

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

In the Matter of)	
)	
F B. N III)	OAH No. 15-0027-CSS
_____)	Agency No. 001091907

DECISION AND ORDER

I. Introduction

The obligor, F B. N III, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on December 15, 2014. The obligee child is M, 17 years old. The other parent in this case is O M. U.

The formal hearing was held on February 19 and March 24 of 2015. Both parties participated by telephone. Joe West, Child Support Specialist, represented CSSD. The hearing was recorded.

Based upon the record and after careful consideration, Mr. N’s child support is modified to \$750 per month, effective December 1, 2014 and ongoing. This child support amount constitutes a variance under Civil Rule 90.3(c), of the amount calculated from his total income from all sources. The \$250 per month Children’s Insurance Benefits (CIB) payments made to M will reduce Mr. N’s out-of-pocket payment to \$500 per month.

II. Facts

A. Procedural History

Mr. N’s child support for M was set at \$392 per month in 1998.¹ On November 5, 2014, CSSD initiated a modification review.² On November 17, 2014, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. N provided income information.⁴ On December 15, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. N’s modified child support at \$977 per month, minus a credit of \$250 per month, for a balance of \$727 per month.⁵ Mr. N filed an appeal and formal

¹ Exh. 1.
² CSSD’s March 12, 2015 Submission to Record, pg. 2.
³ Exh. 4.
⁴ Exh. 5.
⁵ Exh. 7.

hearing request on December 31, 2014.⁶ Prior to the hearing, CSSD filed information regarding Mr. N's income in 2013 and 2014.⁷

*B. Material Facts*⁸

Mr. N is a disabled veteran. He was wounded in Afghanistan in 2009, and as a result has been determined by the military to be 100% totally and permanently disabled. He was separated from the military in 2012. Mr. N receives nontaxable income of \$1421 per month in Social Security disability payments and \$3213.49 from the Veterans Administration. All of these funds are tax-free. Social Security also pays M \$250 per month in Children's Insurance Benefits (CIB) based on Mr. N's disability.

Mr. N and his wife, K, live in South Carolina. They have two daughters together, G, born in 2003; and S, born in 2004. K has an older daughter who is attending college and does not live full-time in the home. K is not employed, but she intends to be in the future. She is licensed in aesthetics and will find work after the family completes its immediate plan to move closer to relatives.

Mr. N listed household expenses totaling approximately \$4500 per month,⁹ including \$1300 for rent; \$600 for food; \$100 for food outside the home; \$350 per year for wood and oil expenses; \$45 for water service; \$50 for Internet service; \$320 for electricity; \$40 for wastewater; \$119 for cable; \$230 for two cell phones; \$395 for the payment on a 2007 Chrysler Town & Country vehicle purchased in March 2014; \$250 for gasoline; \$125 for vehicle maintenance; \$130 for vehicle insurance; \$20 for renters insurance; \$32 for health insurance; \$100 for personal care items; \$60 for tobacco; and \$250 for the payment on a credit card.

III. Discussion

A. Introduction

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁰ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. In 1998, CSSD set Mr. N's child support at

⁶ Exh. 8.

⁷ Exh. 9.

⁸ The facts are taken from the obligor's hearing testimony, unless otherwise stated.

⁹ Exh. 10, completed and returned.

¹⁰ AS 25.27.190(e).

\$392 per month for one child.¹¹ A new child support calculation would have to be at least \$58.80 more or less than \$392 in order to meet the 15% change in the support amount and therefore justify modification of Mr. N's child support amount.¹²

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹³ CSSD issued the notice in Mr. N's case on November 17, 2014, so any modification of his child support obligation would be effective as of December 1, 2014.¹⁴ Retroactive modifications, those that would occur prior to the effective date, are not permitted.¹⁵

As the person who filed the appeal, Mr. N has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.¹⁶

B. Child support calculation

Mr. N argues that CSSD did not make a correct determination of his income for the child support calculation. 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," minus mandatory deductions such as taxes and Social Security. Civil Rule 90.3 specifically provides that, in addition to income from wages, disability payments received by the retired or disabled parent are considered income and must be included in his or her child support calculation.¹⁷

Similarly, Children's Insurance Benefits (CIB) are considered income to the parent on whose behalf they are paid.¹⁸ CIB payments are made to a child based on a parent's past Social Security contributions.¹⁹ An obligor parent is entitled to receive a credit against his or her child support obligation for CIB payments made to their child.²⁰ Pursuant to CSSD's regulations, the CIB credit is determined in a two-step process. First, the annual CIB amount is added to the

¹¹ Exh. 1.
¹² $\$683 \times 15\% = \102.45
¹³ 15 AAC 125.321(d).
¹⁴ Exh. 4.
¹⁵ See Civil Rule 90.3(h)(2).
¹⁶ 15 AAC 05.030(h); see also 2 AAC 64.290(e).
¹⁷ Civil Rule 90.3, Commentary III.A.10-11.
¹⁸ Civil Rule 90.3, Commentary III.A.
¹⁹ 42 USC 402(d).
²⁰ *Miller v. Miller*, 890 P.2d 574, 577 (Alaska 1995).

