

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

In the Matter of:)	
)	OAH No. 15-0068-CSS
Q L. T)	CSSD No. 001198560
_____)	

DECISION AND ORDER

I. Introduction

This case involves the obligor Q L. T's appeal of an Administrative Review Decision that the Child Support Services Division (CSSD) issued on January 10, 2015. The obligee child is B, 4 years of age. The child's mother is D F. N, but this is a foster care case, so the custodian of record is the State of Alaska.

The formal hearing was held on February 19, 2015. Mr. T appeared in person. Joe West, Child Support Specialist, represented CSSD. The hearing was recorded.

After careful consideration, CSSD's Administrative Review Decision is affirmed. CSSD correctly calculated Mr. T's child support based on his actual income for 2014.

II. Facts

A. Procedural History

B was placed in foster care in January 2014.¹ CSSD initiated the process of establishing Mr. T's child support obligation by requesting financial information from him and issuing an administrative child support order on September 18, 2014 that set his child support at \$246 per month.² He was served on November 19, 2014 and requested an administrative review.³ On January 10, 2015, CSSD issued an Administrative Review Decision that affirmed Mr. T's child support would be set at \$246 per month.⁴ Mr. T appealed and requested a formal hearing on January 22, 2015.⁵

B. Material Facts

Mr. T and Ms. N are the parents of B, 4 years of age. B was placed in foster care in January 2014, which gave rise to this child support action.⁶ Mr. T and Ms. N live together and

¹ CSSD Pre-Hearing Brief at pg. 1.

² Exhs. 2-3.

³ Exhs. 3-4.

⁴ Exh. 5.

⁵ Exh. 6.

⁶ Ms. N is not a party to this action.

attend counseling every other week, for which he pays \$56 per week. Also, he has supervised visits with B every week, but it is not known whether Ms. N attends the visits with him. Mr. T's goal is to have B returned to his home in the future. He said that in February the judge ordered a review, possibly a hearing, in another three months.

Mr. T has a history of medical issues involving his back. He said they started with an accident many years ago. He provided copies of his medical records that show in 2004 he was seen for a lumbar disk bulge with pain radiating down his leg, and that the doctor injected steroids in his lumbar spine at L5-S1.⁷ In January 2005 he had a nucleoplasty⁸ performed on the same site, but the results were not noted.⁹ In October 2006, his chiropractor put him on a limited work schedule in which Mr. T could not work more than 4 hours per day or lift more than 25 lbs.¹⁰

The next medical records indicate that in February 2008, Mr. T fell on the ice delivering pizza. On April 14, 2008, his doctor evaluated him for neck, shoulder and upper right extremity pain. The doctor reported that an x-ray and MRI showed central disc protrusion in Mr. T's cervical spine at C5-6 with cord compression, and he recommended that the obligor have surgery.¹¹ The doctor also noted Mr. T had moderate degenerative changes in his thoracic and lumbar spine in addition to his cervical spine.¹²

Mr. T did not file any medical records after 2008 and said it is because he cannot afford to see a doctor. He explained that he is working part-time only, and claimed that he is working against doctor's orders, but there is no medical evidence of his current condition and ability to work. Mr. T earned \$12,715.31 in 2014 and also received \$2,633 in unemployment benefits last year.¹³ CSSD used these figures, plus the 2014 PFD of \$1,884 to calculate his child support at \$246 per month.¹⁴

⁷ Exh. 2 at pg. 6.

⁸ A nucleoplasty is a "technique for the treatment of pain coming from a spinal disc. A special probe is inserted into the spinal disc and is used to remove a small amount of disc tissue from the disc nucleus and then to apply controlled thermal energy or heat to the disc. This causes the pressure within the disc wall to decrease and allows the disc to bulge or protrude less." <http://www.medcentral.org/Main/DiscNucleoplasty.aspx>

⁹ Exh. 2 at pg. 8.

¹⁰ Exh. 2 at pg. 2.

¹¹ Exh. 2 at pgs. 3-5.

¹² Id.

¹³ Exh. 7 at pgs. 1-2.

¹⁴ Exh. 3 at pg. 7.

Mr. T has limited expenses – he pays \$775 for rent and utilities; \$25 for a cell phone; \$50 per week for gasoline; \$26 per month for car insurance; and \$56 every two weeks for family counseling.¹⁵ He did not report what he spends for food every month.

III. Discussion

As the person who filed the appeal, Mr. T has the burden of proving by a preponderance of the evidence that CSSD’s Administrative Review Decision is incorrect.¹⁶ That order set his child support at \$246 per month.

A. Child Support Calculation

A parent is obligated both by statute and at common law to support his or her children.¹⁷ In cases established by CSSD, the agency collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child.¹⁸ B went into foster care in January 2014, so CSSD established his obligation for support effective February 1, 2014.¹⁹

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 its original administrative order, CSSD calculated Mr. T’s 2014 child support at \$246 per month, based on its estimate of his total earnings for the year. CSSD’s administrative review affirmed its earlier order because Mr. T’s actual earnings were consistent with the agency’s initial estimate. CSSD’s order is a correct determination of Mr. T’s income and support obligation.

Mr. T claims he cannot afford the child support amount. Whether he may be entitled to a reduction in the amount calculated under Civil Rule 90.3 based on a financial hardship is discussed below.

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

¹⁵ Exh. 9.

¹⁶ 15 AAC 05.030(h).

¹⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁸ 15 AAC 125.105(a)(1)-(2).

¹⁹ *See* Exh. 3 at pg. 8.

injustice would result if the support award were not varied.”²⁰ 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).²¹

The establishment of this child support order has undoubtedly created stress for Mr. T, especially since he is working at a lower income level. However, since he does not work a full 40 hours per week, he has the flexibility to obtain additional part-time employment in order to supplement his earnings. Mr. T has had back problems in the past, but he has not submitted any records later than 2008 regarding his medical condition. This is too far in the past to be proof of his current condition.

Thus, based on the evidence in its entirety, Mr. T 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 B were not reduced. Mr. T’s child support should remain at \$246 per month, as initially set by CSSD.

IV. Conclusion

Mr. T did not meet his burden of proving by a preponderance of the evidence that CSSD’s calculation was incorrect, as required by 15 AAC 05.030(h). Neither did Mr. T prove that manifest injustice would result if his support obligation were not reduced from the amount calculated under Civil Rule 90.3. He is thus not entitled to a variance and CSSD’s calculation of \$246 per month should be affirmed.

V. Child Support Order

- CSSD’s Administrative Review Decision dated February 7, 2015 is affirmed;
- Mr. T’s child support for B is set at \$246 per month, effective February 1, 2014, and ongoing.

DATED this 11th day of March, 2015.

Signed _____
Kay L. Howard
Administrative Law Judge

²⁰ Civil Rule 90.3(c).

²¹ See Civil Rule 90.3, Commentary VI.E.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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 31st day of March, 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.]