

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

In the Matter of	)	
	)	
M J. T	)	OAH No. 15-1308-CSS
<hr style="width:40%; margin-left:0"/>	)	Agency No. 001159570

**DECISION AND ORDER**

**I. Introduction**

M J. T appeals a Modified Administrative Child Support and Medical Support Order that increased his monthly child support obligation for his daughter, D, from \$482 per month to \$574 per month. After a full hearing and based on the evidence in the record, this decision adjusts Mr. T’s monthly support obligation to \$572 per month, and otherwise affirms the September 2015 Order.

**II. Facts**

M T and K E are the parents of D, age 8, who lives full-time with Ms. E. Mr. T works as a no name at the No Name Center (No Name Center). Mr. T has two other children for whom he pays child support – a daughter, N, who is older than D, and a son, F, who is younger than D.

Prior to this hearing, Mr. T’s monthly support obligation for D was most recently set through an October 2012 decision by the Office of Administrative Hearings. That decision, in OAH Case No. 12-0136-CSS, set Mr. T’s monthly support obligation for D at \$482 per month, effective June 1, 2012.<sup>1</sup> At that time, Mr. T’s annual income including the Alaska Permanent Fund Dividend was \$43,450.<sup>2</sup>

Mr. T’s income from No Name Center has slowly increased over the intervening years. In 2013, his annual income from No Name Center was \$44,292.48. In 2014, it was \$49,321.88. In 2015, his income for the first two quarters of the year was \$23,138.21.<sup>3</sup> Mr. T estimates that his base pay this year will be roughly \$50,000.<sup>4</sup>

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<sup>1</sup> Ex. 1.  
<sup>2</sup> Ex. 1, p. 2.  
<sup>3</sup> Ex. 6.  
<sup>4</sup> Testimony of Mr. T.

In April 2015, Ms. E requested that CSSD modify the parties' Administrative Child Support and Medical Support Order.<sup>5</sup> CSSD notified both parties of the petition for modification on April 25, 2015.<sup>6</sup> Mr. T submitted paystubs in response to this Order.<sup>7</sup> Additionally, the State of Alaska, Division of Retirement and Benefits submitted an employment verification identifying Mr. T's base rate of pay as \$23.05 per hour.<sup>8</sup>

In September 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order increasing Mr. T's monthly support obligation for D to \$574 per month, effective May 1, 2015.<sup>9</sup> The September 2015 Order explained that this new support amount was based on Mr. T's pay stubs and the amount of the Alaska Permanent Fund Dividend, with deductions for prior child support paid and union dues.<sup>10</sup> Additionally, the Order noted that Mr. T would receive a credit for D's health insurance, so that, while the monthly support obligation was set at \$574, CSSD would only collect \$556 per month (along with "any arrears and interest that may be owed").<sup>11</sup>

Mr. T appealed, arguing that the calculation did not properly consider all of his other child support cases. Mr. T also stated he had been working overtime specifically to pay off back child support, and argued that his support obligation should be based on his "base rate of pay."<sup>12</sup> Lastly, Mr. T argued that he had not received credit for D's health insurance.<sup>13</sup>

A hearing was held on November 9, 2015. Mr. T and Ms. E participated by telephone. Joseph West represented CSSD. The record was held open following the hearing to allow the parties to submit additional information. The record closed on November 23, 2015, without post-hearing submissions by any party.

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<sup>5</sup> Ex. 2.

<sup>6</sup> Ex. 2.

<sup>7</sup> Testimony of Mr. T. These paystubs are not in the record. Mr. T was allowed to supplement the hearing record to include paystubs, but did not do so.

<sup>8</sup> Ex. 3. Mr. T agrees that these figures are accurate. Testimony of Mr. T.

<sup>9</sup> Ex. 4.

<sup>10</sup> Ex. 4, p. 5.

<sup>11</sup> Ex. 4, p. 5.

<sup>12</sup> Ex. 5. For several months during 2015 Mr. T worked a considerable amount of overtime. This started around May 2015 and continued until September 2015. Testimony of Mr. T.

<sup>13</sup> Ex. 5.

### III. Discussion

A parent is obligated both by statute and at common law to support his or her children.<sup>14</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>15</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.”<sup>16</sup> The regulations implementing this rule direct that a parent’s ongoing support obligation be based on “the total annual income the parent is likely to earn or receive when the child support is to be paid.”<sup>17</sup>

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>18</sup> A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.<sup>19</sup> Because CSSD sent the parties notice of the petition for modification on April 25, 2015, this modification is effective as of May 1, 2015.<sup>20</sup> Mr. T, as the parent challenging a child support calculation under Rule 90.3, has the burden of proving by a preponderance of the evidence that the support calculation is incorrect.<sup>21</sup>

#### A. Support Amount and the Issue of Overtime

Child support determinations calculated under Civil Rule 90.3 from an obligor’s actual income figures are presumed to be correct. In calculating child support, CSSD looks at all income the obligor parent can expect to earn, which includes “salaries and wages, including overtime and tips.”<sup>22</sup> 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>23</sup>

In most cases income from overtime or a second job will be counted as adjusted annual income under Rule 90.3(a). However, the court has discretion

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<sup>14</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>15</sup> Civil Rule 90.3, Commentary I.B.

