

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

In the Matter of)	
)	
L D. M)	OAH No. 15-0030-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 001066474

DECISION AND ORDER

I. Introduction

The obligor, L D. M, appealed an Amended Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 12, 2015. The child is J, 17 years old. The custodian is T M. F.

The hearing was held on February 19, 2015. Mr. M appeared by telephone; Ms. F chose not to participate. James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after careful consideration, Mr. M's child support is modified to \$379 per month for one child, effective December 1, 2014.

II. Facts

A. Procedural History

Mr. M's child support obligation for J was set at \$203 per month in August 2012.¹ Ms. F's state of residence requested a modification review on November 6, 2014.² On November 18, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ On December 11, 2014, CSSD granted the request for modification, after which Mr. M provided financial information.⁴ On January 12, 2015, CSSD issued an Amended Modified Administrative Child Support and Medical Support Order that set his child support at \$397 per month, effective December 1, 2014.⁵ He appealed and requested a formal hearing.⁶ Prior to the hearing, CSSD submitted Mr. M's earnings history that the division obtained from the Alaska Department of Labor and Workforce Development.⁷

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exhs. 4-5.
⁵ Exh. 6.
⁶ Exh. 7.
⁷ Exh. 8.

*B. Material Facts*⁸

Mr. M has worked for the United Parcel Service (UPS) since at least 2012.⁹ In 2013, he earned \$27,942.27; in 2014, his income from wages was \$26,940.88.¹⁰

Mr. M is married and has two 10 year-old girls in the home: N, his biological child, and K, his stepdaughter. He pays support of \$217 per month for N, and also has shared custody of her 2-3 days per week. Mr. M provides her clothing and other needs while she is in his home. Mr. M's wife, O, is employed part-time for 25-35 hours per week and is paid \$20 per hour. This results in average earnings of \$500-\$700 per week before taxes.

Mr. M reported regular monthly expenses totaling approximately \$3,983 per month. The total consists of \$1,080.07 for rent; \$800 for food; \$60 for Internet service; \$55-\$65 for electricity; \$80 for cable; \$300 for three cell phones; \$240 for gasoline; \$50 per quarter for vehicle maintenance on their two Subaru's, both of which are paid for; \$187 for vehicle insurance; \$16.50 for home insurance; \$50 for personal care items; \$20 for prescriptions; \$60 for insurance co-payments for doctor visits; \$75 for past medical bills; \$100 for two credit cards; \$200 for childcare; \$100 for life insurance; \$320 for student loans; and \$217 for Mr. M's child support payment for N.¹¹ Mr. M testified that his past medical bills total in excess of \$30,000. He explained that these bills were incurred for several surgeries he had prior to getting medical insurance.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹² 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. Mr. M's child support obligation was set at \$203 per month in August 2012. Thus, a child support calculation at least \$30.45 higher or lower than \$203 per month would be sufficient to modify Mr. M's child support amount.¹³

⁸ The facts are taken from Mr. M's testimony, unless otherwise stated.

⁹ Exh. 8.

¹⁰ Exh. 11.

¹¹ Exh. 9, filed after Mr. M completed the blank form.

¹² AS 25.27.190(e).

¹³ \$203 x 15% = \$30.45.

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.¹⁴ In this case, the notice was issued on November 18, 2014, so the modification is effective as of December 1, 2014.¹⁵

In a child support matter, the person who files the appeal has the burden of proving that the division's order was issued in error.¹⁶ Mr. M filed the appeal, so he must prove by a preponderance of the evidence that the Amended Modified Administrative Child Support and Medical Support Order is incorrect.¹⁷

Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. For the modification, CSSD estimated Mr. M's earnings at \$28,403.96 in 2014, from which the division calculated the modified child support at \$397 per month.¹⁸ Before the hearing, CSSD obtained information from the Alaska Department of Labor and Workforce Development (DOL) that Mr. M's actual income in 2014 was \$26,940.88.¹⁹ CSSD used that income amount and calculated a revised child support obligation of \$379 per month.²⁰

Mr. M does not challenge CSSD's determination; he agreed that the figures obtained from the DOL were accurate and he confirmed that he did not have any other employers in 2014. Rather, Mr. M's issue on appeal is that he cannot afford the child support amount calculated by CSSD.

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."²¹

It is appropriate to consider all relevant evidence in order to determine if the child support should be set at a different level than provided for under Civil Rule 90.3(a).²²

¹⁴ 15 AAC 125.321(d).

¹⁵ Exh. 3.

¹⁶ 15 AAC 05.030(h).

¹⁷ 2 AAC 64.290(e).

¹⁸ Exh. 6 at pg. 6.

¹⁹ Exh. 11.

²⁰ Exh. 10.

²¹ Civil Rule 90.3(c).

²² See Civil Rule 90.3, Commentary VI.E.1.

The establishment of this child support order has undoubtedly created financial stress for Mr. M and his family, but his duty to his oldest biological child takes priority over other debts and obligations he may have assumed later.²³ J is entitled to receive child support in an amount based on Mr. M's ability to pay, as calculated pursuant to Civil Rule 90.3. That obligation has been correctly determined under the rule, and there is no evidence in the record that shows there is good cause to reduce his obligation. In general, having bills and other financial obligations that exceed one's net income, without more evidence, does not constitute good cause to vary a child support obligation.

Thus, based on the evidence in its entirety, Mr. M did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for J were not reduced. Mr. M's child support should remain as revised by CSSD, at \$379 per month.

IV. Conclusion

Mr. M did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. He is thus not entitled to a variance from the amount calculated. Mr. M's child support is correctly calculated at \$379 per month, effective December 2014 and ongoing. This figure should be adopted.

V. Child Support Order

- Mr. M is liable for modified ongoing child support for J in the amount of \$379 per month, effective December 1, 2014;
- All other provisions of the Amended Modified Administrative Child Support and Medical Support Order dated January 12, 2015 remain in full force and effect.

Dated: June 1, 2015

Signed

Kay L. Howard
Administrative Law Judge

²³ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

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 17th 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.]