

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

In the Matter of:	)	
	)	OAH No. 14-1068-CSS
W D. H	)	CSSD No. 001189556
_____	)	

**DECISION AND ORDER**

**I. Introduction**

W D. H appealed an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on May 15, 2014. He seeks a hardship variance. The obligee child is K, 7 years of age. The custodian of record is L B. J. This matter was initiated by the State of Wisconsin under the Uniform Interstate Family Support Act.

The hearing in this matter commenced July 28, 2014 and concluded September 4, 2014. The record remained open for CSSD to file supplemental procedural items. Robert Lewis, Child Support Specialist, represented CSSD.

Mr. H's request for a hardship variance is denied. He testified credibly regarding his need for asthma medication. However, without medical bills or prescription receipts to establish his medical expenses, Mr. H has not established by clear and convincing evidence that child support calculated under Alaska Rule Civil Procedure 90.3(a) is manifestly unjust if not varied.

He has established that CSSD's child support obligation effective January 2013 was calculated using an incorrect earnings figure. When correctly calculated, Mr. H is liable for child support for one child in the amount of \$198 per month effective January 2013, and \$300 per month effective January 2014 and ongoing.

**II. Facts**

Mr. H and Ms. J are the parents of K. On January 24, 2013, CSSD received a request from Wisconsin to establish paternity and establish child support because K was on public assistance. Paternity was established June 17, 2013.<sup>1</sup> On March 11, 2014, CSSD served Mr. H with its Modified Administrative Child Support and Medical Support Order and Notice of Finding of Financial Responsibility originally issued June 27, 2013.<sup>2</sup> The June 2013 Modified

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<sup>1</sup> Exh. 2.  
<sup>2</sup> Exh. 13.

Administrative Child Support and Medical Support Order used actual and imputed income to calculate Mr. H's monthly support obligation at \$282, effective January 2013.<sup>3</sup> Mr. H requested an administrative review. Using current financial information, CSSD determined that Mr. H owed arrears in the total amount of \$4,021 for the period commencing January 1, 2013 through May 31, 2014, and monthly support in the amount of \$329 effective June 1, 2014 and ongoing.<sup>4</sup>

Mr. H appealed, arguing that he has found it difficult to find employment with a felony conviction, but has found an employer who is willing to give him a chance. He asked for a reduction in the amount of child support because he suffers from asthma and cannot afford his medication. Without his medication he cannot work, and without work he cannot afford child support.<sup>5</sup> Mr. H cooperated with CSSD by providing current income information and completing a Hearing Expense Worksheet.<sup>6</sup>

CSSD calculated Mr. H's child support effective January 2014 at \$355 per month.<sup>7</sup> It based its calculation on a combination of actual and estimated earnings based on a 40-hour work week.<sup>8</sup> This calculation is incorrect because it disregards Mr. H's actual earnings and hours worked.<sup>9</sup>

### **III. Discussion**

Mr. H requested the formal hearing in this matter. As the appealing party, Mr. H has the burden of proving by a preponderance of the evidence that the Administrative Review Decision affirming CSSD's initial Administrative Child Support and Medical Support Order is incorrect.<sup>10</sup>

Child support determinations calculated under Civil Rule 90.3(a) from a parent's actual income are presumed to be correct. The parent may obtain a reduction in the amount, 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

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<sup>3</sup> Exh. 3.

<sup>4</sup> Exh. 5.

<sup>5</sup> H Testimony.

<sup>6</sup> Exhs. 10 and 11.

<sup>7</sup> Exh. 12.

<sup>8</sup> The income figure resulting in this child support amount included his actual earnings as reported to the Alaska Department of Labor for the first quarter 2014, plus his actual hourly wage (\$13) multiplied by 1,597 hours (\$20,761), plus a \$900 permanent fund dividend. These figures, when added together, total \$25,107.50. Exh. 12.

<sup>9</sup> Exh. 11.

<sup>10</sup> 15 AAC 05.030(h).

support award were not varied.”<sup>11</sup> The existence of “unusual circumstances” may also provide a sufficient basis for a finding of good cause to vary the calculated child support amount.<sup>12</sup> It is appropriate to consider all relevant evidence 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).<sup>13</sup>

For the first six months of 2014, in his present job, Mr. H earned \$8,225.75 regular pay and \$104 overtime.<sup>14</sup> He also earned an additional \$1,613.50 in the first quarter of 2014.<sup>15</sup> Using his actual earnings for the first six months and annualizing, Mr. H’s 2014 annual earnings should be \$19,886.50<sup>16</sup> This figure considers actual hours worked, including overtime, rather than an illusory 2080 hours per year. Using CSSD’s online calculator, and after allowable deductions, Mr. H’s monthly child support obligation for one child is \$300 effective January 1, 2014 and ongoing.<sup>17</sup>

When asked what the result would be if variance were not granted, Mr. H spoke of his need for asthma medication and how, without medication, he becomes ill and cannot work. When asked what amount of variance was being sought, Mr. H did not respond with any specificity. Mr. H’s expenses are not excessive; there are a few items he may be able to cut back on, such as cable or Internet. On the facts presented, Mr. H has not established that his case presents unusual circumstances or that it would be manifestly unjust unless the child support amount was varied.

#### **IV. Conclusion**

CSSD correctly calculated child support effective January 2013. However, as to CSSD’s child support calculation for support owing effective January 2014, Mr. H has established by a preponderance of the evidence that CSSD’s calculation was incorrect. He has not established that his case presents unusual circumstances or that manifest injustice would result from a failure to vary his child support obligation for K. Therefore, CSSD’s calculation effective January 2013 through December 2013 is affirmed. CSSD’s calculation effective January 2014 and ongoing

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<sup>11</sup> Civil Rule 90.3(c).

<sup>12</sup> Civil Rule 90.3(c)(1).

<sup>13</sup> See Civil Rule 90.3, Commentary VI.E.1.

<sup>14</sup> These figures were determined by subtracting Mr. H’s earnings for the period from June 29, 2014 to July 12, 2014 from his total year to date earnings as of July 12, 2014 for regular and overtime. Exh. 12 at 1.

<sup>15</sup> Exh. 8 at 1.

<sup>16</sup>  $\$8,225.75 + \$104 + \$1,613.50 = \$9,943.25$ ;  $\$9,943.25 \times 2 = \$19,886.50$ .

<sup>17</sup> Attachment A.

should be \$300 per month.

**V. Child Support Order**

1. Mr. H is liable for support for K effective January 2013 in the amount of \$198 per month through December 2013, and \$300 per month for January 2014 and ongoing.
2. All other provisions of the Amended Administrative Child Support and Medical Support Order dated May 15, 2013 remain in full force and effect.

DATED this 10<sup>th</sup> day of September, 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 29<sup>th</sup> day of September, 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.]