

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

IN THE MATTER OF:)	
)	OAH No. 14-1609-CSS
M M. G-N)	CSSD No. 001187300
_____)	

DECISION AND ORDER

I. Introduction

The obligor, M M. G-N, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 18, 2014. The obligee children are J and E. This order added J to E’s existing support order and increased Ms. G-N’s monthly support obligation to \$583 per month for two children effective August 1, 2014. The custodian of record is T R. N.¹ Ms. G-N appeared by telephone. Mr. N did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record remained open until October 24, 2014 to provide Ms. G-N with an opportunity to submit additional evidence. However, she did not and the record closed without her further participation.

The hearing process revealed information previously unknown to CSSD. This new information supports a finding that Ms. G-N is liable for arrears for J in the amount of \$50 per month effective April 2014 through July 2014, and \$384 per month for two children effective August 2014 and ongoing.

II. Facts

On November 16, 2012, CSSD issued an Administrative Child Support and Medical Support Order establishing a \$196 support order for E.² This matter was initiated when Mr. N applied for public assistance for J and E. Because there was no existing support order for J, CSSD initiated an “add-a-kid” modification to add J to the order for the existing child support order for E.³

¹ CSSD identified Ms. P H as the custodian of record at the hearing. However, the custodian in the OAH file and all contact information is for Mr. N.

² Exh. 1.

³ Exh. 3.

CSSD issued a Modified Administrative Child Support and Medical Support Order adding J effective April 1, 2014, and imposing arrears from April 1, 2014 through July 31, 2014 totaling \$456 (\$114 per month). Because the order was for two children, effective August 2014, Ms. G-N's ongoing child support was set at \$437 per month.⁴ The support calculation included a \$598 per month deduction for prior children in the home.⁵ These prior children are no longer living in the home or have emancipated.⁶

On September 4, 2014, CSSD received Ms. G-N's appeal. Ms. G-N believed that her income was overstated because it was based on her earnings prior to her February 2014 incarceration, \$22.85 per hour.⁷ She was released in June 2014, and in August 2014 found employment earning \$14 per hour. She averages 75 hours every two weeks.⁸ She does not receive paid holidays or vacations.⁹

At hearing, Ms. G-N requested a hardship variance. She lives with her boyfriend who has been unemployed for over a year. Ms. G-N is the sole source of support in the household. Her rent and heating fuel total \$1,060 per month.¹⁰ She averages \$600 a month for food (in home and out of home), \$79.90 for electricity, \$50 for entertainment, \$80 for personal care items; and has a prepaid cell phone for which she pays \$45 per month.¹¹ Ms. G-N does not have a car or other transportation, so she rides the bus or walks. Her monthly bus pass is \$60.¹²

Ms. G-N has children in state custody who are younger than J and E. She is working on a reunification plan so the younger children can return to her custody.

CSSD's position is that while she was incarcerated, J's support should be set at the minimum allowed by law, \$50. Effective August 1, 2014, ongoing child support should be based on her current wage. CSSD also contends that it would be manifestly unjust if Ms. G-N did not receive a \$150 variance in the support calculated under Alaska Rule Civil Procedure 90.3(a).

⁴ Exh. 5.

⁵ Exh. 5 at 6.

⁶ Testimony of G-N.

⁷ Exh. 2 at 2.

⁸ Exh. 6. When combined, the total monthly expenses are \$1,974.90.

⁹ Exh. 6. When combined, the total monthly expenses are \$1,974.90.

¹⁰ Testimony of G-N (Rent = \$700, Fuel = \$360 per month).

¹¹ Testimony of G-N.

¹² Testimony of G-N.

III. Discussion

Ms. G-N filed this appeal and requested a formal hearing. As the person who requested the hearing, she has the burden of proving by a preponderance of the evidence that CSSD's modification order is incorrect.¹³

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁴ Adding other children to a child support order is a material change in circumstance.¹⁵ In this case, CSSD has modified Ms. G-N's child support for the purpose of adding J to her previous order for E.

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 support award were not varied."¹⁶ The existence of "unusual circumstances" may also provide a sufficient basis for a finding of good cause to vary the calculated child support amount.¹⁷ 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).¹⁸ Before the request for variance can be addressed, Ms. G-N's unvaried child support must be calculated.

