

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

In the Matter of)	
)	
D D. N, II)	OAH No. 16-0586-CSS
_____)	Agency No. 001194414

DECISION AND ORDER

I. Introduction

D D. N, II, appeals a decision by the Child Support Services Division (CSSD) that denied his request to modify his \$467 monthly child support obligation for three of his children, J, D, and C. CSSD denied Mr. N’s request because he did not submit income information to support it or to show a material change of circumstances.

Based on the evidence provided during the hearing process, Mr. N’s income has increased since his support obligation for these children was last reviewed. As a result, his child support amount should be adjusted to \$616 per month, effective April 1, 2016. Mr. N’s request to reduce his support amount due to financial hardship is denied, since he did not show clear and convincing evidence that manifest injustice will result if his obligation is not varied.

II. Facts

*A. Material Facts*¹

Mr. N and custodial parent E N are the parents of three children: J, age 9, D III, age 6, and C, age 5.² Ms. N has primary physical custody of the children. Both parents live in E.

Mr. N has five biological children, who live in three different households. J, D and C are Mr. N’s three middle children. Mr. N also has an older son who is 9 years old. That child is one month older than J. He lives with his mother in a separate household. Mr. N and his wife recently had a baby, who is now five months old. She is Mr. N’s fifth and youngest child. In addition to his wife and baby, Mr. N’s home also includes his three stepchildren, ages 8, 7, and 5, who Mr. N helps support financially. Mr. N’s wife earned wage income in 2015, but she does not currently work.

In 2016, Mr. N will earn income from a number of different sources. In January 2016, he did some carpentry work at the E library, for which he earned \$1000. In February 2016, he

¹ Unless otherwise specified, material facts are based on the testimonies of D D. N, II, and E N.

² Exhibit 1, p. 1.

began working for NANA Management as a cook at the E school. This position is now his primary job. Mr. N took the job because it is stable and predictable, which can be difficult to find in the village. He expects to work whenever school is in session, and he will have the summers off. Mr. N is paid on an hourly basis, at the rate of \$17 per hour. The job is not full-time, and Mr. N's work schedule can vary from day to day. He may work 7 hours on one day and substantially less on another. On average, he works four and a half hours a day, five days a week, or 22.5 hours per week, while school is in session.

From February 2016 through the end of the school year in May 2016, Mr. N earned \$3822.43 from this job.³ The fall semester runs from mid-August through mid-December, which is 18 weeks long. During that time, Mr. N will continue to work approximately 22.5 hours per week, and he expects to earn \$6885.⁴ In total, he expects to earn \$10,707.43 from his school job during 2016.

Over the summer school break, Mr. N is working at a temporary job. The work is related to a large construction project taking place in the village, and Mr. N is helping unload airplanes. This kind of work is not typically available every summer, since it depends on construction activity. Mr. N testified that he earns a regular hourly rate of \$32.48. In a related matter, Mr. N's employer testified that his hourly wage is \$32.85.⁵ To maintain consistency between Mr. N's related child support matters, the undersigned takes official notice of this testimony and adopts \$32.85 as the more reliable figure.⁶ Mr. N will work at this job ten hours per day, six days a week. He began this job around June 13th, and he plans to work through the second week of August, which is a total of 9 weeks. Mr. N's pay will include his regular hourly rate for 40 hours per week, plus time-and-a-half overtime pay for 20 hours per week. His anticipated total income from this work is therefore \$20,696.40.⁷

Mr. N has two sources of non-wage income. As a NANA shareholder, he earned dividends totaling \$350 in 2015, and he expects a similar dividend in 2016. He also will receive

³ Exhibit 10.

⁴ \$17 per hour x 22.5 hours per week x 18 weeks = \$6885.

⁵ OAH No. 16-0585-CSS (Testimony of D Z, Deputy Director, No Name).

⁶ Mr. Z testified while reviewing Mr. N's employment records. When he testified in this case, Mr. N seemed to speak from his recollection, and he is more likely to have been mistaken about his actual wage.

⁷ Regular pay of \$32.85 per hour x 40 hours per week x 9 weeks = \$11,826.00. Overtime pay of \$49.28 per hour x 20 hours x 9 weeks = \$8,870.40. Regular plus overtime pay totals \$20,697.20.

a 2016 Alaska Permanent Fund Dividend. At the time of this decision, the PFD is expected to be \$1000.⁸

Mr. N's current monthly household expenses include: rent, \$150; gas, \$50; fuel oil, \$292.50; water, \$100; electricity, \$300; waste water, \$85; internet, \$120; cable, \$160 (premium plan); and cell phone, \$80. He does not own a car, but he has a four-wheeler ATV, for which he spends \$75 monthly for gas, and approximately \$25 monthly for maintenance. According to Mr. N, the household spends \$1800 per month on food, and \$250 per month for the infant's needs, including diapers, wipes and formula. His monthly entertainment expenses are \$25, and he spends \$200 per month on cigarettes. He spends \$300 to \$400 per year, or roughly \$25-33 per month, for glasses. He does not have credit cards.

