

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

In the Matter of)	
)	
B J. D, JR.)	OAH No. 14-1768-CSS
_____)	Agency No. 001067879

DECISION AND ORDER

I. Introduction

The obligor, B J. D, Jr., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 16, 2014. The obligee children are U, 17, and E, 13. The custodian is J D. Q.

The hearing was completed on November 14, 2014. Both parties appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. D's child support obligation for U and E is modified to \$414 per month for two children (\$306 for one child), effective September 1, 2014, and ongoing.

II. Facts

A. Procedural Background

Mr. D's child support for U and E was set at \$250 per month in 2012.¹ On July 18, 2014, Ms. Q requested a modification review.² On August 15, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Mr. D did not provide income information. On September 16, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. D's child support to \$768 per month for two children, effective September 1, 2014.⁴ Mr. D appealed on September 29, 2014, asserting he did not yet have tax information for 2014, he could not afford to pay the amount CSSD calculated, and he did not know where the children were living.⁵

B. Material Facts

Mr. D and Ms. Q are the parents of U and E, who live with Ms. Q. The parties were previously involved in custody litigation in Washington, but it does not appear to have been completed and neither one has produced a final custody or child support order. However, Ms. Q

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

was awarded temporary custody of both U and E in 2007, so for purposes of this case, Mr. D's child support obligation will be determined based on Ms. Q having primary custody of both children.⁶ If the parties wish to dispute custody any further, it will have to be done in a court of competent jurisdiction.

Mr. D has worked in construction-related jobs for many years, both as an employee⁷ and, since 2010, as the sole proprietor of his own business.⁸ He does work such as drywall, interior carpentry, and painting. In 2013, he had gross receipts of \$10,335, expenses of \$3,999, and net profit of \$6,336.⁹ In 2014, his gross receipts increased to \$36,461, and after expenses of \$18,270, his net profit was \$18,191.¹⁰ Adding the PFD to his net profit results in total annual income of \$20,075.¹¹

Mr. D lives with his girlfriend in his mother's home and stated that he does pay rent. After the hearing, he listed his regular expenses at approximately \$2,044 per month.¹² However, this list does not include an entry for food. Ms. Q listed her regular monthly expenses at about \$4,494.¹³ Other than herself, she has U and E in the home.

At the end of the hearing, CSSD indicated the agency had changed its position. CSSD suggested that Mr. D's child support modification be calculated from his 2014 year-to-date income and expenses because it was late in the calendar year and he did not have any more income generating activity planned. CSSD's request was granted and the agency was asked to prepare a revised calculation from Mr. D's most recent 2014 income information. CSSD subsequently filed a revised calculation of \$306 per month.¹⁴ However, this calculation is for just one child, which is incorrect. There are two children in this case, so another calculation was generated using the same income figures and the result is \$414 per month for two children.¹⁵

⁶ Mr. D produced an order issued by the Superior Court of Washington, County A, dated May 10, 2004, that awarded him temporary custody of E. Exh. 10 at pg. 3. Ms. Q claims that custody action was subsequently dismissed after they reached an agreement regarding custody. She submitted an order issued by the County B Superior Court, State of Washington, dated July 23, 2007, that awarded her temporary custody of both children based on a proposed parenting plan. Custodian's documents received by the OAH on December 3, 2014, at pg. 5. It should be noted that Mr. D was the petitioner in this latest action, which was entitled "In Re: Parentage of E D[,] U D," No. 00-0-00000-0.

⁷ Exh. 6.

⁸ Exh. 7.

⁹ Exh. 10 at pg. 22.

¹⁰ Exh. 10 at pg. 18.

¹¹ See Exh. 11.

¹² Exh. 10 at pg. 9.

¹³ Exh. 9 at pg. 1.

¹⁴ Exh. 11.

¹⁵ See Attachment A.

