

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

In the Matter of:)
)
 U J) OAH No. 16-0380-CSS
) CSSD No. 001210098
_____)

DECISION AND ORDER

I. Introduction

U J appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on March 7, 2016. The modified order increased his child support obligation from \$50 to \$347 per month. Mr. J requested that CSSD credit his support obligation for the cost of medical insurance he provides for his son. He also requested a reduction of the modified obligation because of financial hardship.

This decision concludes that Mr. J’ monthly child support payment was correctly calculated under Civil Rule 90.3(a). Although Mr. J requested a reduction due to financial hardship, there is not sufficient information in the record to show clear and convincing evidence that the modified amount will result in manifest injustice. Accordingly, CSSD’s Modified Administrative Child Support and Medical Support Order dated March 7, 2016 is affirmed. Mr. J can work separately with CSSD to receive appropriate credit for the cost of health insurance that he provides for his son.

II. Facts

A. Procedural Background

Mr. J and custodial parent B C have one child, E, who is 17.¹ Ms. C has primary physical custody of E.

In February 2001, CSSD set Mr. J’ support obligation for E at \$50 per month.² In January 2016, CSSD initiated a modification review because it received information that Mr. J’ income had changed.³ It sent the parties notice of the petition for modification on January 21, 2016.⁴ Mr. J responded and provided a summary of his income.⁵ A former employer also provided income information.⁶

¹ Exhibit 1.
² Exhibit 1.
³ Exhibit 2.
⁴ Exhibit 2.
⁵ Exhibit 3.
⁶ Exhibit 4.

On March 7, 2016, CSSD issued a decision granting the petition for modification.⁷ The same day, it issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal.⁸ The order modified Mr. J' ongoing support obligation to \$347 per month, effective February 1, 2016. This amount was calculated based on Mr. J' gross 2015 wages of \$22,227.86, plus his \$2072 Alaska PFD, and it accounted for allowable deductions such as taxes and Social Security.

Mr. J appealed.⁹ The formal hearing took place on May 4, 2016. Mr. J appeared in person and represented himself. Ms. C participated by telephone and represented herself. Child Support Specialist Delinda Cain appeared in person and represented CSSD. The record closed at the end of the hearing.

*B. Material Facts*¹⁰

Mr. J is employed full-time as a kitchen supervisor at the No Name.¹¹ He agreed that his gross pay in 2015 totaled \$22,227.48.¹² He also submitted his 2016 paystubs through May 1, 2016.¹³ His gross pay for that time period was \$8343.24, which suggests that his 2016 income will be consistent with his 2015 wages.¹⁴

Mr. J does not have other biological children. His household includes his wife and a nephew. His monthly expenses include: rent, \$1050.00; gas, \$95.00; and his cell phone, \$102.00. He does not have internet or cable tv service. He drives a 1999 Chevrolet Tahoe. His auto insurance costs \$245.00 per month, and gasoline averages \$140.00 per month. He spends about \$575.00 per month on food consumed at home, and his family does not spend much, if anything, for entertainment or to eat at restaurants. He did not indicate any spending for clothing and personal care items, although he noted a \$140 monthly expense for tobacco. He does not have any significant debts.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁵ Alaska Civil Rule 90.3(a) provides the formula used to calculate child support awards in cases

⁷ Exhibit 5.

⁸ Exhibit 6.

⁹ Exhibit 7.

¹⁰ Unless otherwise specified, material facts are based on the testimony of U J.

¹¹ Exhibit 3 at 1.

¹² *Id.*

¹³ J Exhibit 1.

¹⁴ See J Exhibit 1 (No Name Earnings Statement for the period 4/18/16 – 5/1/16).

¹⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

where one parent has primary physical custody. The Commentary to Civil Rule 90.3 explains that the rule is designed to approximate the amount a non-custodial parent would have spent on the child if the family was intact. It operates on the principal that, as the income available to both parents increases, the amount available to support the child also will increase.¹⁶

A child support order may be modified upon a showing of “good cause and material change in circumstances.”¹⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that “material change in circumstances” has been established and the order may be modified. Mr. J’ child support was previously set at \$50 per month, so a revised calculation that is at least \$7.50 higher, or \$57.50 or more, would be sufficient to warrant modification in this case.¹⁸

In a child support matter, the person who files an appeal bears the burden of proof.¹⁹ Mr. J filed this appeal, so he must prove by a preponderance of the evidence that the March 7, 2016 Modified Administrative Child Support and Medical Support Order is incorrect.²⁰

Under Civil Rule 90.3, a parent’s ongoing child support obligation should be based on the amount the parent can be expected to earn during the period for which the support is being paid.²¹ In cases where the obligor parent's income is relatively steady, as in this case, this calculation can be based on the non-custodial parent's income from the previous year. For this reason, CSSD relied on Mr. J’ 2015 income to calculate his revised obligation.

