

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

In the Matter of	)	
	)	
M N. F	)	OAH No. 15-0371-CSS
_____	)	Agency No. 001123092

**DECISION AND ORDER**

**I. Introduction**

The Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order increasing M F’s monthly child support obligation for her daughters D and Z from \$178.00 per month to \$335.00 per month. Ms. F appeals, arguing that she cannot afford to pay the increased amount. Based on the record as a whole and after careful consideration, Ms. F’s monthly support obligation for D and Z is properly set at \$120.00 per month, effective December 1, 2014. Additionally, Ms. F’s request for a Rule 90.3 hardship variance is granted for the limited period that she was unable to work due to pregnancy complications and following the birth of her infant child. Accordingly, from March 2015 through June 2015, her monthly support obligation in this case is reduced to \$50.00 per month.

**II. Facts**

M F and T B are the parents of D, age 13, and Z, age 11. The children live outside of Alaska with Mr. B; Ms. F, the obligor, lives in Alaska. In November 2006, the Office of Administrative Hearings issued a Decision and Order setting Ms. F’s ongoing support obligation at \$178.00 per month, effective August 1, 2006.<sup>1</sup>

Ms. F is also the mother of a younger child, P, and an infant born in April 2015. P, age 8, is the subject of a separate child support order issued as part of a divorce proceeding.<sup>2</sup> In November 2014, because her income had dropped substantially, Ms. F filed a request

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<sup>1</sup> Ex. 1.  
<sup>2</sup> F testimony.

asking CSSD to modify her child support order in P's case.<sup>3</sup> CSSD denied that request, but then initiated a modification review of Ms. F's support obligation for D and Z.<sup>4</sup>

On November 20, 2014, CSSD issued a Notice to Ms. F and Mr. B informing them of a petition for modification in this case, and requesting the parents provide income documentation.<sup>5</sup> Ms. F testified that she brought original copies of income documentation to her CSSD caseworker in support of her request for modification in P's case. However, it appears that the only income documentation CSSD received from Ms. F during the modification review in this case was five biweekly paystubs received in March 2015.<sup>6</sup>

On April 9, 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order increasing Ms. F's monthly support obligation for D and Z from \$178.00 per month to \$335.00 per month effective December 1, 2014.<sup>7</sup> With the support amount in P's case unchanged, and the increased support obligation in this case, Ms. F's total child support obligation for all three children rose to \$580.30 per month.<sup>8</sup> Because this led to more than half of her monthly income being withdrawn for child support, Ms. F appealed.

A hearing was held on May 12, 2015 before Administrative Law Judge Kay Howard.<sup>9</sup> Andrew Rawls represented the Division. Ms. F participated by phone and testified on her own behalf; Mr. B was provided notice of the hearing but did not participate.<sup>10</sup>

At the time of the hearing, Ms. F was living with two disabled adult relatives and her two-week-old infant. She was unemployed, having recently left employment due to

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<sup>3</sup> Ex. 2; F testimony. Ms. F testified that her hourly wage dropped from \$12/hour to \$8/hour.

<sup>4</sup> F testimony. In its August 2015 submission to record, CSSD explained that it cannot modify the support order in P's case because that order was issued by the Superior Court, and so can only be modified through proceedings in the court case.

<sup>5</sup> Ex. 3.

<sup>6</sup> Ex. 4. The five paystubs – for pay periods ending December 15, 2013; December 29, 2013; January 26, 2014; February 9, 2014; and February 22, 2015 – reflect that Ms. F's hours ranged from 33.50 to 66 hours per pay period at a rate of \$8.00 per hour in 2013 and 2014, and \$8.50 per hour in 2015. *See* Ex. 4.

<sup>7</sup> Ex. 5.

<sup>8</sup> F testimony.

<sup>9</sup> This matter was reassigned to the undersigned upon Judge Howard's retirement, and the undersigned has thoroughly reviewed the hearing recordings as well as the written record in order to reach a decision in this matter.

<sup>10</sup> At the time of the hearing, there was no answer at the telephone number that had been provided from Mr. B, and no opportunity to leave messages at that number. Mr. B did later participate in a post-hearing status conference in July 2015, at which time he consented on the record to the issuance of a decision without further testimony being taken.

pregnancy complications. Her annual income for the prior two years had averaged less than \$4,000 per year.<sup>11</sup> Ms. F testified that she has no child care available, and also that she had not been able to obtain unemployment insurance benefits. She indicated that she would likely go back to work in October 2015, when her newborn's father could begin caring for the child during the day, but also indicated she could likely obtain nightshift work, for which she would have child care available, earlier than October 2015.

