

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

In the Matter of)	
)	OAH No. 15-0272-CSS
K M-U)	Agency No. 001192082
_____)	

DECISION AND ORDER

I. Introduction

This case involves K M-U’s appeal of a November 19, 2014 Amended Administrative Child and Medical Support Order. The parties’ child, C, is 2 ½ years old. The custodian is T L.

Hearings were commenced on April 2, 2015 and April 16, 2015, but because of problems with Mr. M-U’s telephone, it was not possible to reach him or leave a message. A third hearing was held on May 5, 2015.¹ CSSD was represented by Child Support Specialist James Pendergraft. Ms. L appeared by telephone. Mr. M-U was represented by his father, H M-Q, who also appeared by telephone.

At the hearing, Mr. M-Q indicated that the obligor had no dispute with the income figures used in CSSD’s calculations. Instead, he disputes whether the amount of the child support obligation constituted a financial hardship such that there was good cause to vary the award. The parties agreed to submit financial information and other supporting statements.

Based on the financial circumstances of both parents, CSSD’s Amended Administrative Child and Medical Support Order is affirmed.

II. Facts

A. Procedural History

Ms. L applied to CSSD for services on May 15, 2013.² CSSD issued an Administrative Child Support and Medical Support Order dated July 8, 2014 which set Mr. M-U’s support obligation at \$567 per month.³ CSSD obtained additional information, and conducted an administrative review. An Amended Administrative Child and Medical Support Order on

¹ All three hearings were held by Administrative Law Judge Kay L. Howard. Upon ALJ Howard’s retirement, this matter was re-assigned to ALJ Jeffrey A. Friedman, who has reviewed the entire record and listened to all three audio recordings.

² Exhibit 1.

³ Exhibit 3. This order included a Permanent Fund Dividend (PFD) as part of the obligor’s income.

November 19, 2014.⁴ The amended order set Mr. M-U's child support obligation at \$526 per month, and set arrears beginning on May 1, 2013, accruing at the rate of \$526 per month.⁵ Mr. M-U appealed that decision.⁶

B. Material Facts

Mr. M-U is enlisted in the Army. His Leave and Earnings Statement for April 2015 shows a base pay of \$2,351.40, subsistence allowance of \$387.92, and a housing allowance of \$1,374, for a total income of \$4,093.32 per month.⁷

Mr. M-U is married with two children living in his home. The oldest child was born in 2009, and the youngest was born in 2014.⁸ The monthly expenses shown on his Hearing Expense Worksheet are reflected in the following chart:

MONTHLY EXPENSES

Rent/Mortgage	\$1374	Gas	\$0	Electricity	\$40
Wood/Oil	\$0	Water/Sewer	\$0	Trash Pick Up	\$0
Cable	\$0	Internet	\$55	Telephone	\$0
Cellular Phone	\$220	Food In Home	\$450	Meals Out	\$0
Car Loan 1	\$452	Car Loan 2	\$293	Car Loan 3	\$0
Vehicle Maint.	\$34	Gasoline	\$200	Public Transp.	\$0
Vehicle Insurance	\$240	Home Insurance	\$8	Dental Insurance	\$33
Medical Expenses	\$0	Alcoholic Bev.	\$0	Tobacco	\$0
Clothing	\$0	Child Care	\$0	Entertainment	\$0
Miscellaneous	\$0				

The listed expenses total \$3,399. In addition, Mr. M-U's older child is diabetic and needs additional supplies and a special diet. This adds approximately \$300 per month to the family's expenses. Mr. M-U also has several outstanding credit card bills, and is paying \$165 per month towards those debts.

⁴ Exhibit 8, page 4.

⁵ The amended order did not include a PFD as part of Mr. M-U's income. Exhibit 8, page 12.

⁶ Exhibit 9.

⁷ Exhibit 13, page 8.

⁸ Exhibit 13, page 2 (Hearing Expense Worksheet from obligor).

Based on the information he submitted, he has expenses of \$3,864 each month. Paying another \$526 each month towards child support would increase his monthly expenses to \$4,390, which is \$300 more than his income.

Ms. L is single with two children in her home. She is also serving in the military. Her Hearing Expense Worksheet shows the following expenses:

MONTHLY EXPENSES

Rent/Mortgage	\$1800	Gas	\$0	Electricity	\$120
Wood/Oil	\$0	Water/Sewer	\$0	Trash Pick Up	\$0
Cable	\$100	Internet	\$20	Telephone	\$0
Cellular Phone	\$150	Food In Home	\$500	Meals Out	\$100
Car Loan 1	\$596.83	Car Loan 2	\$0	Car Loan 3	\$0
Vehicle Maint.	\$20	Gasoline	\$130	Public Transp.	\$0
Vehicle Insurance	\$170.18	Home Insurance	\$0	Dental Insurance	\$11
Medical Expenses	\$	Alcoholic Bev.	\$0	Tobacco	\$0
Clothing	\$119	Child Care	\$600	Entertainment	\$75
Miscellaneous	\$100				

Ms. L's listed expenses are \$4,612.01 per month. She is also paying \$125 per month towards two credit card debts, which brings her total expenses to \$4,737.01. Ms. L's income is \$4,500 per month.⁹ Her expenses are \$237 more than her income.

III. Discussion

Alaska uses the percentage of income approach to calculate child support obligations. Alaska law assumes each parent is contributing the same percentage of income towards the

⁹ Exhibit 12, page 1.

support of his or her children. A parent with a higher income will contribute at a higher dollar amount, but at the same percentage of income as the parent with a lower income.¹⁰

The support obligation is based on an obligor's total income from all sources.¹¹ A parent may obtain a reduction from the amount calculated based on total income, but only if he or she shows good cause for that reduction. In order to establish good cause, a parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."¹² It is appropriate to consider all relevant evidence, including the circumstances of the custodian when determining if the support amount should be varied to avoid manifest injustice.¹³

Both parents are having financial difficulties. There is little doubt that Mr. M-U's support obligation will create financial difficulties for his family. Neither parent appears to be living an extravagant lifestyle, but the total amount of income for both households is insufficient to pay the total expenses for each household.

Proving manifest injustice by clear and convincing evidence is a difficult burden to meet. In this case, after considering all of the circumstances, Mr. M-U has not met that burden. Even when considering the extra expenses for his diabetic son, Mr. M-U has sufficient funds to meet his household expenses. His expenses only exceed his income when the support obligation is added. While paying child support will be difficult, he has not shown manifest injustice.

IV. Conclusion

Mr. M-U has not shown by clear and convincing evidence that his support obligation should be varied to avoid manifest injustice. He is not entitled to a variance, and CSSD's calculation of \$526 per month, for one child, should be affirmed.

V. Child Support Order

The Amended Administrative Child and Medical Support Order dated November 19, 2014, is AFFIRMED.

Dated this 16th day of July, 2015.

Signed

Jeffrey A. Friedman
Administrative Law Judge

¹⁰ Civil Rule 90.3, Commentary II.

¹¹ Civil Rule 90.3(a)(1).

¹² Civil Rule 90.3(c).

¹³ *In re S G E*, OAH No. 14-0013-CSS (Commissioner of Revenue 2014), pages 3 – 4, available at <http://aws.state.ak.us/officeofadminhearings/Documents/CSS/CSS140013.pdf>.

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 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.]