

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

In the Matter of	)	
	)	
N A. G	)	OAH No. 15-1284-CSS
<hr style="width:40%; margin-left:0"/>	)	Agency No. 001200057

**DECISION AND ORDER**

**I. Introduction**

Obligor N A. G appealed an Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on May 8, 2015. The obligee child is B, 6 years old. The custodian is E N.

The hearing was held on November 3, 2015. Mr. G and Ms. N participated by telephone.<sup>1</sup> Brandi Estes, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. G's child support is set at \$536 per month, effective June 1, 2014 and ongoing. Mr. G's request for a reduction of his child support obligation based on financial hardship is denied.

**II. Facts**

*A. Procedural History*

This child support proceeding was initiated against Mr. G when B first received public assistance in June 2014.<sup>2</sup> Paternity was established through genetic testing.<sup>3</sup> CSSD subsequently issued an Administrative Child and Medical Support Order on May 8, 2015. This order set Mr. G's child support at \$536 per month effective June 2014 and ongoing.<sup>4</sup> Mr. G requested an Administrative Review. This review affirmed CSSD's Administrative Child Support and Medical Support Order issued in May 2015.<sup>5</sup> Mr. G appealed.

*B. Material Facts*

Mr. G is employed by No Name Inc., and has been for many years.<sup>6</sup> He is also self-employed delivering newspapers.<sup>7</sup> At No Name he details cars earning \$12 per hour straight

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<sup>1</sup> Ms. N's connection was lost in the middle of the hearing. Attempts to contact her were unsuccessful.  
<sup>2</sup> Exh. 1.  
<sup>3</sup> Exh. 5 at p. 1 – 3.  
<sup>4</sup> Exh. 7.  
<sup>5</sup> Exh. 9.  
<sup>6</sup> Exh. 11; G Testimony.

time and \$18 overtime.<sup>8</sup> The Alaska Department of Labor and Workforce Development (DOL) reported that for the first two quarters of 2015 (January through June), Mr. G received wages from No Name in the amount of \$16,973.46.<sup>9</sup> In the third quarter of 2015 (July through September) he earned an additional \$10,000.<sup>10</sup>

His earnings from No Name have been consistent over recent years. In 2014 he had reported earnings in the amount of \$33,568.53; in 2013 he had reported earnings in the amount of \$34,283.22; and in 2012 he had reported earnings in the amount of \$34,858.34.<sup>11</sup>

In 2014, his newspaper delivery business had gross receipts in the amount of \$6,057 or \$504.75 per month.<sup>12</sup> On his tax return, Mr. G deducted \$21,930 in car and truck expenses resulting in a net loss to his newspaper delivery service in the amount of \$15,873.<sup>13</sup>

When calculating child support, CSSD used Mr. G's W-2 wages in the amount of \$33,569<sup>14</sup> plus PFD.<sup>15</sup> CSSD did not include Mr. G's self-employment income in its calculation. As calculated by CSSD, Mr. G's child support obligation is \$536 per month effective June 2014 and ongoing.

Mr. G owns his home. He lives with his girlfriend. His girlfriend purchases her own food but she does not contribute to Mr. G's monthly expenses.<sup>16</sup>

Mr. G's monthly expenses without child support total \$2,787.<sup>17</sup> When child support in the amount of \$536 is included, Mr. G's monthly expenses total \$3,323. His adjusted monthly income calculated by CSSD is \$2,679.<sup>18</sup> His monthly expenses exceed his monthly income by \$644.<sup>19</sup>

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<sup>7</sup> Exh. 6 at p. 6; G Testimony. On his 2014 Federal income tax return Mr. G reported interest income. This payment a singular event.

<sup>8</sup> Exh. 6 at p. 11; G Testimony.

<sup>9</sup> Exh. 11.

<sup>10</sup> Estes Testimony.

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

<sup>12</sup> Exh. 6 at p.4.

<sup>13</sup> *Id.*

<sup>14</sup> Exh. 6 at p. 1.

<sup>15</sup> Exh. 9 at p. 2.

<sup>16</sup> G Testimony.

<sup>17</sup> Exh. 14.

<sup>18</sup> Exh. 9.  $\$32,147/12 = \$2,678$ .

<sup>19</sup>  $\$2,679 - \$3,323 = \$644$ .

### III. Discussion

The person who filed the appeal, in this case, Mr. G, has the burden of proving by a preponderance of the evidence that CSSD's support order is incorrect.<sup>20</sup> Mr. G's appeal focused on four areas: 1) there was a civil matter pending, 2) he made a payment made to Ms. N in April 2014, 3) he wanted visitation credit, and 4) Mr. G believed his support obligation was too high and would create a hardship.