Based on this information, Mr. N's claimed expenses total approximately \$3737.50 per month, without including his child support obligations for his four oldest children. In light of Mr. N's income history and assertion of hardship, however, this list clearly includes some unreasonable expenses, most notably in the category of monthly food and baby expenses.

Ms. N's household includes herself and the three children. She declined to provide her income information. However, she indicated that her monthly expenses include: rent, \$250; electricity, \$160; fuel oil, \$300; food, \$500-600; cable, \$92; ATV gas, \$110; ATV maintenance, \$45; and baby sitter, \$260. Based on this information, which omits certain expenses such as Ms. N's cell phone costs, Ms. N's monthly household expenses total roughly \$1817.

B. Procedural Background

In February 2014, CSSD issued an administrative child support order that set Mr. N's ongoing monthly obligation for J, D and C at \$467.⁹ In March 2016, Mr. N requested a modification review.¹⁰ He indicated that, after paying child support for his four oldest children, he did not have enough money to provide for his current family. The same month, CSSD sent the parties a notice that a modification review had been requested.¹¹ The notice informed the parties of their obligation to provide income information. It also indicated that CSSD may stop the review if the requesting party did not provide the necessary supporting documentation.

Mr. N did not provide any supporting documentation. As a result, CSSD had no

⁸ In a special session, the Alaska Legislature may override the Governor's recent action reducing the 2016 PFD to \$1000. Nonetheless, at the time of this decision, the 2016 PFD is more likely than not \$1000.

⁹ Exhibit 1.

¹⁰ Exhibit 2.

¹¹ Exhibit 3.

information showing a material change of circumstances. On May 6, 2016, it issued a Decision denying his request for a modification review.¹²

Mr. N appealed.¹³ He alleged that CSSD had improperly included his wife's income when it calculated his child support obligation. In addition, he indicated that he now worked part-time, and his wife was not working due to the new baby. Therefore, his income was not sufficient to support his current household of 6, after paying child support for four other children.

Mr. N submitted 2015 and 2016 income information with his appeal, including his 2015 tax return and paystubs from his work at the E school.¹⁴ He had not yet finalized his 2016 summer employment, so that information was not in the initial record on appeal. Prior to the hearing, CSSD submitted a summary of Mr. N's income as reported by his employers to the Alaska Department of Labor.¹⁵

The hearing took place in two sessions, on June 15 and July 6, 2016. Mr. and Ms. N appeared telephonically and represented themselves at both hearing sessions. Child Support Specialist Brandi Estes also appeared telephonically and represented CSSD at both sessions. The hearing was audio-recorded. All offered exhibits were admitted into evidence. The record closed at noon on July 7th, so that CSSD could submit an updated support calculation, as requested by the Administrative Law Judge during the hearing.

III. Discussion

In child support matters, the person who files an appeal bears the burden of proof.¹⁶ Mr. N filed this appeal, so he must prove by a preponderance of the evidence that CSSD incorrectly denied his modification request.¹⁷

A. Income Determination and Support Calculation under Civil Rule 90.3(a).

A parent is obligated both by statute and at common law to support his or her children.¹⁸ Civil Rule 90.3(a) provides the formula for calculating child support awards where one parent has primary physical custody. That calculation is based on the noncustodial parent's "total income from all sources," minus specified deductions. In determining total income from all sources, Civil Rule 90.3 requires an assessment of the amount the parent can be expected to

¹² Exhibit 4.

¹³ Exhibit 5.

¹⁴ Exhibit 6.

¹⁵ Exhibit 8.

¹⁶ 15 AAC 05.030(h).

¹⁷ 2 AAC 64.290(e).

¹⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

earn during the period for which the support is being paid. By its nature, this is a somewhat uncertain endeavor, since the relevant calculation is expected future income.¹⁹

The first step in reviewing Mr. N's child support obligation is to determine his likely 2016 income. As discussed previously, he will have wage income from three different jobs: his work at the E library (\$1000), his job at the E school (\$10,707.43), and his summer job (\$20,696.40). This income totals \$32,403.83. His total income from all sources is expected to be \$33,753.83 after his NANA dividends and PFD are included.

Mr. N has one child who is older than J, D, and C. As a result, he is entitled to a deduction from his total income for the support that he pays for that child.²⁰ His ongoing support amount for his oldest child is \$466 per month.²¹ After additional deductions for matters such as taxes and social security, Mr. N's anticipated 2016 income results in an ongoing child support amount of \$616 per month for these three children.²²

A child support order may be modified upon a showing of "good cause and material change in circumstances."²³ 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. In this case, the revised calculation is more than a 15% change from the previous support amount, so a modification is warranted. The modification becomes effective the month after the parties are served with the petition for review. The parties received notice of Mr. N's petition in March 2016, so the modification is effective April 1, 2016.