obligor parent's total annual income, from which a child support amount is calculated.²¹ Second, the monthly CIB payment is subtracted from the child support calculation as a direct credit. If the CIB payment exceeds the amount of support due for that month, the balance of the payment is applied to the obligor parent's arrears for time periods that do not involve public assistance.²²

The record in this matter shows that CSSD correctly determined Mr. N's annual income. The agency added his Social Security payments of \$1421 per month, his VA compensation of \$3213.49 per month, and M's monthly CIB payment of \$250, to arrive at total annual income of \$58,613.88.²³ This income figure results in a child support amount of \$977 per month.²⁴ Subtracting the CIB payment of \$250 per month as a direct credit results in a final child support amount of \$727 per month.²⁵ Whether Mr. N may be entitled to a reduction in the amount calculated under Civil Rule 90.3 based on a financial hardship is discussed below.

C. 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."²⁶ 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 in Civil Rule 90.3(a).²⁷

Based on the evidence presented, Mr. N has proven by clear and convincing evidence that manifest injustice would result if the child support amounts calculated under Civil Rule 90.3 were not varied. His child support should be calculated at \$750 per month, so after M's \$250 per month CIB credit is deducted, Mr. N's out-of-pocket payment will be \$500 per month. Mr. N has been determined to be 100% disabled, and he is essentially unemployable. This means that he has few options for getting additional income. Many obligor parents are able to find part-time work, but Mr. N's disability would not enable him to supplement his income substantially. K

²¹ 15 AAC 125.030(b)(2).

²² 15 AAC 125.475(b)(1)(B).

²³ Exh. 7 at pg. 5.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Civil Rule 90.3(c).

²⁷ *See* Civil Rule 90.3, Commentary VI.E.1.

may be able to find work in the future, but that is not guaranteed. Reducing the support amount will enable the obligor to meet his basic living expenses. It is important also to note that Mr. N's child support should not be reduced further. His support obligation for M was set in 1998 based on total income of just under \$27,000, and the monthly amount of \$392 was not modified until 2014, so it is safe to infer that his child support probably has been too low for several years. There is no information in the record as to why a modification was never requested, as Ms. U chose not to testify, but this child support amount will balance the equities in this case.

D. Alaska Has Continuing, Exclusive Jurisdiction

Finally, Mr. N has requested that his child support case with CSSD be transferred to South Carolina, his state of residence. He claims that his state will be better able to manage his support obligation. Both CSSD and Ms. U are opposed to any transfer of this case.

The jurisdictional issue in this appeal is controlled by the Uniform Interstate Family Support Act, commonly referred to as UIFSA. It was developed to determine the jurisdiction of and consistent procedures for different states that are involved in establishing, modifying or enforcing child support orders that involve the same parties. Alaska has adopted UIFSA,²⁸ which states in relevant part:

- (a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order
 - (1) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
 - (2) until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

Alaska issued the first child support order involving these parties in 1998. The order was issued under Civil Rule 90.3, the law governing child support calculations in this state.²⁹ Thus, pursuant to AS 25.25.205(a), Alaska had continuing, exclusive jurisdiction of Mr. N's child support obligation at that time. The question remaining now is whether Alaska *maintains* continuing, exclusive jurisdiction. Under AS 25.25.205(a), the only other requirement for

²⁸ AS 25.25.

²⁹ “[Civil] Rule 90.3 applies to all proceedings involving child support, whether temporary or permanent, contested or non-contested, including without limitation actions involving separation, divorce, dissolution, support modification, domestic violence, paternity. . . .” Civil Rule 90.3, Commentary I.C.

Alaska to have continuing, exclusive jurisdiction is that “this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued.”³⁰ For purposes of this matter, Ms. U has an Alaska address, and M lives with her. This satisfies the requirement of AS 25.25.205(a), and as a result, Alaska has continuing, exclusive jurisdiction over Mr. N’s child support order.

IV. Conclusion

Mr. N met his burden of proving by clear and convincing evidence that his child support should be varied under Civil Rule 90.3(c) from the amount calculated from his total income from all sources. His child support should be modified to \$750 per month, effective December 1, 2014. When the \$250 CIB payment is deducted, his out-of-pocket payment will be \$500 per month. CSSD should be authorized to adjust the CIB deduction as necessary, based on changes to the payment made to M.

V. Child Support Order

- Mr. N’s child support for M is modified to \$750 per month, effective December 1, 2014, and ongoing;
- Mr. N is entitled to a monthly deduction of \$250 based on the CIB payment made to M;
- CSSD is authorized to adjust the CIB deduction as necessary, based on future changes in the CIB payment to M;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated December 15, 2014 remain in full force and effect.

Dated: June 29, 2015

Signed

Kay L. Howard
Administrative Law Judge

³⁰ AS 25.25.205(a)(1).

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 14th day of July, 2015.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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