<sup>16</sup> See 15 AAC 125.010 (adopting Civil Rule 90.3 by reference).

<sup>17</sup> 15 AAC 125.050 (c).

<sup>18</sup> AS 25.27.190(e).

<sup>19</sup> 15 AAC 125.321(d).

<sup>20</sup> Ex. 2.

<sup>21</sup> 15 AAC 05.030(h); 2 AAC 64.290(e).

<sup>22</sup> 15 AAC 125.020(a)(1). See Civil Rule 90.3(a) (calculation based on total annual income from all sources).

<sup>23</sup> 15 AAC 125.075; Civil Rule 90.3(c).

not to include this income when, for example, the extra work is undertaken to pay off back child support.<sup>24</sup>

Here, Mr. T indicated that he worked overtime to pay off his child support arrears, and therefore objects to his child support amount increasing commensurate with his overtime-based increase in income.<sup>25</sup>

As a threshold matter, however, it is not clear from the record whether the overtime income was included in the income calculation. Both the Child Support Guidelines worksheet and the Order itself indicate that the annual gross income amount was based on paystubs provided by Mr. T.<sup>26</sup> Neither CSSD nor Mr. T has provided copies of these paystubs. However, because CSSD requested income information in late April, shortly before Mr. T began working the extra overtime, and then issued its Order in early September, around the time he stopped working the overtime, the paystubs he provided may well have reflected the temporarily-increased income from overtime.<sup>27</sup> To the extent to which these income amounts were then extrapolated, it is likely that CSSD's income calculation assumed a higher annual income than is accurate, as well as relying on extra income earned specifically to pay off child support arrears.<sup>28</sup>

The foregoing concerns are most accurately addressed by basing the income calculation off of Mr. T's full-time annual income at his base rate of pay.<sup>29</sup> The employer response to CSSD's wage inquiry indicated that Mr. T's semimonthly gross income is \$2,028.50, equating to an annual wage income of \$48,684.<sup>30</sup> When this corrected wage amount is entered along with all other required deductions into CSSD's online child support calculator, the corrected monthly support amount for one child is \$572.<sup>31</sup> The 2015 Support Order should be modified accordingly.

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<sup>24</sup> Civil Rule 90.3 Commentary VI.B.9.

<sup>25</sup> Ex. 5.

<sup>26</sup> See Ex. 4, pp. 5, 6.

<sup>27</sup> Ex. 2, p. 1; Ex. 4, p. 1.

<sup>28</sup> It is undisputed that any increase in Mr. T's income for the overtime was temporary, so extrapolating based on that temporarily higher earnings amount would yield a higher annual income figure than is accurate.

<sup>29</sup> Ex. 3, p. 2.

<sup>30</sup> Ex. 3, p. 2.  $2,028.50 \times 24 = 48,684$ . CSSD's calculation is based on annual wages of \$49,164 – a difference of less than \$500 over the year. Ex. 4, p. 6. CSSD's calculation was also based on an estimated Permanent Fund Dividend amount that was lower than the actual dividend amount, further diminishing any gap between CSSD's calculation and the recalculation sought by Mr. T. See Ex. 4, p. 6; Attachment A.

<sup>31</sup> See Attachment A.

**B. Deductions for Other Child Support Cases**

Mr. T next argues that the September 2015 Modified Support Order does not appropriately consider his other child support obligations. This is incorrect. Rule 90.3(a)(1)(c) entitles an obligor to a deduction from income for “child support . . . payments arising from prior relationships which are required by other court or administrative proceedings and actually paid[.]” Pursuant to this Rule, the order appropriately gives Mr. T a deduction for the support amount owed in N’s case. Mr. T is not entitled to a deduction for support paid for any children born *after* the child in this case.<sup>32</sup> Mr. T has not met his burden of proof on this issue.

**C. Health Care Costs**

Lastly, Mr. T also raises the issue of credit for health care costs. Both parents provide health insurance for D. Mr. T objects to paying for copayments. Ms. E credibly testified that she pays copayments. As was explained to the parties, their allocation of expenses, including child care expenses, is a matter outside the scope of CSSD’s jurisdiction and therefore outside the jurisdiction of the OAH.

**IV. Conclusion**

Mr. T’s monthly child support obligation is appropriately calculated at \$572 per month. Mr. T did not otherwise meet his burden of proving that the September 2015 Modified Child Support and Medical Support Order is incorrect.

**V. Child Support Order**

1. M J. T is liable for child support in the amount of \$572 per month for 1 child, effective May 1, 2015 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated September 9, 2015 remain in full force and effect.

Dated: November 25, 2015

*Signed* \_\_\_\_\_  
Cheryl Mandala  
Administrative Law Judge

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<sup>32</sup> In those cases, D counts as a “prior child,” and Mr. T would be entitled to a deduction for support ordered and paid in this case.

## **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 9<sup>th</sup> day of December, 2015.

By: Signed \_\_\_\_\_  
Signature  
Cheryl Mandala \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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