B. Hardship Variance under Civil Rule 90.3(c).

Mr. N asserted that he cannot afford his existing support amount and adequately provide for his other children, and he requested a reduction of his obligation to J, D and C because of financial hardship.

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. To establish good cause, the parent must prove by clear and convincing evidence that "manifest

¹⁹ Civil Rule 90.3, Commentary III.E.

²⁰ Civil Rule 90.3(a)(1)(C).

²¹ *In re D D. N II*, OAH No. 16-0585-CSS.

²² See Attachment A (calculation from <https://webapp.state.ak.us/cssd/guidelinecalc/form>, CSSD online child support calculator).

²³ AS 25.27.190(e).

injustice would result if the support award were not varied.”²⁴ This is a high standard, and reductions based on hardship are reserved for cases involving unusual circumstances. In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.

Under Alaska law, Mr. N’s duty to pay the correct percentage of his income toward his ongoing support for his children takes precedence over other debts and financial obligations. This is because parents have a paramount duty to support their children, and new obligations to subsequent children do not diminish that duty.²⁵ Therefore, Mr. N’s obligation to support his youngest child, or his current household, typically will not justify lowering his monthly child support obligation to his prior children, unless a reduction is required to prevent a substantial hardship to the younger children.²⁶

Mr. N asserted that, after making his child support payments for his first four children, he is unable to financially provide for his subsequent family. However, during the hearing, he acknowledged that his household expenses include a number of luxuries or unnecessary costs. These would include the premium cable plan, the family’s preference for the most expensive foods, and Mr. N’s tobacco expenses.

In addition, Mr. N’s claimed monthly expenses for food and baby items are neither reasonable nor credible. Food and baby expenses for his household of six allegedly total \$2050 per month. By way of comparison, food expenses for Ms. N’s household of four are \$500 to \$600 per month. The parties live in the same village, and a discrepancy that large is not easily rationalized by the differences between the parties’ household size, taste preferences, or adult/child household composition. Moreover, without including his child support obligations, Mr. N’s claimed expenses total \$44,844 per year.²⁷ This sum far exceeds his household income over the last three years.²⁸ Mr. N did not explain how the household could operate on such a basis. As presented, Mr. N’s expectations regarding his current family’s lifestyle are not reasonable, at least in light of his other responsibilities to his oldest children.

²⁴ Civil Rule 90.3(c); *see also* 15 AAC 12.075.

²⁵ *Kestner v. Clark*, 182 P.3d 1117, 1123 (Alaska 2008) (A parent should not be relieved of the obligation to support his or her children except under the most extreme circumstances.).

²⁶ Alaska Civil Rule 90.3 Commentary VI.B.2; 15 AAC 125.075(a)(2)(F).

²⁷ \$3737 per month x 12 months = \$44,844.

²⁸ Exhibit 6, pp. 3-5 (H&R Block tax return summaries for 2013-2015).

To the extent Mr. N feels financial pressures as a result of his different obligations, the evidence presented during the hearing is that his income is increasing due to his lucrative summer job. This should alleviate some financial constraints. In addition, while his wife is not currently working, she earned significant wage income in 2015.²⁹ If necessary, she could consider returning to work in order to assist with the household finances. This might be particularly appropriate if she is not receiving child support from her children's father, as Mr. N indicated, and much of that financial burden has been shifted to Mr. N.

Mr. N clearly faces some significant budgeting challenges to meet his child support obligations and to maintain the desired lifestyle for his current family. He is justifiably concerned about his expenses, and his desire to provide for his three stepchildren is understandable. However, he has no legal obligation to support his stepchildren; his first obligation is to support his biological children. Based on the evidence in the record, Mr. N has not met his burden to clearly and convincingly establish that manifest injustice would result if his support amount is not reduced. Further, he did not clearly and convincingly establish that his youngest child or current household are likely to experience substantial hardship if his obligation to his older children is not reduced. Therefore, this case does not present unusual circumstances as contemplated by Civil Rule 90.3(c).

IV. Conclusion

Through the evidence provided during the hearing process, Mr. N showed that his support obligation for J, D and C should be modified. Under the primary custody formula in Civil Rule 90.3(a), his support obligation is correctly calculated at \$616 per month, effective April 1, 2016 and ongoing. This amount is based on his expected 2016 income from three different jobs, the Alaska PFD, and his NANA Corporation dividends, and it accounts for Mr. N's support obligation for his oldest child.

There is not clear and convincing evidence that manifest injustice will result if Mr. N's support for these three children is not reduced, based on substantial hardship to Mr. N's subsequent children or family. Therefore, the request for a variance under Civil Rule 90.3(c) is denied.

V. Child Support Order

- Mr. N is liable for modified child support for J, D and C in the amount of \$616

²⁹ Exhibit 6, p. 3.

per month, effective April 1, 2016 and ongoing;

- All other provisions of the Administrative Child Support and Medical Support Order dated February 6, 2014, remain in full force and effect.

DATED: July 8, 2016.

By: 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 26th day of July, 2016.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

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