

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

In the Matter of	)	
	)	
E L. X	)	OAH No. 16-1008-CSS
<hr style="width:45%; margin-left:0"/>	)	Agency No. 001107492

**DECISION AND ORDER**

**I. Introduction**

E X appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division issued increasing Mr. X’s child support obligation for his child L from \$358 to \$654 a month. Because Mr. X failed to demonstrate that the division's modification of his monthly child support obligation was incorrect, the modification is affirmed.

**II. Facts**

The custodial parent in this case, Ms. U V, requested that the division modify Mr. X’s child support obligation. Mr. X submitted information to the division documenting the disability benefits he receives from the Department of Veteran’s Affairs.<sup>1</sup> Mr. X has a compensable disability rating of 100%.<sup>2</sup> He receives \$3,268 a month in benefits from the Department of Veteran’s Affairs.<sup>3</sup> This equates to an annual total gross income of \$39,217.<sup>4</sup> Mr. X has one child living in his household. That child is younger than L.<sup>5</sup> The division issued a modified administrative child support and medical support order on July 28, 2016.<sup>6</sup> The division increased Mr. X’s child support obligation to \$654 a month.<sup>7</sup> Mr. X appealed.

A telephonic hearing was held on September 19, 2016. Mr. X represented himself. Child Support Specialist Joe West represented the division. U V, the custodial parent, participated.<sup>8</sup> The record closed on September 19, 2016.

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<sup>1</sup> Division Exhibit 4.  
<sup>2</sup> Division Exhibit 5.  
<sup>3</sup> Division Exhibit 4 at 2.;  
<sup>4</sup> Division Exhibit 6 at 6.  
<sup>5</sup> Division Exhibit 7 at 1; Testimony of X.  
<sup>6</sup> Division Exhibit 6  
<sup>7</sup> Division Exhibit 6 at 1.  
<sup>8</sup> Ms. V is referred to in the division’s exhibits as U X.

### III. Discussion

The person appealing the division's decision, in this case Mr. X, has the burden of demonstrating that the division's decision is incorrect.<sup>9</sup>

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>10</sup> If the newly calculated child support amount is at least 15 percent higher or lower than the previous order, Civil Rule 90.3(h) assumes a "material change in circumstances" has been established and the order may be modified.<sup>11</sup> The new child support obligation of \$654 a month is more than 15 percent higher than the previous obligation of \$358 a month, so the material change in circumstances standard has been met.

The division used the disability benefit information Mr. X provided to calculate his annual gross income of \$39,217 and his modified monthly child support obligation of \$654. Under Civil Rule 90.3(a)(1), "adjusted annual income" means "the parent's total income from all sources," minus mandatory deductions such as payroll taxes, and child support arising from prior relationships. The commentary to Civil Rule 90.3 specifies that the phrase "total income from all sources" should be interpreted broadly, and includes "veteran's benefits, except those that are means based" and "disability benefits."<sup>12</sup> Thus, the division correctly included Mr. X's payments from the Department of Veterans Affairs for his service-related disability in its calculation of his gross income. The modified child support obligation of \$654 a month is 20 percent of his gross income, as required for one child under Civil Rule 90.3(a)(2)(A).

Mr. X is not entitled to any deductions. Mr. X's disability benefits are not taxable. The child living in his home is younger than the child covered by the child support order in this case. Therefore, he was not entitled to a deduction for federal income tax or child support.<sup>13</sup>

In his written appeal, Mr. X requested special consideration of his situation because he has a 100 percent service connected disability that occurred in 2009, after his younger child was born. At the hearing, he asked what types of income were included for purposes

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<sup>9</sup> 15 AAC 05.030(h).

<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> Civil Rule 90.3(h)(1).

<sup>12</sup> Commentary to Civil Rule 90.3 at III.A.9. and 25.

<sup>13</sup> Civil Rule 90.3(a).

of calculating child support, and whether the division had included income other than his military disability benefit.

Civil Rule 90.3(c) allows for variance from the child support formula set forth in Civil Rule 90.3(a) “upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied.” The commentary has interpreted this to require a finding that unusual circumstances exist and that those circumstances make application of the usual formula unjust. The commentary specifically recognizes that “[a] parent with a support obligation may have other children living with him or her who were born or adopted after the support obligation arose. The existence of such ‘subsequent’ children, even if the obligor has a legal obligation to support these children, will not generally constitute good cause to vary the guidelines.”<sup>14</sup> At the hearing, Mr. X declined to argue that setting his child support obligation under Civil Rule 90.3(a) would create a hardship for the child living in his household, or that there were other unusual circumstances justifying a hardship exemption under Civil Rule 90.3(c).

The division correctly calculated Mr. X’s child support obligation for one child under the formula in Civil Rule 90.3(a) given the income information provided by Mr. X. Mr. X did not demonstrate that there were unusual circumstances that justified an exception under Civil Rule 90.3(c) to application of the formula in this case.

#### **IV. Conclusion**

Because Mr. X failed to demonstrate that the division's modification of his monthly child support obligation was incorrect, the modification of his monthly child support obligation is upheld. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

#### **V. Child Support Order**

The division’s Modified Administrative Child Support and Medical Support Order, dated July 28, 2016, is affirmed.

Dated: September 23, 2016.

*Signed* \_\_\_\_\_  
Kathryn L. Kurtz  
Administrative Law Judge

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<sup>14</sup> Commentary to Civil Rule 90.3 at VI.B.2.

## **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 10<sup>th</sup> day of October, 2016.

By: Signed  
Signature  
Kathryn Kurtz  
Name  
Administrative Law Judge  
Title

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