

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

In the Matter of)	
)	
B Q)	OAH No. 16-0750-CSS
<hr style="width:40%; margin-left:0;"/>)	Agency No. 001112724

DECISION AND ORDER

I. Introduction

B Q appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on May 16, 2016. The modified order increased his child support obligation for his son, Z, from \$221 to \$635 per month, effective April 1, 2016. Mr. Q argued that CSSD relied on incorrect income information when it modified his obligation. He also asserted that he is homeless, and he cannot afford the increased support amount and adequately provide for his current household.

Mr. Q did not show that CSSD incorrectly calculated his monthly child support obligation under Civil Rule 90.3(a). He alleged a number of circumstances that might have justified a reduction of his support obligation based on financial hardship, if he had provided sufficient evidence to support his claims. However, he did not show clear and convincing evidence that manifest injustice would result if his support amount is not reduced under Civil Rule 90.3(c). He may request another modification review when he is willing to fully disclose his financial circumstances.

II. Facts

*A. Material Facts*¹

Mr. Q and N E are the parents of one child, Z, who lives with Ms. E. Z will be 16 in August 2016. He is on the autism spectrum and has been diagnosed with Asperger’s Syndrome. In addition to autism, Z has other specialized medical needs that result in significant medical expenses, for example, for care from a pediatric gastroenterologist, a psychologist, an activity therapist, and other care providers.

Mr. Q lives in Southern California. He is a military veteran. The Department of Veteran’s Affairs (V.A.) has determined that he is 100% permanently and totally disabled as a result of his military service.² The V.A. is reviewing his employability status, and it may have recently determined that he is employable. While he was in the military, Mr. Q worked as a

¹ Unless otherwise specified, material facts are based on the testimonies of B Q and N E.
² Exhibit 7, p. 9.

heavy equipment mechanic and operator. At the time of the hearing, he planned to rely on V.A. vocational rehabilitation benefits to return to school full-time, starting in August 2016, to pursue a degree in web design and studio art. However, one week after the hearing, Mr. Q suggested that his schooling plans may be deferred due to surgery on his injured shoulder.³

Mr. Q has not earned wage income in 2016. Because of his disability rating, he receives monthly V.A. disability payments. Based on information it obtained from the V.A., CSSD determined that Mr. Q's gross monthly disability benefit is \$3176.26.⁴ On a yearly basis, this totals \$38,115.12 in non-taxable income. At present, this is his only income.

If Mr. Q returns to school this fall, he is likely to receive a subsistence allowance from the V.A.'s vocational rehabilitation program.⁵ Mr. Q was vague about if and when he would begin receiving this benefit, and he did not disclose the amount he is likely to receive.

Mr. Q's household includes his spouse and five children, who are all younger than Z. Of the five children, three are Mr. Q's biological children, ages 3, nearly 2, and 7 months. The other two children are his step daughters, ages 13 and 11. The household does not receive child support from the father of Mr. Q's step daughters, since he is serving a life sentence in a California prison. Mr. Q's wife does not work. Mr. Q indicated that she is unable to work while she recovers from medical problems related to childbirth. He also indicated that she is unable to work because she plans to return to school.

Since at least May 2014, Mr. Q's family has lived transiently in various hotels.⁶ In October 2014, the family participated in a program that provided shelter and case management services to homeless families.⁷ At the time of the hearing, the family continued to live in hotel rooms. According to Mr. Q, his homelessness is the result of a legal dispute he had with a former landlord. The case was resolved in the landlord's favor, but at least initially, Mr. Q refused to pay the judgment. As a result, he has not been able to rent another home. While Mr. Q works to resolve that problem, the family lives transiently.

Mr. Q's monthly household expenses are reasonable for a household of seven. They include: monthly hotel bills, \$1700; laundry, \$75; personal care items, including diapers and wipes, \$150; clothing, \$100; and cell phones, \$150. His monthly expense for food is \$400, but he

³ B Q email submission to record, dated August 10, 2016.

