After he provided his Leave and Earnings Statements for the years beginning in 2007, CSSD was able to accurately determine his actual annual income for each year at issue. Also, CSSD's final calculations incorporate the deductions for prior children, and his support obligation is now correctly calculated, reflected in the figures in the table on page 4, above.³³

B. Financial Hardship

Mr. X's second appeal issue is that he cannot afford the child support amounts calculated by CSSD. His child support is now correctly calculated, as shown above, and it is from these figures that Mr. X's request to lower the support amount based on financial hardship should be considered. He maintains that he cannot afford the monthly support amount, especially given that he is retired from the military and his annual income has been reduced significantly.

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

³¹ *Id.*

³² *See* Civil Rule 90.3, Commentary III.A.19.

³³ With the exception of charges for 2007, which have been excluded.

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.”³⁴

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child, 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).³⁵

There are many factors to consider in Mr. X’s request for a variance based on financial hardship: those working primarily in his favor are his reduced income; his inability to pay all of the family’s bills after child support is deducted from his pay; and the significant debt arising from arrears that began in 2008. Those factors working against Mr. X’s request are the fact that he knew he had a child to support; his wife is employed and contributes to the household income; his two prior children in the home have reached the age of emancipation; and, in the absence of support from Mr. X, Ms. N had to rely on public support for E’s basic needs.

Based on the evidence in its entirety, Mr. X has proven by clear and convincing evidence that manifest injustice would result if the child support calculated under Civil Rule 90.3 were not varied. Mr. X’s child support should be set at \$250 per month for all the time periods in this appeal. This constitutes a reasonable measure of his ability to pay support under Civil Rule 90.3(c), especially now that he is having to pay support for a prior time in which he was earning significantly more than he is now. As a result, Mr. X will have arrears in the approximate amount of \$20,000. This means that in total, Mr. X will have to pay about \$365 per month toward the arrears;³⁶ \$250 per month for ongoing support until E emancipates; \$450 per month for his younger child, N; and an unknown amount of interest charges. Mr. X’s expenses were much higher than most obligors who request a hardship variance, so this task will not be easy – he and his wife will have to significantly reduce their household expenses, but over time it should be manageable.

This child support amount is designed to at least partially balance the competing interests in this case – it somewhat reimburses Ms. N and Tennessee for their expenditures on E’s behalf

³⁴ Civil Rule 90.3(c).

³⁵ See Civil Rule 90.3, Commentary VI.E.1.

³⁶ See 15 AAC 125.545(a).

over the years, yet it is not set so high that Mr. X is thrown into financial ruin. It is important that he be able to *continue* to pay support on E's behalf.

IV. Conclusion

Mr. X met his burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision was incorrect. He also met his burden of proving by clear and convincing evidence that manifest injustice would result if his child support calculated under Civil Rule 90.3 were not varied. His support obligation for E should be \$250 per month, effective July 2008 through May 2015, and ongoing.

V. Child Support Order

1. Mr. X is liable for child support for E in the amount of \$250 per month, effective July 2008 through May 2015, and ongoing;
2. All other provisions of the Administrative Review Decision dated April 14, 2014 remain in full force and effect.

DATED this 15th day of April, 2015.

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 4th day of May, 2015.

By: Signed

Signature
Kay L. Howard

Name
Administrative Law Judge

Title

[This document has been modified to conform to the technical standards for publication.]