At the close of the hearing, the record was held open for CSSD to submit a proposed revised support calculation based on the evidence in the record. On August 3, 2015, CSSD submitted a proposed revised support calculation based on Ms. F's 2014 income, under which her monthly support obligation would decrease to \$120.00 for two children.<sup>12</sup>

### **III. Discussion**

#### *A. Overview of Applicable Law*

A parent is obligated both by statute and at common law to support his or her children.<sup>13</sup> Child support obligations are determined under Alaska Civil Rule 90.3. "The primary purpose of Rule 90.3 is to ensure that child support orders are adequate to meet the needs of children, subject to the ability of parents to pay."<sup>14</sup>

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. Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>15</sup> 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.

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.<sup>16</sup>

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<sup>11</sup> Ex. 7, p. 1.

<sup>12</sup> Ex. 9.

<sup>13</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>14</sup> Civil Rule 90.3, Commentary I.B.

<sup>15</sup> AS 25.27.190(e).

<sup>16</sup> Civil Rule 90.3(c).

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.”<sup>17</sup>

A parent challenging child support calculations under Rule 90.3 has the burden of proving by a preponderance of the evidence that the department’s support calculations are incorrect.<sup>18</sup> Where the basis of the appeal is that the Rule 90.3 modification amount constitutes a substantial hardship, the parent must prove hardship by clear and convincing evidence.<sup>19</sup>

*B. Child Support Calculation*

CSSD’s calculation in the April 9, 2015 Modified Administrative Child Support and Medical Support Order is not sustainable. CSSD set the modified child support amount based on a projected total gross income of \$15,755.55.<sup>20</sup> After allowable deductions, the Rule 90.3 monthly support calculation based on that amount was \$335.00 for 2 children.<sup>21</sup>

It is unclear from the record how CSSD arrived at the gross income amount. The Child Support Guidelines Worksheet accompanying the Order indicates the income amount used was based on “employer provided income and Native Dividends and AK PFD.”<sup>22</sup> However, the record contains no evidence of “employer provided” amounts that would justify the total gross income used.

At the time the Modified Support Order was issued, Ms. F was employed at No Name, and earning far less there than the amounts projected by CSSD. According to records from the Department of Labor, she earned \$3,973.68 in 2013 and \$3,540.00 in 2014.<sup>23</sup> And the record contains no “Employer response to Inquiries” that might justify the amount used. In short, there is no evidence that Ms. F would, will or could earn anywhere close to the amount attributed to her.<sup>24</sup> Because the April 9, 2015 Modified Administrative Child Support and Medical Support Order significantly overstated her ability to pay, Ms. F met her burden of showing that the modification order was in error.

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<sup>17</sup> Civil Rule 90.3(c).

<sup>18</sup> 15 AAC 05.030(h); 2 AAC 64.290(e).

<sup>19</sup> Civil Rule 90.3(c)(1).

<sup>20</sup> Ex. 7.

<sup>21</sup> Ex. 7.

<sup>22</sup> Ex. 5, p. 6.

<sup>23</sup> Ex. 7, p. 1.

<sup>24</sup> Although Ms. F’s prior support amount was based on imputed income after a finding nearly ten years ago of voluntary, unreasonable underemployment (*see* Ex. 1), CSSD did not argue in this proceeding that Ms. F is currently voluntarily and unreasonably underemployed or unemployed.

At the close of the hearing, the Division was asked to provide a proposed revised calculation for consideration. The Division provided a proposed revised calculation establishing a monthly support obligation of \$120.00 per month for two children.<sup>25</sup> The basis of this calculation is an annual gross income of \$3,540.00 – equal to what Ms. F earned in 2014 – in wages, plus the amount of the Permanent Fund Dividend, for a total taxable gross income of \$5,424.00, as well as a non-taxable gross income from Native corporation dividend shares, for a total gross income of \$5,606.55.

After allowable deductions, the Rule 90.3 monthly support amount for two children based on this income amount is \$120.00.<sup>26</sup> Rule 90.3 calculations based, as here, on actual income are presumed correct. Additionally, neither parent has objected to this calculation, which is adopted here as appropriately determining Ms. F's annual income and associated Rule 90.3 support obligation in this case.

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.<sup>27</sup> In this case, the notice was issued on November 20, 2014.<sup>28</sup> Accordingly, the modification of Ms. F's child support obligation in this matter is effective as of December 1, 2014.

### *C. Hardship Analysis*

In addition to establishing the need to modify her support obligation for D and Z, Ms. F has proved by clear and convincing evidence that manifest injustice would result if that support obligation were not reduced during the time she was unable to work due to pregnancy complications and the care of her newborn child.