⁴ Exhibit 4, pp. 7-8; CSSD submission to record, dated August 5, 2016; CSSD pre-hearing brief, p. 1.

⁵ CSSD submitted information from the V.A. explaining its vocational rehabilitation and employment services program, and the subsistence allowance benefits that are available under the program. *See* Exhibit 8.

⁶ *See* Exhibit 7; Testimony of B Q.

⁷ Exhibit 7, pp. 2-3.

also receives some food assistance. He owns a van, for which he pays \$435 per month. His auto insurance costs \$105 per month, and his monthly gasoline expense averages \$75. The household also incurs \$15 in monthly expenses for transportation by bus. Mr. Q does not spend money on tobacco or alcohol, and his medical expenses are covered by the V.A. He has two debts from either credit cards or payday-type loans. Together, his debts total \$1800. Last month, he made the minimum \$35 payment on one debt, but he could not pay toward the other. Based on this information, Mr. Q's monthly expenses total approximately \$3240, without including a minimum payment toward his second loan debt or his child support obligation for Z.

Ms. E's household includes her husband, Z and 3 other children. Two of the other children in the home are Ms. E's biological children, and one is a stepchild. Ms. E's oldest biological child is 18, but she still lives at home and Ms. E financially supports her. Ms. E and her husband jointly earn gross income of \$200,000 per year. The household's standard of living is comfortable, and it allows for significant spending on entertainment and recreational activities.

B. Procedural Background

Mr. Q's monthly child support obligation for Z was last reviewed in 2013, when his obligation was set at \$221 per month.⁸ In March 2016, Ms. E requested a modification review.⁹ On March 22, 2016, CSSD sent the parties notice that a Petition for Modification had been requested.¹⁰ CSSD did not receive income information from either party. It accessed information about Mr. Q's disability benefits from the V.A.'s Disability Department and the federal parent locator service.¹¹ Based on this information, it determined that Mr. Q receives monthly disability benefits totaling \$3176.26 per month, or \$38,115.12 per year.¹²

On May 16, 2016, CSSD issued a decision granting the request for a modification.¹³ It also issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal.¹⁴ CSSD calculated Mr. Q's support obligation based on his expected \$38,115.12 annual disability income, which results in an ongoing support amount of \$635 for one child.

⁸ Exhibit 1.

⁹ Exhibit 2.

¹⁰ Exhibit 3.

¹¹ Exhibit 4, p. 7; CSSD pre-hearing brief, p. 1; CSSD post-hearing submission, dated August 5, 2016.

¹² Exhibit 4, p. 7.

¹³ Exhibit 4, pp. 1-2.

¹⁴ Exhibit 4, pp. 3-8.

Mr. Q appealed.¹⁵ He argued that CSSD relied on incorrect income information, since some of his veteran's benefits are designated for his younger children. He also indicated that he is homeless and enduring financial hardship while he supports his current household of seven, in addition to Z. He requested a variance of his support obligation based on financial hardship, as well as a delay in the effective date of any modification in his case.¹⁶

A formal hearing took place on July 26, 2016. Mr. Q and Ms. E appeared by telephone and represented themselves. Child Support Specialist Brandi Estes represented CSSD. The hearing was recorded. The record remained open for additional evidence and argument until August 10, 2016. All submitted documents were admitted into the record.

