

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

In the Matter of	)	
	)	
H M. P	)	OAH No. 15-0517-CSS
_____	)	Agency No. 001178773

**DECISION AND ORDER**

**I. Introduction**

This case is H M. P’s appeal of an order issued by the Child Support Services Division (CSSD), which decreased Mr. P’s ongoing monthly support obligation from \$392 per month to \$123 per month effective March 1, 2015. The obligee child is F, age 7. The custodian of record is T X.

On May 26, 2015, a hearing was held to consider Mr. P’s appeal. Ms. X received notice but did not participate. Mr. P participated by telephone as did CSSD’s representative Joseph West. Mr. P has six children under five support orders.<sup>1</sup> The other four orders are also being considered at this time in their respective proceedings. The parties to this proceeding agreed that the record should remain open because Mr. P believed he would be working on the North Slope within a few weeks.

On June 19, 2015, Mr. P notified CSSD that he had not been hired but had submitted more applications for North Slope positions and locally. On June 23, 2015, CSSD submitted a calculation using three years of his average earnings. On July 21, 2015, CSSD revised their calculation. The revised calculation resulted in a child support obligation for one child in the amount of \$160 per month.

Having considered the record, this is an unusual circumstance under Civil Rule 90.3(c) where the application of the 90.3(i) methodology will avoid manifest injustice. Using this methodology, Mr. P’s ongoing child support for F is \$50 per month effective March 1, 2015.

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<sup>1</sup> One support order, for children older than F, is subject to court jurisdiction but it is appropriate to include them for purposes of this calculation.

## II. Facts

This is a modification action.<sup>2</sup> The order sought to be modified was issued on September 1, 2012 and set Mr. P's support at \$392 per month.<sup>3</sup> This is the minimum allow by law. On February 11, 2015, Mr. P requested modification and supplied income information in support of his request.<sup>4</sup> Notice of his Petition for Modification was mailed February 23, 2015.<sup>5</sup> Using the income information provided, CSSD issued a Modified Administrative Child Support and Medical Support Order dated March 27, 2015, setting his ongoing support at \$123 per month for one child effective March 1, 2015.<sup>6</sup> Mr. P appealed.

At the hearing Mr. P provided information about his household finances. He has four biological children in his home ages 9, 4, 2, and 5 months. His wife does not work. Their rent is \$895 per month. This amount includes all utilities except telephone. Mr. P has a cell phone for which he pays \$200 per month. The only other expenses identified as household expenses were food, \$500 - \$700 per month, and insurance, \$80 per month.

At the time of hearing Mr. P was unemployed. He had been working on the North Slope for No Name as a temporary employee and had applied for a permanent position.<sup>7</sup> He believes he will be hired but would not know for a few weeks.<sup>8</sup> If he is hired, he agreed that his annual earnings will be at least \$32,000 per year.<sup>9</sup>

Mr. P has a total of ten biological children, with six different mothers, that he is obligated to support, either in his home or through child support orders. The children subject to child support orders are A (17 years), B (15 years), C (13 years), D (12 years), E (10 Years), and F (6 years). D and E are full siblings. Their support obligation is established by court order at \$660 per month. However, there is no evidence in the record to indicate that Mr. P is paying this amount, if any.

The parties agreed to keep the record open to see if Mr. P was hired as a permanent employee. He was not.

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<sup>2</sup> Alaska Rule Civil Procedure 90.3(h) governs modification actions.

<sup>3</sup> Exh. 1.

<sup>4</sup> Exh. 2.

<sup>5</sup> Exh. 3.

<sup>6</sup> Exh. 4.

<sup>7</sup> P Testimony.

<sup>8</sup> P Testimony.

<sup>9</sup> P Testimony.

After the hearing, as ordered, CSSD provided new calculations based on a three year averaged income due to the wide variation from year to year. This calculation resulted in a child support obligation for one child in the amount of \$160 per month and for six children in the amount of \$337 per month.<sup>10</sup>

### III. Discussion

Alaska Rule of Civil Procedure 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."<sup>11</sup> Child support may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."<sup>12</sup> Good cause includes a finding of unusual circumstances.<sup>13</sup> The person appealing CSSD's decision has the burden of proving that the decision is incorrect.<sup>14</sup>

At the time of the hearing Mr. P was actively looking for employment. It is unknown if he has been successful. Unemployment is considered a temporary change in circumstances. Mr. P was employed in the first two quarters of 2015, the last three quarters of 2014, and the first two quarter of 2012. In 2013, Mr. P has no reported earnings. CSSD's revised calculation is based upon a three year average. Looking at Mr. P's earning pattern a four year average will best capture his ability to pay child support. His four year average annual gross income is \$6,205 and his 3 year average unemployment benefit is \$1,536.<sup>15</sup> Unemployment is averaged over three years because the record does not indicate that he received any unemployment benefit in 2015. Adding Mr. P's permanent fund dividend and Native Corporation dividends result in a total gross income in the amount of \$10,135. After the required deductions, Mr. P has an adjusted gross income in the amount of \$9,621.76.<sup>16</sup> This is the amount that will be used for purposes of child support because it represents what his ability to pay is likely to be in the coming months.

