

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

In the Matter of)	
)	OAH No. 14-1693-CSS
K C. M)	Agency No. 001117009
_____)	

DECISION AND ORDER

I. Introduction

The obligor, K C. M, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 19, 2014. The obligee child is L, 14. The custodian is J C. N.

The hearing was held on October 28, 2014. Both parties appeared by telephone. Joe West, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. M's child support obligation for L is modified to \$839 per month for one child, effective August 1, 2014, and ongoing. His request for a hardship variance pursuant to the provisions of Civil Rule 90.3(c) is denied because he failed to provide evidence regarding his expenses as agreed at the hearing.

II. Facts

A. Procedural Background

Mr. M's child support for L was set at \$151 per month in 2010.¹ On July 22, 2014, Ms. N requested a modification review.² On July 25, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Mr. M's employers replied to CSSD's queries regarding his income.⁴ On August 19, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. M's child support to \$849 per month for one child, effective August 1, 2014.⁵ Mr. M appealed on September 9, 2014, asserting the income CSSD used for the child support calculation was too high and he cannot afford the higher amount because he has to support a family of five.⁶

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.
⁶ Exh. 6.

B. Material Facts

Mr. M and Ms. N are the parents of L, 14, who lives with Ms. N. All of them reside in a small town on Alaska's west coast.

Since about 2013, Mr. M has been employed by Company Z and Company Y to transport freight and/or passengers to and from the community's small airport. Income data that CSSD obtained from the Alaska Department of Labor and Workforce Development (DOL) shows that in 2013, Mr. M earned a total of \$48,344.58 from these two companies.⁷ Mr. M's income information from the DOL was not available for all of 2014, but in the first half of the year, he received \$30,190.36.⁸

After the hearing, CSSD was asked to revise the child support calculation based on the current income information for Mr. M. CSSD divided Mr. M's half-year income of \$30,196.36 by 6 months to obtain a monthly average of \$5,031, then multiplied that figure times 12 months to arrive at an estimated annual income of \$60,372.⁹ To this total earned income figure, CSSD added the PFD and Mr. M's Native dividends of \$1,463 from the Corporation X and \$365.95 from the Corporation W,¹⁰ to arrive at total annual income of \$62,256.¹¹ From this figure, CSSD calculated Mr. M's revised child support at \$839 per month for one child, which is only \$10 per month lower than CSSD's modification order.¹²

Mr. M lives with his fiancée, O. They have three children in the home aged five and younger: her child from a prior relationship,¹³ and their two biological children. O is not working – she was expecting their third child in early 2015.

Nothing is known of Mr. M's household expenses. He agreed to fill out the blank form that CSSD attached to the Pre-Hearing Brief for just that purpose, but he had not submitted the additional evidence by the time CSSD filed its Submission to Record on November 19, 2014.

III. Discussion

As the person who filed the appeal in this case, Mr. M has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.¹⁴

⁷ Exh. 8.

⁸ *Id.*

⁹ Submission to Record at pg. 1.

¹⁰ *See* Exh. 10 at pg. 2.

¹¹ Exh. 12.

¹² *Id.*

¹³ This child's biological father is deceased.

¹⁴ 15 AAC 05.030(h).

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁵ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h)¹⁶ assumes “material change in circumstances” has been established and the order may be modified. Mr. M’s child support was previously set at \$151 per month in 2010, so a child support calculation over \$173.65 would be sufficient to modify his child support obligation at this time.¹⁷

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹⁸ CSSD sent the parties the notice of modification on July 25, 2014, so this modification is effective as of August 1, 2014.¹⁹

A. Child Support Calculation

On appeal, Mr. M argued that the income CSSD used in the child support calculation was about \$20,000 more than he earned per year, but he later acknowledged he was going by his 2013 income. He did not challenge the DOL figures showing his income was \$30,190.36 during just the first half of 2014. Mr. M also requested a financial hardship variance under Civil Rule 90.3(c) because he has a family of five to support (including himself), and was expecting another child in early 2015.

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.” In 2013, Mr. M earned \$48,344.58 from his two employers.²⁰ Based on his earnings from the first half of 2014, he was on course to receive approximately \$60,000 that year. Indeed, after the hearing, CSSD averaged his monthly income and estimated his annual earnings for 2014 to be \$60,372.²¹ Adding the PFD and his Native dividends resulted in total annual income of \$62,256, from which CSSD calculated his child support at \$839 per month for one child.²² This figure is correct. Whether Mr. M may be entitled to a reduction based on a financial hardship is discussed below.

¹⁵ AS 25.27.190(e).

¹⁶ Civil Rule 90.3 contains the guidelines for calculating child support in Alaska. The rule applies to all proceedings in which support is to be determined, whether in court or before CSSD, the administrative agency.

¹⁷ \$151 x 115% = \$173.65.

¹⁸ 15 AAC 125.321(d).

¹⁹ Exh. 3.

²⁰ Exh. 8.

²¹ Submission to Record at pg. 1.

²² Exh. 12.

B. Financial Hardship

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, 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."²³

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child(ren), 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).²⁴

Based on all the evidence, Mr. M has not proven by clear and convincing evidence that manifest injustice would result if the calculated child support amount were not varied. Civil Rule 90.3 states that in general, an obligor parent's child support obligation should not be reduced for that parent's *younger* children.²⁵ The provisions of Civil Rule 90.3 give priority to a parent's older children. That is why the rule states that a support obligation for an older child should not be reduced simply because the parent decided to have subsequent children.²⁶ One exception that may provide for a reduction is if the failure to reduce the support obligation would cause "substantial hardship" to the subsequent children.²⁷

Unfortunately, in this case, Mr. M has not shown whether his subsequent children would suffer a substantial hardship in the absence of a reduction in his child support obligation for L. He agreed to file a list of his expenses, but he failed to do so. In the absence of the additional evidence he agreed to provide, a reduction cannot be granted.

IV. Conclusion

Mr. M did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his child support were not varied from the amount calculated by CSSD pursuant to Civil Rule 90.3. After the hearing, CSSD revised his child support obligation to \$839 per month. Based on all the evidence in the record, this figure is correct and should be adopted.

²³ Civil Rule 90.3(c).

²⁴ See Civil Rule 90.3, Commentary VI.E.1.

²⁵ Civil Rule 90.3, Commentary VI.B.2.

²⁶ See *In re V.S.*, OAH No. 11-0271-CSS (Comm'r of Revenue 2011), pg. 4.

²⁷ Civil Rule 90.3, Commentary VI.B.2.

V. Child Support Order

- Mr. M’s child support obligation for L is modified to \$839 per month for one child, effective August 1, 2014, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 19, 2014, remain in full force and effect.

Dated: April 24, 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 within 30 days after the date of this decision.

DATED this 13th 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.]