III. Discussion

A. Child Support Calculation.

In child support matters, the person who files an appeal bears the burden of proof.¹⁷ Mr. Q filed this appeal, so he must prove by a preponderance of the evidence that the May 16, 2016 Modified Administrative Child Support and Medical Support Order is incorrect.¹⁸

A parent is obligated both by statute and at common law to support his or her children.¹⁹ The rules for calculating child support are set by Civil Rule 90.3. Under Civil Rule 90.3, an existing child support order may be modified upon a showing of "good cause and material change in circumstances."²⁰ If the newly calculated child support amount is more than a 15% change from the previous order, a "material change in circumstances" is established, and the order may be modified. Mr. Q's child support was previously set at \$221 per month, so a revised calculation that is at least \$33.15 higher, or \$254.15 or more, would be sufficient to warrant modification in this case.²¹

In cases involving primary physical custody, Civil Rule 90.3(a) bases the non-custodial parent's ongoing child support obligation on the amount the parent can be expected to earn during the period for which the support is being paid.²² This determination is necessarily somewhat speculative because the relevant income figure is expected future income.²³

¹⁵ Exhibit 5.

¹⁶ *Id.*

¹⁷ 15 AAC 05.030(h).

¹⁸ 2 AAC 64.290(e).

¹⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

²⁰ AS 25.27.190(e).

²¹ \$221 x 15% = \$33.15.

²² Civil Rule 90.3, Commentary, Section III.E.

²³ *Id.*

Mr. Q challenged CSSD's reliance on the monthly disability income information it obtained from the V.A. and the federal parent locator service. However, he did not submit sufficient information to show that this figure is incorrect. At the hearing, he was advised to send in a statement that shows his disability payments. He submitted an April 24, 2014 letter from the V.A., indicating that it was increasing his disability payments following the birth of a new child.²⁴ The letter stated that he would receive \$3043.99 per month starting December 1, 2013, for his status as a veteran with two dependents. Since Mr. Q now has a legal obligation to support four minor children, this information does not reflect his current V.A. payment amount. That amount very likely exceeds \$3,043.99 per month.

Instead of submitting a statement to show his actual disability payments, Mr. Q submitted screenshots from unidentified internet pages that generically show how the V.A. calculates disability amounts. This is not sufficient to meet Mr. Q's burden of proof. In addition, the general information that Mr. Q submitted indicates that he should be receiving monthly disability income exceeding the \$3176.26 that CSSD used to calculate his child support obligation.²⁵

Mr. Q's vocational rehabilitation plan includes returning to school full-time in 2016. If and when he returns to school, Mr. Q is likely to receive additional income from the V.A. vocational rehabilitation program's subsistence allowance. Mr. Q acknowledged that he would receive this benefit, but he declined to provide any specific information about the amount or timing of those benefits.²⁶

The evidence in the record supports the finding that Mr. Q's likely 2016 actual gross income is at least \$3176.26 per month, as CSSD determined, and it may be more. Mr. Q did not meet his burden to show that CSSD made a mistake in relying on that income figure when it calculated his child support amount under Civil Rule 90.3(a). This monthly income translates to expected annual income of \$38,115.12, and an ongoing child support obligation of \$635 per month under Civil Rule 90.3(a).²⁷

Mr. Q argued that some part of his disability benefit is ear-marked for his younger children, and it should be excluded from this analysis. He did not specify what amount he

²⁴ Exhibit 7, pp. 4-5.

²⁵ The screenshots indicate that a 100% disabled veteran and spouse would receive \$3068.90 per month, plus \$80.52 for each additional child under the age of 18. Exhibit 7, pp. 6-7. Since Mr. Q is legally responsible to support four biological children, this suggests that his monthly disability income is closer to \$3390.98.

²⁶ CSSD submitted a V.A. publication explaining the subsistence allowance rates that apply to the vocational rehabilitation program. Exhibit 8, p. 4. A veteran with two dependents who is returning to full-time schooling would receive a base monthly payment of \$885.00, plus \$64.50 for each additional dependent.

²⁷ See Exhibit 4, p. 8.

believes should be excluded. This argument apparently refers to the fact that his monthly disability payments include an adjustment based on the number of dependents he supports. Child support calculations under Civil Rule 90.3(a) are based on the noncustodial parent's "total income from all sources," less specified deductions. The definition of "income" includes veteran's benefits and disability benefits.²⁸ It excludes means-based sources of income, such as Food Stamps and Supplemental Security Income, as well as child support payments.²⁹ However, there is no deduction or exclusion for the kind of disability income adjustment that Mr. Q apparently receives for his additional dependents. Similarly, Mr. Q's subsistence allotment under the vocational rehabilitation program would qualify as income for purposes of Rule 90.3.