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<sup>10</sup> Exh. 11.

<sup>11</sup> Alaska Rule Civil Procedure 90.3(a)(1).

<sup>12</sup> Alaska Rule Civil Procedure 90.3(c).

<sup>13</sup> Alaska Rule Civil Procedure 90.3(c)(1)(A).

<sup>14</sup> 15 AAC 05.030(h).

<sup>15</sup> As shown on exhibit 10, Mr. P had the following reported earnings for 2015, 2014, and 2012: \$14,704.35 + \$5,496.63 + 13,119.42. His total reported earnings for four years = \$33,320.4. When averaged over 4 years, Mr. P's reported earnings for the past four years = \$8,330.10. His three year average received from unemployment for 2014, 2013, and 2012 is \$1,536.53.

<sup>16</sup> Attachment A.

The issue then is how to calculate Mr. P's child support obligation for not only his child in this case but recognizing that he has ten other children, six subject to support orders. This is an unusual circumstance.

To understand the unusual circumstances of this case, one must consider the full extent of Mr. P's obligation to support children of different relationships. Mr. P has ten children with six different mothers. He has five separate child support orders, including this one.

The rules and regulations governing child support appear to recognize the hard reality that at some point it is more counterproductive to attempt to charge a noncustodial parent more than 40% of his or her adjusted income for ongoing child support. This is reflected in 15 AAC 125.540(c). This regulation recognizes that a withholding order may not exceed 40% of an obligor's adjusted earnings.<sup>17</sup>

Strict adherence to the support guidelines of Civil Rule 90.3(a) for so many children with the same non-custodial parent and different custodial support would result in a total support obligation far in excess of anything reasonable or collectable and would clearly work an injustice on the subsequent children.

Here, A as the oldest child would be entitled to 20% of Mr. P's adjusted income, as per Civil Rule 90.3(a). The next child, B, would then get 20% of the 80% that is left. The third child would get 20% of the remaining 60%. The fourth and fifth children would get 27% of the remaining 40% and the sixth child would get 20% of the remaining 20%. The three younger children in the home would have to get by on the little that remained. Even this complicated and unjust distribution of the available income would not follow Civil Rule 90.3(a) because one of the children in the home is older than F.

To avoid injustice, Mr. P's cases and the children in his home should be treated as if they were one family, the way that Civil Rule 90.3(i) instructs for setting child support in third-party custody situations. If all ten children were part of one family, with one custodial parent and one support order, Mr. P's obligation would be set at 54% of his adjusted income, \$5,195 divided by ten to establish the annual amount for each of Mr. P's orders. The annual amount, \$519.50, is then divided by 12 to obtain the monthly support amount of \$43.29.

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<sup>17</sup> 15 U.S.C. § 1672; 15 AAC 125.540(c)

However, this is an unusual circumstance case under Civil Rule 90.3(c) applying a 90.3(i) methodology. Under Civil Rule 90.3(c), the minimum child support amount is \$50.<sup>18</sup> Therefore, his monthly child support obligation should be \$50 per month.

Mr. P has applied for modification in all of his cases over which CSSD has jurisdiction and this approach can be applied in each of CSSD's remaining cases involving Mr. P.

#### **IV. Conclusion**

There is clear and convincing evidence that it would be manifestly unjust if Mr. P's ongoing child support obligation was not varied to \$50 per month for one child. This amount is calculated under Alaska Rules Civil procedure 90.3(c) and 90.3(h).

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

1. H M. P is liable for child support in the amount of \$50 per month for one child effective March 1, 2015 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated March 27, 2015 remain in full force and effect.

Dated: September 4, 2015

Signed  
\_\_\_\_\_  
Rebecca L. Pauli  
Administrative Law Judge

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<sup>18</sup> Alaska Rule Civil Procedure 90.3(c)(3)

## **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 18<sup>th</sup> day of September, 2015.

By: Signed  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge/OAH  
Title

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