Mr. J does not challenge the income information that CSSD used in his case, and he did not dispute that the Civil Rule 90.3 formula results in a \$347 monthly support amount. Rather, he requests credit for the cost of medical insurance he provides for E, and he requests a reduction in his obligation based on financial hardship.

A. Credit for Medical Insurance

Under Alaska law, Mr. J is entitled to a credit against his ongoing support obligation for the portion of E’s health insurance that is owed by Ms. C, but paid by Mr. J.²² Mr. J submitted evidence that he provides E with medical, dental and vision insurance through his employer.²³

¹⁶ Civil Rule 90.3, Commentary, II.

¹⁷ AS 25.27.190(e).

¹⁸ $\$50 \times 115\% = \57.50

¹⁹ 15 AAC 05.030(h).

²⁰ 2 AAC 64.290(e).

²¹ Civil Rule 90.3, Commentary, Section III(E).

²² See Civil Rule 90.3(d)(1)(B).

²³ J Exhibit 2 (No Name Employee Benefit Summary Report, dated 3/14/16); J Exhibit 3 (Letter from No Name to Alaska CSSD, dated 3/14/16).

However, Mr. J has not yet presented evidence of the *specific amount* he pays toward E's health insurance each month, as opposed to the total cost to cover himself *and* E. As a result, no deduction can be implemented at this time. When he provides this information to CSSD, CSSD can implement the deduction administratively.²⁴

B. Hardship Variance Under Civil Rule 90.3(c)

Child support determinations calculated under Civil Rule 90.3 from a non-custodial parent'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."²⁵ In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.

There is no evidence in the record regarding Ms. C's income, so it is not possible to evaluate her circumstances, or to compare them to Mr. J'. The evidence regarding Mr. J' lifestyle indicates that he is working hard to bring in income, and he is not spending money extravagantly. He testified to monthly household expenses totaling roughly \$2347, or \$2694 once his modified support obligation for E is included. Since Mr. J' gross monthly income in 2015 was approximately \$2025 per month, it is clear that the increased child support obligation will be financially challenging for him.

However, Mr. J' household includes his wife, who also has a job and earns income. Mr. J testified that she works full-time in a downtown City A gift shop, but he did not disclose her income. As a result, it is not possible to evaluate the actual extent of the financial burden imposed by the modified support award on Mr. J' household. Even if Mr. J' wife earns minimum wage, her income can be expected to help defray household expenses significantly. This changes the analysis, and it suggests that Mr. J' ongoing support obligation may not be overly burdensome.

There is no doubt that the modified support award presents a significant financial challenge for Mr. J, who is working hard and keeping his expenses down. However, based on the evidence in the record, it cannot be said that manifest injustice will result if the modified child support amount of \$347.00 per month is not reduced. Mr. J did not meet his high burden on this issue. His request for a reduction of his child support obligation based on financial hardship therefore is denied.

²⁴ CSSD pre-hearing brief at 2; CSSD representative's statements at hearing.

²⁵ Civil Rule 90.3(c).

IV. Conclusion

CSSD's Modified Administrative Child Support and Medical Support Order dated March 7, 2016 correctly determined Mr. J' monthly child support obligation under Civil Rule 90.3(a), based on his actual income. The additional evidence provided during the hearing process did not demonstrate clear and convincing evidence that manifest injustice will result unless the \$347.00 per month support obligation is further reduced pursuant to Civil Rule 90.3(c). Accordingly, CSSD's March 7, 2016 Modified Administrative Child Support and Medical Support Order is affirmed. Mr. J can work separately with CSSD to receive appropriate credit for the cost of health insurance that he provides for E.

V. Child Support Order

- CSSD's Modified Administrative Child Support and Medical Support Order dated March 7, 2016 is affirmed and remains in full force and effect.

DATED this 18th day of May, 2016.

Signed

Kathryn Swiderski
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 1st day of June, 2016.

By: *Signed*

Signature
Andrew M. Lebo

Name
Administrative Law Judge

Title

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