Z is Mr. Q's oldest child. Absent a finding of hardship or unusual circumstances, the Civil Rule 90.3(a) formula entitles him to 20% of Mr. Q's adjusted annual income, without any reduction for Mr. Q's younger children from different relationships.³⁰ This is because parents have a paramount duty to support their children, and new obligations to subsequent children do not diminish that duty.³¹ However, a variance may be justified if it is necessary to prevent a substantial hardship to the younger children.³² This issue is discussed below.

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. 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."³³ 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.

Mr. Q argued that he cannot adequately provide for his younger children and current household if his support for Z is not reduced. He testified to a number of facts that could justify a finding of hardship, including his family's transient residency in various hotels, the cost of providing necessities for his current household, and his reliance on food assistance and payday

²⁸ Civil Rule 90.3, Commentary III.A.

²⁹ *Id.*

³⁰ Civil Rule 90.3(a)(2); Civil Rule 90.3, Commentary VI.B.2.

³¹ *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).

³² Civil Rule 90.3 Commentary VI.B.2; 15 AAC 125.075(a)(2)(F).

³³ Civil Rule 90.3(c); *see also* 15 AAC 12.075.

loans to make ends meet. Mr. Q's current monthly household expenses total roughly \$3240. Including his modified support obligation for Z, his monthly expenses will total roughly \$3875. This suggests that his expenses may significantly exceed his monthly income, which could result in substantial hardship to his younger children.

However, Mr. Q's request falls short of meeting the clear and convincing evidence standard because he was unwilling to provide complete and reliable evidence of his household income, which is the starting point in assessing any claim of hardship. In addition, his vague responses and persistent refusal to address the topic of income undermined his credibility. His determination to limit the discussion to evidence favoring his claims makes it difficult to take all of his testimony at face value, without additional verification.

Mr. Q's monthly expenses are only meaningful if compared to reliable information regarding his income. However, Mr. Q did not submit a statement showing his V.A. disability payments, despite several requests to do so. The general information he submitted suggests that his monthly disability payments may be as much as \$3390.98.³⁴

In addition, he would not discuss his likely vocational rehabilitation benefits in any detail, even though he agreed that he will receive those benefits upon returning to school.³⁵ During the hearing, Mr. Q was confident of his plan to return to school in August 2016. After the discussion during the hearing of his likely subsistence allowance benefits, he sought to distance himself from his school plans. He also argued that those benefits should not count as income for child support purposes, since they are intended to support his education.³⁶

Mr. Q indicated that the V.A. is revising his employability status, but he was vague and defensive about this topic as well. As a result, it is impossible to ascertain whether his employability status has any bearing on his child support calculation.³⁷ It could be relevant, for instance, in evaluating whether Mr. Q is voluntarily unemployed. It also could be relevant to Ms. E's allegation that Mr. Q sometimes works "under the table" for cash income.

Mr. Q also did not adequately explain why his wife cannot work and earn income, to help defray some of the family's expenses. Her desire to return to school does not create grounds for

³⁴ See *infra*, fn. 25.

³⁵ Based on the information CSSD submitted, Mr. Q may receive a non-taxable subsistence allowance totaling \$4314 during the fall semester of 2016. See Exhibit 8, pp. 4-9 (\$885 monthly base allowance for a veteran with two dependents, plus \$64.50 for each of his three additional dependents, multiplied by the four months of the fall semester).

³⁶ Mr. Q post-hearing submission, dated August 10, 2016 (noting that the subsistence allotment may be needed for car payments, gas, and clothing costs while back in school).

