

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

In the Matter of:)
)
 B J) OAH No. 15-1418-CSS
) CSSD No. 001181607
_____)

DECISION AND ORDER

I. Introduction

The obligor, B J, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 14, 2015.¹ The obligee child in this case is L, 14 years old.²

The hearing was held on November 20, 2015. Mr. J and H T, the custodial parent, participated. Delinda Cain represented CSSD.

Based on the evidence and after careful consideration, Mr. J's monthly child support obligation is \$603, before allowing a \$29 medical credit, effective October 1, 2015.

II. Facts

A. Procedural Background

Mr. J and Ms. T have one minor child, L, 14 years of age. Ms. T is the custodial parent.³ Mr. J's monthly child support obligation, before application of a child support credit was \$500. Ms. T requested a review of the child support order on September 4, 2015.⁴ On October 14, 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. J's child support at \$628 per month, allowed him a medical credit of \$29, for a monthly child support payment of \$599 per month, beginning October 1, 2015.⁵

Mr. J appealed and requested a formal hearing.

*B. Material Facts*⁶

Mr. J's employment income has remained consistent over the past several years. His gross earnings for 2013 and 2014 were \$41,834.23 and \$41,851.44.⁷ CSSD calculated that his earnings for 2015 would total \$41,431.11.⁸

¹ Ex. 4.
² Ex.4, p. 1.
³ Ex. 4.
⁴ Ex. 1.
⁵ Ex. 4.
⁶ Except where otherwise provided, the facts are based upon Mr. J's and Ms. T's testimony.
⁷ Ex. 6.

Mr. J provided a number of paystubs at hearing. The most recent of those paystubs was issued on November 13, 2015. It showed gross yearly pay of \$39,502.39. Because Mr. J has three more pay periods in calendar year 2015 (he gets paid every two weeks), CSSD's extrapolation of his 2015 yearly income may slightly understate his income. However, given the slight variation in his paychecks, it is more likely true than not true that CSSD has correctly estimated Mr. J's 2015 earnings at \$41,431.11.

In addition to his earnings, Mr. J had a Permanent Fund Dividend of \$2,072 and another dividend of \$750, which made his total gross income \$44,253.11. That income figure, when inserted into CSSD's online child support calculator, yields a child support amount of \$603 monthly. CSSD also determined that Mr. J is entitled to a \$29 monthly medical credit, which makes his total child support payment \$574 per month.⁹

Mr. J's take home pay varies. After accounting for the fact that child support is deducted from it, his net pay, before that child support deduction is made, varies from \$1,241.43 to \$1,291.67 every two weeks. His monthly expenses, in addition to child support, consist of rent (\$975), electric (\$23), car (\$259), car insurance (\$164), cell phone/internet (\$175 – for which he receives a \$50 month work allowance, which is reflected in his pay), and quarterly car maintenance (\$40).¹⁰ Ms. T's net monthly income is approximately \$2,200. Her monthly expenses are rent (\$1200), utilities – the exact amount is unknown because she just moved, but she paid a total of \$180 for a smaller unit in the same development, cell phone (\$190) for both her and the son, cable/internet (\$150), car payment (\$240), car insurance (\$130), renter's insurance (\$15), credit card payments (\$80), and quarterly car maintenance (\$55).

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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." The person appealing CSSD's decision has the burden of proving that the decision is incorrect.¹²

⁸ See CSSD's November 23, 2015 post-hearing submission to the record. The Division had previously calculated that his 2015 earnings would be \$44,772. See Ex. 4, p. 6.

⁹ Ex. 8.

¹⁰ Mr. J's testimony; Ex. 5, pp. 3 – 5; Ex. A (Mr. J's paystubs introduced at hearing).

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² 15 AAC 05.030(h).

There are two issues presented in this case. First, determining whether J's child support should be increased and, if so, to what amount; and second, whether his child support should be varied from the formula set forth in Civil Rule 90.3 based on financial hardship.

A. Child Support Amount

As found above, CSSD has correctly found that Mr. J's earnings for 2015 would be \$41,431.11. When his other income (PFD and other dividend) is accounted for and placed into the child support formula, his monthly child support amount, without any credits, is \$603 per month. His prior child support amount, without any credits, was \$500 per month. The \$603 figure is a 20.6 percent increase.¹³ Because this is 15 percent or more greater than the current \$500 monthly support amount, there has been a material change of circumstances which justifies an increase in child support.¹⁴ Accordingly, Mr. J's child support amount should be increased, before any credits are applied, to \$603 per month. After application of his \$29 per month medical credit, his payment is \$574 per month.

B. Financial Hardship

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."¹⁵ It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child(ren), 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).¹⁶

The parties' testimony and Mr. J's paystubs show that he makes slightly more per month than Ms. T does. Her expenses are understandably higher than his, given that she has primary physical custody of the parties' son. Based upon the fact that he makes slightly more per month than Ms. T and the fact that his basic living expenses are less than hers, Mr. J did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 is not varied.

¹³ Ex. 9.

¹⁴ Civil Rule 90.3(h)1).

¹⁵ Civil Rule 90.3(c).

¹⁶ See Civil Rule 90.3, Commentary VI.B.

IV. Conclusion

Mr. J proved by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect. As noted and corrected by CSSD, it slightly overstated his yearly income from his job. Based upon the correct income figures, which were submitted post-hearing by CSSD, Mr. J’s child support should be increased to \$603 per month, which is calculated according to Civil Rule 90.3 without variation under Civil Rule 90.3(c).¹⁷

V. Child Support Order

1. Mr. J’s child support obligation for L is per \$603 per month, effective October 1, 2015, and ongoing;
2. All other provisions of the October 15, 2015 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 30th day of November, 2015.

Signed

 Lawrence A. Pederson
 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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 15th day of December, 2015.

By: *Signed*

 Signature
Lawrence A. Pederson
 Name
Administrative Law Judge
 Title

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

¹⁷ As noted in the guidelines worksheet, Ex. 8, Mr. J is currently entitled to a \$29 medical credit to be applied against his monthly child support obligation.