

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

In the Matter of)	
)	
G E. O)	OAH No. 15-1333-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 001155550

DECISION AND ORDER

I. Introduction

G O’s monthly child support obligation for his children, G and N U, was set at \$986 per month in 2009. In December 2012, Mr. O was permanently disabled by an anoxic brain injury. In September 2015, the Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Monthly Support Order reducing Mr. O’s monthly support obligation to \$451 per month. On appeal by Mr. O’s guardian, this decision finds clear and convincing evidence supporting a variance from the monthly support obligation calculated under Civil Rule 90.3 and, accordingly, sets Mr. O’s ongoing support obligation at \$50 per month.

II. Facts

G O and T J are the parents of G and N U. The children live with Ms. J. In 2009, CSSD issued an Administrative Child Support and Monthly Support Order setting Mr. O’s monthly child support obligation for the two children at \$986 per month.

In December 2012, Mr. O suffered a life-altering tragedy when he was assaulted, leading to an anoxic brain injury.¹ After a lengthy hospitalization, Mr. O, now wheelchair-bound and severely disabled, was released to an assisted living home, where he continues to reside.² As a result of the assault, Mr. O is permanently disabled.³

Mr. O receives \$1,095 in Social Security Disability benefits, from which his guardian pays \$961 in room and board to the assisted living home where he resides. Ms. O typically transfers the remaining balance – \$134 per month – to the assisted living home director to provide for Mr. O’s incidental expenses.⁴ Mr. O is also eligible for, and

¹ Ex. 3; Testimony of Q K; Testimony of D O.
² Ex. 3; Testimony of Q K.
³ See Ex. 3, pp. 3-4.
⁴ Ex. 9; testimony of Ms. O.

receives, Native corporation dividends. He has not previously received a Permanent Fund Dividend, but his guardian intends to apply for one for the coming year.⁵

Minor children whose disabled parents are entitled to Social Security benefits are typically eligible for a federal Social Security Child's Insurance Benefits (CIB). However, neither the non-custodial parent nor CSSD can apply on the child's behalf; the custodial parent must apply. To date, despite encouragement from Ms. O, Ms. J has not yet applied for CIB for G and N.⁶

In July 2015, Mr. O's guardian requested modification of his monthly child support obligation. CSSD notified Ms. J and Ms. O of the petition for modification, and requested that they provide income-related documentation.⁷ In September 2015, CSSD issued a Modified Administrative Child Support and Monthly Support Order reducing Mr. O's monthly support obligation by 54.3%, to \$451 per month.⁸

Ms. O appealed on her brother's behalf, explaining that this reduced amount was still well outside of what Mr. O could afford to pay given the high cost of his assisted living home care.⁹ A hearing was held on November 9, 2015. CSSD was represented by Brandi Estes. Ms. O attended the hearing and testified on Mr. O's behalf. Mr. O's care coordinator, Q K, attended the hearing telephonically and also testified. Ms. J did not answer her phone at the time set for hearing, and so did not participate.¹⁰ At the end of the hearing the record closed and the matter was taken under advisement.¹¹

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹² Alaska Civil 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

⁵ Ex. 3, 7, 9; Testimony of D O.

⁶ CSSD case presentation. *See generally*, <http://www.benefits.gov/benefits/benefit-details/4380> (last accessed November 9, 2015). Ms. O testified that she has left voice mail messages and sent electronic messages urging Ms. J to apply for CIB benefits.

⁷ Ex. 2.

⁸ Ex. 6.

⁹ Ex. 7.

¹⁰ Ms. J was unable to be reached at either of her phone numbers of record. Because notice of the hearing had properly been sent to Ms. J's address of record on October 13, 2015, the hearing proceeded in Ms. J's absence.

¹¹ The record was not held open for a possible good cause showing pursuant to 15 AAC 05.034(j) because the hearing was not requested by Ms. J but by Ms. O, who did appear and participate.

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

deductions. Here, CSSD's August 2015 Order calculated Mr. O's monthly support obligation based on his income from Social Security, Native dividends and the Permanent Fund Dividend.¹³

Mr. O does not contend that the monthly support obligation was incorrectly calculated given his income. Rather, the issue in this appeal is whether Mr. O is entitled to a "good cause" reduction in his child support obligation pursuant to 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."¹⁴ Such a variance may be granted where "unusual circumstances exist which require variation of the award[.]"¹⁵

Here, as CSSD agreed at the hearing, the evidence clearly and convincingly establishes that manifest injustice would result if the support award were not varied. The severity and permanency of Mr. O's impairment, and the high cost of his continued care, constitute "unusual circumstances" warranting a variance from the Rule 90.3 calculation. To the extent to which lowering the monthly support amount might create challenges for Ms. J, it is noted that she alone has the authority to file for CIB benefits for the children. The likely availability of these benefits to mitigate any hardship associated with this variance weighs in favor of granting variance.

Considering the totality of the circumstances, including Mr. O's severe disability and extensive needs, and Ms. J's ability to seek CIB benefits for the children, a hardship variance is granted to lower Mr. O's monthly support obligation to \$50 per month.¹⁶ A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹⁷ In this case, the notice was issued on July 22, 2015, so the modification of the support obligation is effective as of August 1, 2015.¹⁸

¹³ Ex. 6.

¹⁴ Civil Rule 90.3(c); 15 AAC 125.075.

¹⁵ Civil Rule 90.3(c)(1); 15 AAC 125.075(a)(2).

¹⁶ As discussed in some length at the hearing, Mr. O also owes significant arrears in this case. As a result of the large arrears balance, lowering Mr. O's ongoing support amount alone will likely not automatically lower the amount of monthly withholding. *See generally*, 15 AAC 125.540(a). CSSD's representative indicated that, upon finalization of this Decision and Order, CSSD would undertake a hardship analysis under 15 AAC 125.500 to address this related issue.

¹⁷ 15 AAC 125.321(d).

¹⁸ Ex. 2.

IV. Conclusion

Because it has been proven by clear and convincing evidence that manifest injustice would result if Mr. O’s child support were not significantly reduced, Mr. O’s ongoing support obligation is modified to \$50 per month pursuant to Rule 90.3(c)(1). As discussed during the hearing, CSSD shall undertake a hardship analysis under 15 AAC 125.500 to address the overall income withholding amount in Mr. O’s case.

V. Child Support Order

1. G E. O is liable for child support in the amount of \$50 per month for two children effective August 1, 2015 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated September 22, 2015 remain in full force and effect.

Dated: November 10, 2015

Signed _____
 Cheryl Mandala
 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 27th day of November, 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.]