Ms. G-N was incarcerated from February 2014 through June 2014. She found employment in August 2014 earning \$14 per hour. She testified that she averaged 75 hours per week and is paid every two weeks, or 26 times a year. Prior to incarceration, she earned \$22.85 per hour.¹⁹ Using Ms. G-N's current earnings and recognizing that she is unlikely to work 52 weeks a year, it is reasonable to multiply her hourly wage, \$14, by 1,875 hours (75 hours x 25 pay periods) hours resulting in an annual income in the total amount of \$26,250.²⁰ Using

¹³ 15 AAC 05.030(h).

¹⁴ AS 25.27.190(e).

¹⁵ See 15 AAC 125.321(b)(2)(B).

¹⁶ Civil Rule 90.3(c).

¹⁷ Civil Rule 90.3(c)(1).

¹⁸ See Civil Rule 90.3, Commentary VI.E.1.

¹⁹ Exh. 3 at 2.

²⁰ Ms. G-N testified that she will be working holidays. It is more likely than not that Ms. G-N will miss some work. For this reason, income was calculated using 25 pay periods versus 26.

CSSD's online calculator, and after allowable deductions, Ms. G-N's monthly child support obligation for two children is \$534 per month effective August 1, 2014 and ongoing.²¹

Ms. G-N's monthly expenses total \$1,974.90.²² Her monthly expenses exceed her monthly income by \$1.71. Ms. G-N's average adjusted monthly income is anticipated to be \$1,976.61. When her \$534 monthly child support payments are included, Ms. G-N's expenses exceed her income by \$535.71.

The household expenses are not excessive; there are a few items she may be able to cut back on, such as personal hygiene and entertainment. She testified that if she was required to pay \$534 per month in child support it would be difficult to provide food for the household.

A variance of \$150 is appropriate in this instance. This results in a monthly child support obligation for two children in the amount of \$384. While her expenses will still exceed her monthly income, Ms. G-N has options available to her without J and E bearing the burden of supporting her household. For example, Ms. G-N could get a roommate to help her with monthly expenses, or her boyfriend could find a job. This would permit additional income for the household, thereby lowering Ms. G-N's monthly expenses.

Addressing the arrears for J from April 2014 through July 2014, a parent who is in jail cannot earn a significant income. It is not appropriate to impute income to an individual who cannot work due to incarceration, even though the parent may have taken what could be characterized as unreasonable actions that led to incarceration and loss of earnings.²³ Because Ms. G-N was incarcerated during this period, she was unable to earn the income that her child support for J was based on. Her incarceration limited her earning capacity to almost nothing.

At the hearing, CSSD agreed that Ms. G-N's support for J should be set at the minimum amount of \$50 based on her lack of income due to incarceration. Alaska law requires that child support be set at no less than \$50 per month, and the Alaska Supreme Court has said that a minimum order is generally appropriate when an obligor is incarcerated.²⁴

²¹ Attachment A.

²² In calculating a parent's adjusted annual income, deductions are made for supporting a child of a prior relationship. Alaska Rule Civil Procedure 90.3(a)(1)(C). There is, however, no corresponding deduction allowed for children of a subsequent relationship. Alaska Rule Civil Procedure 90.3 Commentary III.D and IV.B.2.

²³ *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998).

²⁴ See *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998) & *Douglas v. State, Department of Revenue* 880 P.2d (Alaska 1994).

IV. Conclusion

Ms. G-N established by a preponderance of the evidence that CSSD's August 18, 2014 order was incorrect because it overstated her income. CSSD's August 18, 2014 Modified Administrative Child Support and Medical Support order correctly added J to E's existing child support order. Because Ms. G-N was incarcerated when CSSD commenced establishment proceedings for J, it is appropriate that J's monthly support be the minimum permitted by law, \$50 per month from April 1, 2014 through July 31, 2014. As to ongoing support for E and J, Ms. G-N has established by clear and convincing evidence that it would be manifestly unjust to order support at the amount calculated under Civil Rule 90.3(a). A variance should be granted in the amount of \$150 per month, effective August 1, 2014. CSSD does not object.

V. Child Support Order

- Ms. G-N is liable for child support arrears for J in the amount of \$50 per month effective April 1, 2014 through July 31, 2014;
- Ms. G-N's child support obligation for J and E is set at \$384 per month effective August 2014 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 18, 2014 remain in full force and effect.

DATED this 4th day of November 2014.

By: 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 20th 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.]