³⁷ Mr. Q argued that his disability status means he is not required to work anymore, so his employability status is irrelevant. See Mr. Q post-hearing submission, dated August 10, 2016.

granting a hardship variance, if she could be working, since Z should not subsidize this endeavor. Similarly, a general claim that she cannot work for unspecified medical reasons is insufficient under the circumstances of this case.

Mr. Q submitted some documentation to verify his family's homelessness. However, even this information provided limited support for his claims, since it related to his family's circumstances in 2014. Based on Mr. Q's hearing testimony, it appears that the family lives transiently in hotels because Mr. Q's poor credit history prevents him from obtaining more traditional housing. This situation is clearly not desirable, but it might be distinguishable from homelessness given Mr. Q's ability to pay up to \$1700 per month for housing. As with other important topics, there is insufficient evidence in the record explaining Mr. Q's housing situation, and it is not possible to make an informed finding regarding homelessness.

If Mr. Q's household finances and living circumstances are as he alleged, he could be entitled to a variance based on hardship. However, a full understanding of his circumstances is necessary to properly assess his request. Because Mr. Q was unwilling to provide that information, his hardship request is denied. He has not met his burden to clearly and convincingly show that manifest injustice would result if his support for Z is not reduced.

As Mr. Q emphasized, there is no question that Ms. E's household is well-positioned to provide for Z, even if Mr. Q's obligation is reduced. In the hardship analysis, the parties' relative financial circumstances would weigh in Mr. Q's favor, by showing that the custodial parent could adequately provide for the child if the non-custodial parent's support obligation is decreased. However, it is not appropriate to take Ms. E's financial circumstances into account until Mr. Q first provides clear and convincing evidence that his household is experiencing financial hardship, and that his younger children are likely to experience substantial hardship if a reduction is not granted. If Mr. Q works cooperatively with CSSD and provides documentation of his circumstances, he may be able to meet that burden of proof. In that case, he is encouraged to seek another modification review.

C. Effective date of modification.

Generally, a child support modification is effective beginning the month after the parties are served with notice of the petition for modification.³⁸ Following this rule, the modification in

³⁸ 15 AAC 125.321(d).

this case should be effective starting April 1, 2016. The effective date can be moved forward, to a later starting date, but only upon a showing that there is good cause to do so.³⁹

Mr. Q asked to delay the effective date of this modification for one or two months. To the extent this request is an extension of his request for a hardship variance, it is denied for the reasons stated above. Mr. Q also argued that he had already made payments under the former support order through April 2016.⁴⁰ This does not constitute good cause. Therefore, the effective date of this modification will be April 1, 2016.

IV. Conclusion

Mr. Q's expected 2016 income from his V.A. disability benefits totals \$38,115.12. CSSD properly relied on this figure, and it properly calculated Mr. Q's support obligation under the primary custody formula in Civil Rule 90.3(a). That calculation results in a \$635 per month ongoing support amount for Z, effective April 1, 2016.

Mr. Q requested a hardship variance under Civil Rule 90.3(c), and he testified to a number of facts that could support a reduction of his support amount based on unusual circumstances. However, as a whole, Mr. Q presented vague and incomplete information, and he was unwilling to verify his household income. As a result, he did not meet his burden to show clear and convincing evidence that manifest injustice would result if his support amount is not reduced. Therefore, his request for a hardship variance is denied. If Mr. Q is willing to make a full and frank disclosure of his household's financial circumstances, he may request another modification review.

V. Child Support Order

- CSSD's Modified Administrative Child and Medical Support Order dated May 16, 2016, is affirmed and remains in full force and effect.

DATED: August 12, 2016.

By: Signed
Kathryn Swiderski
Administrative Law Judge

³⁹ See *Alaska Dept. of Revenue, CSED v. Dillon*, 977 P.2d 118 (Alaska 1999).

⁴⁰ Exhibit 5.

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 30th day of August, 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.]