

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

In the Matter of)	
)	
K D)	OAH No. 14-2055-CSS
<hr style="width:45%; margin-left:0"/>)	Agency No. 001188452

DECISION AND ORDER

I. Introduction

The obligor, K D, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on November 4, 2014. The obligee children are A, B, and C. This order added A to an existing support order for B and C in the amount of \$465 per month. Effective November 1, 2014, Mr. D's support for three children was modified to \$844. The custodian of record is H M. N, who appeared in person. All parties participated in the December 31, 2014 hearing.

II. Facts

On March 6, 2014, CSSD issued an Administrative Child Support and Medical Support Order establishing a \$465 support order for B and C.¹ A was born in March 2014. CSSD initiated this proceeding seeking to establish support for A and to add her to the existing child support order for B and C.² CSSD's action was triggered by Ms. N applying for public assistance for A.

On November 4, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that added A effective April 1, 2014. It ordered arrears for A from April 1, 2014 through October 31, 2014 totaling \$1,078 (\$154 per month for 7 months + \$844 for one month) and ongoing support effective November 1, 2014 in the amount of \$844 per month for three all children.³ CSSD calculated support adding Mr. D's 2013 third and fourth quarter earning with his 2014 first and second quarter earnings for four quarters of earning reported by his employers to the Alaska Department of Labor totaling \$35,325.95.⁴

¹ Exh. 1.
² Exh. 3.
³ Exh. 5.
⁴ Exh. 5 at 4.

Mr. D timely appealed, contesting his paternity of A and the amount of support ordered.⁵ Paternity was established by CSSD's order dated September 30, 2014 and can only be disestablished by the Court.⁶

Mr. D has two jobs. His earnings reported to the Department of Labor for the first three quarters in 2014 total \$31,659. When annualized, Mr. D's 2014 earnings are anticipated to total \$42,212.⁷ This results in an adjusted annual income in the amount of \$34,614.68 or \$2,884.55 per month.

Mr. D testified that his monthly living expenses total \$2,010.⁸ Mr. D has some medical debt that he not paying. He also owns debt free, two vehicles: a 2001 Ford and a 2003 Cadillac. He keeps one vehicle to use as a backup.⁹ The backup vehicle is loaned to a friend who pays for the vehicle's gas and maintenance.

Mr. D has one child older than A who lives in Santo Domingo. He sends this older child support in the amount of \$112.93 per month. Mr. D testified that the support is paid under a court order, but no court order or other evidence of payment was produced.

III. Discussion

1. *Modification*

Mr. D filed this appeal and requested a formal hearing. As the person who requested the hearing, he has the burden of proving by a preponderance of the evidence that CSSD's order is incorrect.¹⁰

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹¹ Adding other children to a child support order is a material change in circumstance.¹² In this case, CSSD has modified Mr. D's child support for the purpose of adding A to his previous order for B and C.

⁵ Exh. 6.

⁶ Exh. 2.

⁷ Exh. 7; $\$31,659/3 = \$10,553 \times 4 = \$42,212$

⁸ Rent \$400, Food \$400, Phone \$60, Gas and Auto Maintenance \$700, \$150 Auto insurance, Personal Care items \$200, and Entertainment \$100.

⁹ D testimony.

¹⁰ 15 AAC 05.030(h).

¹¹ AS 25.27.190(e).

¹² See 15 AAC 125.321(b)(2)(B).

2. *Child Support Calculation*

Civil Rule 90.3(a)(1)(C) and (D) provide that a parent who pays support for a prior child or who supports a prior child in the home is entitled to a deduction from the parent's income in calculating the support obligation for a younger child. The unchallenged evidence establishes that Mr. D pays support for a child that is older than A and younger than B and C, so Mr. D is entitled to a deduction from his income in A's child support calculation. The deduction for the older child is \$112.93 per month, the amount of Mr. D's child support order in the other case.

Calculating child support in this type of case is a multistep process. First, it is necessary to calculate the amount of support for B and C. At Attachment A, Mr. D's annualized 2014 income is inserted into the CSSD online child support calculator. After mandatory deductions for taxes and Social Security; Mr. D's child support for B and C is calculated as \$810 per month.¹³

Second, Mr. D's adjusted annual income is determined by including the deduction from income for supporting his older child. The deduction for the older child comes from the court order of \$112.93 per month. The adjusted annual income figure is \$34,641.68.¹⁴

The final step determines the amount of support owing for A. Here, the adjusted annual income from step 2 is multiplied by the percentage increase in child support attributable to a third child, 6%, and divided by 12 to ascertain Mr. D's monthly support obligation for A. This amount, \$173.20, is added to Mr. D's support amount for B and C, \$810. This yields a correct support amount of \$983 per month for all three children.¹⁵

B. *Financial Hardship*

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 presence of "unusual circumstances" in a particular case may be sufficient to establish "good cause" for a variation in the support award:

¹³ Attachment A.

¹⁴ Attachment B.

¹⁵ Here's the math: $\$34,641.68 \times .06 = \$2,078.50 \div 12 = \$173 + \$810 = \$983$. Figures are rounded where appropriate.

¹⁶ Civil Rule 90.3(c).

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children^[17]

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 formula in Civil Rule 90.3(a).¹⁸

Mr. D believes the amount of support is excessive. He already works at two jobs and has reduced housing expenses by living with a roommate. His adjusted monthly income is \$2,886.80. His monthly expenses, including child support, exceed his monthly income by \$106.20. Although his expenses in general are not excessive, he has some monthly expenses that could be reduced further, such as personal care items (\$200) and entertainment (\$100). With a few slight adjustments, Mr. D's income could cover his monthly expenses after he pays child support.

If a variance were provided, his children would be supporting Mr. D's lifestyle. Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. D did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied.

IV. Conclusion

Mr. D established by a preponderance of the evidence that CSSD's November 4, 2014 order was incorrect because it did not include a deduction for support paid for an older child. When the support for this older child is considered, Mr. D is liable for arrears for A in the amount of \$173.20 per month from April 1, 2014 through October 31, 2014. Effective November 1, 2014 and ongoing, Mr. D's support for three children is \$983 per month.

V. Child Support Order

1. K D is liable for child support arrears for A in the amount of \$173¹⁹ per month effective April 1, 2014 through October 31, 2014.
2. K D's child support obligation for B, C, and A is \$983 per month effective

¹⁷ Civil Rule 90.3(c)(1).

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

¹⁹ This amount has been rounded to the nearest dollar from \$173.20.

November 1, 2014 and ongoing.

3. All other terms of the Modified Administrative Child Support and Medical Support Order dated November 4, 2014 remain in full force and effect.

Dated: April 20, 2015

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 within 30 days after the date of this decision.

DATED this 8th day of May, 2015.

By: Signed

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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