

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

In the Matter of)	
)	
C M. X)	OAH No. 15-0483-CSS
<hr style="width:40%; margin-left:0;"/>)	Agency No. 001164916

DECISION AND ORDER

I. Introduction

The obligor, C M. X, appealed a Modified Administrative Child Support and Medical Support Order dated April 13, 2015 that the Child Support Services Division (CSSD) issued in his case. This order increased Mr. X’s support for three children from \$50 per month to \$1,670 per month, effective January 1, 2015. The obligee children are J, G and K. The custodian of record is B X.

A formal hearing was held June 2, 2015. Ms. X did not participate.¹ Mr. X participated by telephone. Child Support Specialist Joseph West participated on behalf of CSSD. Mr. X did not establish by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. CSSD’s April 10, 2015 Modified Administrative Child Support and Medical Support Order is affirmed.

II. Facts

On September 10, 2010 CSSD issued an Administrative Child Support and Medical Support Order establishing a \$50 support order for Mr. X’s three daughters, J, G and K.² When his support obligation was established, Mr. X was incarcerated, so his support obligation was set at the minimum allowed by law, \$50 per month.³

On December 17, 2014, Ms. X petitioned to modify the 2010 support order. CSSD served a Notice of Petition for Modification of Administrative Support order on December

¹ “If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department.” 15 AAC 05.010(c). The notice of hearing was mailed by certified mail to the address in CSSD’s file. The “green card” was signed for and returned. Ms. X received notice of this proceeding.

² Exh. 1.

³ Exh. 1 p. 4.

31, 2014.⁴ The notice directed the parties to provide current financial information. Neither party complied, so CSSD calculated Mr. X's income using his Social Security Disability Income (SSDI) and his Veterans Administration Disability Income (VADI).

Mr. X receives \$1,272 a month from SSDI and, as a 100% disabled veteran, he receives \$3,176.26 per month.⁵ The children each receive \$204 per month through their Social Security Children's Insurance Benefit (CIB). None of these sources of income are taxable. Mr. X's adjusted annual income for purposes of child support totaled \$60,723.12. When calculated pursuant to Alaska Rule Civil Procedure, his child support for three children is \$1,670 per month. He believes the amount is manifestly unjust.

Mr. X testified that he lives with his partner and caretaker in an apartment that he rents for \$1,000 per month. His utilities total \$925 per month. Mr. X's other monthly expenses include \$400 for food; \$104 for medical insurance; and \$50 for renters insurance. He owns two cars, a 2007 Dodge and a 2015 Jeep. He owes \$15,000 for the Dodge and \$35,000 for the Jeep. His monthly car payments for both vehicles total \$1,294. Mr. X estimates he spends \$550 a month for gas and automobile insurance. He also has medical and consumer debt which he is paying at the rate of \$300 per month. He has one recreational vehicle on which he owes \$12,000 and pays \$250 per month. Finally, Mr. X has accrued \$10,500 in student loans while he pursues his fine arts degree; however, these loans are deferred while he is in school.

III. Discussion

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.⁶ Mr. X filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.⁷

Mr. X does not challenge CSSD's determination; he agreed that the income figures are correct and that CSSD correctly calculated his child support under Alaska Rule of Civil

⁴ Exh. 2.

⁵ Mr. X does not dispute the accuracy of these figures.

⁶ 15 AAC 05.030(h).

⁷ 2 AAC 64.290(e).

Procedure 90.3(a).⁸ Mr. X contends that he should receive a variance pursuant to Civil Rule 90.3(c) from the amount of support ordered.

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."⁹

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).¹⁰

The increase in child support from \$50 per month to \$1,670 is a 3,240% increase. The increase in support will undoubtedly create financial stress for Mr. X and his partner, but his duty to support his three children takes priority over other debts and obligation incurred after they were born.¹¹ The impact of the increased child support expense is eased by the credit Mr. X receives for the \$612 in CIB benefits paid to his children. The CIB reduces the amount of monthly child support that Mr. X must actually pay for his three children to \$1,058 per month.

J, G and K are entitled to receive child support in an amount based on Mr. X's *ability to pay*, as calculated pursuant to Civil Rule 90.3. Mr. X's monthly expenses total \$4,873. After child support in the amount of \$1,058 per month is added, his monthly expenses are increased to \$5,931. Mr. X's monthly income is \$5,060.25 per month. His monthly expenses exceed his monthly income by \$870.35.

The \$870.35 difference is not insurmountable. Mr. X's monthly expenses include over \$1,400 in car and recreational vehicle expenses. Mr. X can sell one car and the recreational vehicle and have ample resources to support his children, or Mr. X can ask his partner to pay part of the rent and utilities if he would rather keep all of his vehicles.

Mr. X's child support obligation has been calculated correctly 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, will not constitute good cause to vary a child support obligation.

⁸ Also known as Civil Rule 90.3.

⁹ Civil Rule 90.3(c).

¹⁰ See Civil Rule 90.3, Commentary VI.E.1.

¹¹ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

Thus, based on the evidence in its entirety, Mr. X 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 K, G, and J were not reduced. Mr. X's child support should remain as revised by CSSD, at \$1,670 per month.

IV. Conclusion

Mr. X did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. Therefore, he is not eligible to receive a variance from the amount calculated. Mr. X's child support is correctly calculated at \$1,670 per month, effective January 2015 and ongoing. This figure should be adopted.

V. Child Support Order

- Mr. X is liable for modified ongoing child support for J, G and K in the amount of \$1,670 per month, effective January 1, 2015;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated April 13, 2015 remain in full force and effect.

Dated: June 9, 2015

Signed
Rebecca L. Pauli
Administrative Law Judge

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 23rd day of June, 2015.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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