

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

In the Matter of)	
)	
N D. J)	OAH No. 16-1356-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 001163676

DECISION AND ORDER

I. Introduction

N J appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on October 28, 2016. The modification increased Mr. J’s support amount for his daughter, U, from \$556 to \$1,299 per month. Mr. J argued that CSSD did not properly account for child support he pays for older children. He also argued that he cannot afford the increased amount, and he requested a reduction based on financial hardship.

This decision concludes that, under Civil Rule 90.3(a) and accounting for Mr. J’s older children, his support obligation for U was correctly calculated at \$1,299 per month, effective September 1, 2016 and ongoing. Mr. J did not show that manifest injustice would result if his obligation is not further reduced. Therefore, his support obligation cannot be varied under Civil Rule 90.3(c).

II. Facts

*A. Material Facts*¹

N J and S J are the parents of U, who is 14. Ms. J has primary physical custody of U. Mr. J is in the military and stationed in No Name City. As of November 2016, his rank was E7 with 24 years of service.² Mr. J’s August through November 2016 Leave and Earnings Statements show that he receives total base pay of \$4,725.30 for each month.³ He also receives nontaxable income from the military, in the form of a basic allowance for housing (BAH), a basic allowance for subsistence (BAS), and a cost-of-living adjustment.

Mr. J has a total of five children, three of whom are older than U. His oldest son, 20, is emancipated and in the military. His second child, B, is 19 and in college. Mr. J initially indicated that he pays ongoing monthly child support of \$230 for B to the State of Arizona.

¹ Unless indicated otherwise, the material facts are based on the testimonies of N J and S J.
² Exhibit A, p. 2 (Leave and Earnings Statement for November 2016).
³ Exhibit 5; Exhibit A.

However, he did not submit other evidence to support this assertion. It appears that B has emancipated, and Mr. J's payments are for arrears rather than ongoing support.⁴

Mr. J's third child is 16-year-old O, for whom he pays monthly child support of \$695.⁵ U is Mr. J's fourth child. His fifth and youngest child is approximately one month younger than U. Mr. J's support obligation for her is \$450 per month.

B. Procedural Background

Mr. J's support for U was last reviewed in early 2013. At that time, Mr. J was not stationed in Alaska, and his non-taxable military income was significantly lower than it is now. In 2013, his gross income totaled \$64,538.88, including base pay and all nontaxed allowances or cost-of-living adjustments. After accounting for Mr. J's support obligations for his three older children, this income resulted in an ongoing obligation for U of \$556 per month.⁶

Ms. J requested a modification review in August 2016. By this time, Mr. J had transferred to Alaska, where he receives higher base pay and significantly higher allowances for housing, subsistence, and cost-of-living.⁷ On August 24, 2016, CSSD served the parties with a Notice of Petition for Modification of Administrative Support Order. Mr. J and Ms. J both submitted their 2015 federal tax returns.⁸ Mr. J also submitted his Leave and Earnings Statements from July through November 2016.⁹

Based on his Leave and Earnings Statements, CSSD concluded that Mr. J's expected 2016 gross income from all sources is \$97,952.82. This includes taxable income of \$56,703.60, plus non-taxable military allowances totaling \$41,249.22.¹⁰ CSSD then made adjustments to account for federal income tax, Social Security/Medicare costs, and Mr. J's \$695 ongoing support obligation for 16-year-old O, since she is the only older child for whom Mr. J owes a legal duty of support. It did not allow deductions for child support paid on behalf of his other children.

The resulting adjusted annual income totaled \$77,915.34. Under the Civil Rule 90.3(a) formula, this resulted in a modified obligation for U of \$1,299 per month, effective September 1,

⁴ CSSD post-hearing submission to record, dated 1/5/17.

⁵ See Exhibit 6, p. 7; Testimony of N J.

⁶ Exhibit 1.

⁷ These non-taxable allowances totaled \$19,661.28 in 2013 and \$41,249.22 in 2016. Exhibit 1, p. 6; Exhibit 6, p. 7.

⁸ Exhibits 3, 4.

⁹ Exhibit 5; Exhibit A.

¹⁰ Exhibit 6, pp. 6-7.