III. Discussion

As the person who filed the appeal in this case, Mr. D has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.¹⁶

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h)¹⁸ assumes "material change in circumstances" has been established and the order may be modified. Mr. D's child support was previously set at \$250 per month in 2012, so a child support calculation over \$287.50 would be sufficient to modify his child support obligation at this time.¹⁹

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.²⁰ CSSD sent the parties the notice of modification on August 15, 2014, so this modification is effective as of September 1, 2014.²¹

The record suggests that Mr. D has continuing objections to CSSD's collection of child support arrears, but that issue cannot be resolved in this appeal. Because this is a modification action that became effective on September 1, 2014, the administrative law judge does not have any authority to adjust Mr. D's arrears prior to that date. He may need to seek relief in the court.

A. *Child Support Calculation*

Civil Rule 90.3(a)(1) provides that an obligor's child support obligation is to be calculated from his or her "total income from all sources," minus mandatory deductions. The Rule does not have a specific formula for determining the income of a self-employed obligor, but the commentary to the Rule provides this guidance:

Self-Employment Income. Income from self-employment, rent, royalties, or joint ownership of a partnership or closely held corporation includes the gross receipts minus the ordinary and necessary expenses required to produce the income. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses, investment tax credits, or other business expenses determined by the court to be inappropriate. Expense reimbursements and in-kind payments such as use of a company car, free housing or reimbursed meals should be included as income if the amount is significant and reduces living expenses.^[22]

¹⁶ 15 AAC 05.030(h).

¹⁷ AS 25.27.190(e).

¹⁸ 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.

¹⁹ $\$250 \times 115\% = \287.50 .

²⁰ 15 AAC 125.321(d).

²¹ Exh. 3.

²² Civil Rule 90.3, Commentary III.B.

CSSD initially calculated Mr. D's modified child support at \$768 per month, based on national average annual wage statistics for insulation workers and floor, ceiling, and wall workers earning mean annual wages of \$36,940.²³ At the hearing Mr. D established that his income as a sole proprietor is significantly lower than the national average. Ms. Q asserted that Mr. D hides his actual income, but there is no direct evidence of that in the record. Mr. D did not object to CSSD's suggestion that his child support be calculated based on his net income in 2014 plus the PFD. That revised calculation, which is incorrect because it was for just one child, has been corrected to \$414 per month for two children, and \$306 for one child.

B. Financial Hardship

Mr. D's other primary argument on appeal is that the child support amount will create a financial hardship for him. Parents successful in making this claim potentially become eligible for a reduction in the child support amount calculated under Civil Rule 90.3. 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."²⁴

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).²⁵

Based on all the evidence, Mr. D has not proven by clear and convincing evidence that manifest injustice would result if the revised child support amount were not varied. It is possible that Mr. D will have to condense his monthly expenses, but quite frankly, it is not possible to make a determination that Mr. D would have a financial hardship in the absence of a reduction in the calculated child support amount. This is because Mr. D's evidence is inconsistent and contradictory. Specifically, the list of monthly expenses he submitted equals \$2,044 per month. Yet according to his year-to-date income information, Mr. D had net profit last year of \$18,191, and with the PFD, his total income is \$20,075. Dividing that number by twelve months equals net income of \$1,672.92 per month, which is approximately \$370 per month less than the expenses he indicated he has each month. Also, he did not even indicate a food cost with his

²³ Exh. 4 at pg. 5.

²⁴ Civil Rule 90.3(c).

²⁵ See Civil Rule 90.3, Commentary VI.E.1.

expenses. It appears that Mr. D may have misrepresented his expenses, so his list cannot be relied upon. As a result, his request for a finding of hardship is denied.

IV. Conclusion

Mr. D 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 revised amount calculated by CSSD pursuant to Civil Rule 90.3 because his evidence regarding his expenses is not credible. His child support has been corrected to \$414 per month for two children (\$306 for one child). Based on all the evidence in the record, this figure is correct and should be adopted.

V. Child Support Order

- Mr. D’s child support obligation for U and E is modified to \$414 per month for two children (\$306 for one child), effective September 1, 2014, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated September 16, 2014, remain in full force and effect.

Dated: May 7, 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 3rd day of June, 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.]