Ms. F testified that she was required to stop working at No Name due to pregnancy complications when she was eight months pregnant, that she did so upon her doctor's orders, and that she remained off work until the birth of her child at the end of April. Ms. F further testified that she currently has no access to child care, and intends to resume daytime work in October 2015, when she anticipated having access to daytime child care. However, she also indicated that she could potentially start night work sooner and would be able to arrange for child care were she to do so.

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<sup>25</sup> Ex. 9.

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<sup>27</sup> 15 AAC 125.321(d).

<sup>28</sup> See Ex. 3.

The law presumes that the Rule 90.3 calculation should apply in the vast majority of circumstances, and should only be departed from where unusual circumstance make application of the formula manifestly unjust.<sup>29</sup> “Unusual circumstances” for purposes of a hardship variance may include “the existence of subsequent children of the obligor parent, but only if failure to vary the child support award ... would cause substantial hardship to the subsequent children.”<sup>30</sup> The evidence here justifies departure from the Rule 90.3 calculation for the period of time when Ms. F was unable to work due to pregnancy complications, childbirth, and the need to care for her newborn child.

Ms. F’s already low-wage income was brought to zero as a result of stopping work due to pregnancy, and remained there until she was able to resume work. During that period of time, the Rule 90.3 calculation established above does not properly capture her ability to pay child support. While temporary changes in income, including temporary unemployment, are generally not cause to vary a child support award,<sup>31</sup> here Ms. F was physically unable to work due to complications of late pregnancy, and was then at home caring for a newborn infant under already sparse circumstances. The economic repercussions of refusing to vary the child support award during that period of time – specifically, during the months of March, April, May and June 2015 – would constitute substantial hardship to her newborn child.<sup>32</sup>

Given the totality of the circumstances, Ms. F satisfied her burden to establish that, for the period of time that she was unable to work due to pregnancy complications and following the birth of her child, enforcing even the decreased child support amount established above would cause manifest injustice in the form of substantial hardship to her infant child.<sup>33</sup> Accordingly, from March 2015 through June 2015, Ms. F’s monthly support

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<sup>29</sup> 15 AAC 125.075(a)(2); Rule 90.3, Commentary VI.B.

<sup>30</sup> 15 AAC 125.075(a)(2)(F).

<sup>31</sup> See *Patch v. Patch*, 760 P.2d 526, 530 (Alaska 1988) (“[A] trial court should be reluctant to modify child support obligations when the obligor’s loss of income appears only temporary”); *Curley v. Curley*, 588 P.2d 289, 291 (Alaska 1979).

<sup>32</sup> For purposes of a hardship variance, this decision concludes that Ms. F could reasonably be expected to resume working outside the home by July 2015. Ms. F did not prove by clear and convincing evidence that enforcement of the Rule 90.3 award after that time would cause substantial hardship sufficient to justify a variance from the Rule. Although Ms. F might prefer to wait until October to go back to work, she did not prove by clear and convincing evidence that returning to the workforce earlier would cause substantial hardship sufficient to justify a continued waiver of her support obligation to her older children.

<sup>33</sup> See 15 AAC 125.075(a)(2)(F).

obligation is reduced to the statutory minimum of \$50.00 for two children due to clear and convincing evidence of hardship as to that time period.<sup>34</sup>

#### **IV. Conclusion**

The Division's April 2015 calculation of Ms. F's monthly support obligation was in error because it overstated her ability to pay. The Division's August 2015 proposed revised calculation appropriately resolves this issue and, accordingly, the Rule 90.3 monthly support award for two children is set at \$120.00, effective December 1, 2014. However, a hardship variance reducing the award to \$50.00 per month for two children is justified from March 2015 through June 2015, after which time Ms. F's support amount for two children shall return to \$120.00 per month.

#### **V. Child Support Order**

1. M N. F is liable for child support in the amount of \$120.00 per month for two children from December 1, 2014 through February 1, 2015.
2. M N. F is liable for child support in the amount of \$50.00 per month for two children for the months of March, April, May, and June 2015.
3. M N. F is liable for child support in the amount of \$120.00 per month for two children effective July 1, 2015 and ongoing.
4. All other terms of the Modified Administrative Child Support and Medical Support Order dated April 9, 2015 remain in full force and effect.

Dated: August 14, 2015

*Signed* \_\_\_\_\_

Cheryl Mandala  
Administrative Law Judge

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<sup>34</sup> See Civil Rule 90.3(c)(1)(B).

## **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 August 2015.

By: Signed \_\_\_\_\_  
Signature  
Christopher Kennedy \_\_\_\_\_  
Name  
Deputy Chief Administrative Law Judge  
Title

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