2016.¹¹ On October 28, 2016, CSSD issued a decision granting Ms. J's request for a modification. It also issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal.¹²

Mr. J appealed.¹³ The hearing took place on December 20, 2016. Mr. J and Ms. J both appeared in person, represented themselves, and testified on their own behalf. Child Support Specialist Kimberly Sledgister also appeared in person and represented CSSD.

The record remained open after the hearing, so CSSD could determine whether Mr. J had an ongoing support obligation for his 19-year-old daughter. CSSD concluded that Mr. J's payments to the State of Arizona are for arrears only; he has no ongoing obligation.¹⁴ Mr. J submitted a letter that did not challenge this conclusion. He argued that he cannot afford the increased support for U, while also providing for own necessities and supporting his other children. Ms. J did not respond to CSSD's post-hearing submission. All submitted documents were admitted into the record, and the record closed on January 20, 2017.

III. Discussion

As the party who filed the appeal in this matter, Mr. J has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order issued on October 28, 2016, is incorrect.¹⁵ He does not challenge the income information that CSSD relied on to calculate his support amount. He asserts that he did not receive proper credit for the child support he pays for older children. He also argues that he cannot afford to pay the modified support amount for U, while still adequately providing for himself and his other children.

A. Child Support Calculation & Older Children

A parent is obligated both by statute and at common law to support his or her children.¹⁶ Civil Rule 90.3(a)(1) provides that a noncustodial parent's child support amount is to be calculated based on his or her "total income from all sources," minus specified deductions such as federal income tax, Social Security, and child support paid on behalf of older children.

¹¹ See Exhibit 6, p. 7.

¹² Exhibit 6.

¹³ Exhibit 7.

¹⁴ CSSD post-hearing submission dated 1/5/17.

¹⁵ 15 AAC 05.030(h).

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

Civil Rule 90.3 specifically provides that a military parent's total income from all sources includes his or her base pay, plus the parent's "allowances for quarters, rations, COLA and specialty pay."¹⁷ The reason for including non-taxable military benefits in the calculation is because they reduce the parent's living expenses and allow him or her to use the remaining income for other expenses.

As Mr. J observed, Alaska's relatively high allowances for housing, subsistence and cost of living significantly alter his child support calculation. However, he did not identify any errors in CSSD's determination of his \$97,952.82 gross income from all sources, and the evidence supports this figure. He initially challenged CSSD's refusal to allow a deduction from income for the child support he pays for 19-year-old B. However, he did not meet his burden to show that he has been ordered to pay any ongoing support for her. Payments on arrears are not an allowable deduction from income. Mr. J did receive an appropriate prior child deduction for his \$695 monthly obligation for O.

Based on the evidence in the record, CSSD correctly concluded that Mr. J's gross income from all sources totals \$97,952.82. Under Civil Rule 90.3(a), after allowable deductions, this income results in an ongoing support amount of \$1,299 for U, effective September 1, 2016 and ongoing.

B. Financial Hardship

Mr. J's primary argument is that he cannot afford the child support amount calculated by CSSD and meet his other financial obligations. He therefore requested a reduction of his obligation based on financial hardship pursuant to Civil Rule 90.3(c).

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. Under Civil Rule 90.3(c), a 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."¹⁸ This is a high burden, which is not easily overcome. In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodian and the child.¹⁹

¹⁷ Civil Rule 90.3, Commentary III.A.28.

¹⁸ Civil Rule 90.3(c).

¹⁹ See Civil Rule 90.3, Commentary VI.B.

During the hearing, Mr. J explained the importance of staying current with his financial obligations. Service members are required to provide for their dependents, and service members who fail to pay child support for their children are subject to disciplinary action, including potential separation from military service. Therefore, it would not be in U's best interest to increase Mr. J's support obligation beyond what he is reasonably able to pay, if it results in premature separation from the military and a corresponding reduction in income.²⁰

Mr. J's adjusted monthly income is \$6,492.95.²¹ This is the amount that is available after deductions for federal taxes, Social Security/Medicare, and his support obligation for O. From this income, Mr. J must pay his regular monthly expenses, which total approximately \$3,399, not including his other child support or debt obligations.²² In general, his living expenses are reasonable and appropriate. They include: \$1,500, rent; \$506, utilities;²³ \$300, food; \$545, car payment on his 2015 Dodge Ram; \$100, gas; \$150, vehicle insurance; \$10, vehicle maintenance; \$40, renter's insurance; \$68, health insurance; and \$30, personal care. They also include a \$150 monthly expense for tobacco, which is arguably not necessary; however, Mr. J does not spend money for entertainment or to eat outside the home.