#### A. *Pending Civil Matter*

The civil matter referred to by Mr. G appears to be a request for a 20-Day Ex Parte Domestic Violence Protective Order.<sup>21</sup> This order does not address child support or custody.<sup>22</sup> CSSD confirmed that they were unaware of any order of the court indicating that it was retaining jurisdiction to calculate child support. Therefore, on the record developed through the hearing process, this is the proper tribunal to establish child support. Mr. G was accepting of this explanation.

#### B. *Payment to Custodian*

The payment to Ms. N was made in April 2014. This is prior to the effective date of CSSD's order. By regulation, when establishing a support order because the obligee child is receiving public assistance, CSSD establishes arrears from the first month in which assistance was provided.<sup>23</sup> Assistance was first provided in June 2014. Because the April 2014 payment was made before the effective date of the Administrative Child Support and Medical Support Order, the payment may not be credited against support owing under CSSD's order.

#### C. *Visitation Credit*

As explained at hearing visitation is an administrative process internal to CSSD. CSSD provided a post hearing Submission to Record. In this submission CSSD informed the parties and this tribunal that the Enforcement caseworker issued a Notice of Request for Visitation Credit to start the process.

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<sup>20</sup> 15 AAC 05.030(h).

<sup>21</sup> Exh. 4.

<sup>22</sup> *Id.* at p. 6.

<sup>23</sup> CSSD's ability to establish arrears is not without limit, when public assistance has been provided, CSSD may not go back more than six years. 15 AAC 125.105(a)(1).

*D. May 8, 2015 Administrative Child Support and Medical Support Order*

A parent is obligated both by statute and at common law to support his or her children.<sup>24</sup> Mr. G's child support obligation was calculated using his actual wages reported on his Federal income tax return. This amount included overtime and holiday pay. Mr. G argued that these pay categories should not be included as income for purposes of child support.

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The evidence presented (pay stubs and testimony) did not establish that the income figure used by CSSD was incorrect. There is no provision in Civil Rule 90.3 for leaving overtime pay out of a parent's income for the child support calculation. The total income must therefore include all of Mr. G's pay, including his overtime and holiday hours.<sup>25</sup> Therefore, he has not established by a preponderance of the evidence that CSSD erred in its support calculation. Therefore, unless varied child support will remain at \$536 per month for one child.

An obligor 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."<sup>26</sup> It is appropriate to consider all relevant evidence 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).<sup>27</sup>

Mr. G's monthly expenses including a \$536 child support payment total \$3,323. His adjusted monthly income calculated by CSSD is \$2,679.<sup>28</sup> His monthly expenses exceed his monthly income by \$644.<sup>29</sup>

Even though his expenses exceed his income, based on the evidence contained in the record, Mr. G did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied.

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<sup>24</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>25</sup> If anything, because CSSD failed to include his self-employment income, Mr. G's income for purposes of child support was understated. The record does not reveal why this income was not included by CSSD.

<sup>26</sup> Civil Rule 90.3(c).

<sup>27</sup> See Civil Rule 90.3, Commentary VI.E.1.

<sup>28</sup> Exh. 9.  $\$32,147/12 = \$2,678$ .

<sup>29</sup>  $\$2,679 - \$3,323 = \$644$ . If his self-employment income were included his expenses would barely exceed his income.

Mr. G has a great deal of consumer debt. Child support takes precedent over consumer debt. Significantly, he has two car payments per month that when combined total \$701. It may be possible for Mr. G to sell both vehicles and purchase one with a lower monthly payment. He also could have his girlfriend contribute to his monthly expenses. Therefore, Mr. G's child support amount calculated pursuant to Civil Rule 90.3 should not be lowered. A person looking at the record would not find the amount of support ordered to be manifestly unjust.

Mr. G's primary legal obligation is to support his biological child, B, and this duty takes priority over other debts and obligations.<sup>30</sup> His request for a variance is denied.

#### **IV. Conclusion**

CSSD's May 8, 2015 Administrative Child Support and Medical Support Order calculating support under Civil Rule 90.3(a) should be affirmed without variation.

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

The Administrative Child Support and Medical Support Order dated May 8, 2015 is affirmed.

Dated: January 12, 2016

*Signed*  
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Rebecca L. Pauli  
Administrative Law Judge

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<sup>30</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

**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 27th day of January, 2016.

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

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