Mr. J's monthly \$520 payment on his motorcycle is not included in the above accounting as a necessary expense for purposes of the hardship analysis. He has two significant debts: a credit card debt of \$24,000 and the \$38,000 balance due on his Dodge Ram. He pays \$800 toward his credit card debt every month. A non-custodial parent's debts normally will not justify a reduction in child support, since the duty to support his or her child is deemed a higher priority than most other obligations.²⁴ However, even if Mr. J's \$800 debt payment is added to his regular monthly expenses, along with a \$1,299 support amount for U and a \$450 support obligation for his youngest child, the total falls below his \$6,492.95 in available monthly income.²⁵

²⁰ Mr. J also explained his desire to help his children pay for post-secondary education, and he provided some information about military benefits that may be available for this purpose.

²¹ See Exhibit 6, p. 7. $\$77,915.34 \text{ adjusted annual income} / 12 \text{ months} = \$6,492.95$.

²² N J testimony.

²³ Utilities include: \$132, natural gas; \$100 electric, \$90 internet; \$84 cable; \$100 telephone. Mr. J actually pays \$300 per month for cell phones, but \$200 of that sum is for the phones used by his two oldest children. As he has no legal obligation for these expenses, they are not included here as reasonable and necessary monthly expenses for purposes of a hardship request.

²⁴ Rule 90.3, Commentary VI.B.4.

²⁵ $\$3,399 \text{ (living expenses)} + \$800 \text{ (credit card payment)} + \$1,299 \text{ (U)} + \$450 \text{ (youngest child)} = \$5,948$ in monthly expenses.

It is clear that Mr. J is facing a difficult budgeting situation, since he currently spends additional sums for lifestyle expenses, such as his motorcycle, as well as for child support arrears and ongoing financial support of his oldest two children. In addition to paying for their cell phones, Mr. J indicated that he provides \$200 per month in support for his oldest son and \$400 per month for his 19-year-old daughter. Mr. J's desire to continue supporting his oldest children financially is entirely understandable. However, it is not a basis for reducing the support due U under Civil Rule 90.3(a).

In light of all Mr. J's expenses, it is clear that the modified support amount for U is likely to create additional financial stress, and some budget adjustments may be necessary. However, based on the evidence as a whole, Mr. J did not show clear and convincing evidence that manifest injustice would result if the modified amount for U is not reduced. His adjusted monthly income appears to be adequate to meet his necessary living expenses, his ongoing child support obligations, and his credit card debt payment. Even after these expenses, more than \$500 remains available for other purposes, including payments toward Mr. J's arrears balance for B.

Ms. J also provided information about her living circumstances, including her income from her home-based childcare business and her regular monthly expenses. Although the reasonableness or necessity of some of her monthly expenses is questionable, the evidence is that she also faces significant budget constraints and debts. As a result, U's living circumstances are not such that she should forego the support due under Civil Rule 90.3(a).

IV. Conclusion

Mr. J did not meet his burden to show that the Modified Administrative Child Support and Medical Support Order issued on October 28, 2016, was incorrect. The calculation allows the appropriate deduction for child support paid on behalf of older children. Thus, under Civil Rule 90.3(a), Mr. J's child support is correctly calculated at \$1,299 per month, effective September 2016 and ongoing.

Mr. J requested a variance under Civil Rule 90.3(c). However, he did not prove by clear and convincing evidence that manifest injustice would result if his support obligation for U is not further reduced. If Mr. J's financial circumstances change, or if his military career is threatened by his inability to support his dependents even after re-prioritizing expenses, he should request another modification review at that time.

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order issued on

October 28, 2016, is affirmed and remains in full force and effect.

DATED: January 23, 2017.

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 7th day of February, 2017.

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

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