

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

In the Matter of	)	
	)	
S G	)	OAH No. 17-0073-CSS
_____	)	Agency No. 001215995

**DECISION AND ORDER**

**I. Introduction**

S G appeals an Administrative Review Decision and Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on January 18, 2017. The amended child support order set Mr. G’s 2017 and ongoing obligation for his son, J, at \$453 per month. It also established pre-order arrears. Mr. G disputes the 2017 and ongoing support amount, but not the pre-order arrears calculation for 2016. He also requests a reduction of his obligation because of financial hardship.

This decision concludes that Mr. G’s child support should be \$296 per month, effective January 2017 and ongoing. Mr. G’s 2016 arrears remain \$188 per month for July 2016 through December 2016. Mr. G did not show clear and convincing evidence of manifest injustice if his support obligation is not reduced. His request for a hardship variance therefore is denied.

**II. Facts**

*A. Material Facts*

S G and O G are the parents of J, who is now 7. J lives with Ms. G in Anchorage. Mr. G lives in No Name. Mr. G is J’s adoptive father, and paternity is not disputed. J is Mr. G’s oldest minor child. Mr. G has another minor child, E, who is about five months younger than J. Mr. G also has adult children who are emancipated and live independently. However, he continues to owe child support arrears in excess of \$60,000 on their cases. Mr. G indicated that the withholding from his wages to pay these arrears significantly reduces his take-home pay.

Mr. G is currently single. Most recently, he lived in a hotel, where the monthly rent totaled \$1,500. On the day of the hearing in this case, he had just terminated his hotel housing, and his living situation was in flux. Mr. G did not know where he would live, or what his future rental expense likely would be.

Mr. G’s most steady employment is his part-time job at Facility X in No Name, where he typically has worked 20 hours per week. In 2016, he earned \$11 per hour, but he currently earns

\$12 per hour. He appears to have started this job during the third quarter of 2016.<sup>1</sup> Between November 27, 2016 and February 9, 2017, Mr. G also had another part-time job working as a “call-in cook” at the local hospital, where he earned \$19.39 per hour.<sup>2</sup> Mr. G left that job in early February, because the hospital reduced his hours to two days per week, and he felt the remaining work schedule was not sufficient to cover his travel and other expenses for the job. Now that Mr. G is down to one job, he is trying to increase his hours at Facility X. He expected to begin working a 30-hour weekly schedule shortly after the hearing in this case.

*B. Procedural History*

On July 14, 2016, CSSD received Ms. G’s application for child support services.<sup>3</sup> CSSD then initiated a child support action, and it ordered Mr. G to provide financial information.<sup>4</sup> CSSD did not receive any current income information from Mr. G, but it did receive outdated information from some of Mr. G’s former employers.<sup>5</sup>

On August 22, 2016, CSSD served Mr. G with an Administrative Child Support and Medical Support Order.<sup>6</sup> The order set his child support amount for J at \$171 per month, based on estimated income from a part-time, minimum wage job working 20 hours per week, plus an Alaska PFD.<sup>7</sup> CSSD later issued an Amended Administrative Child and Medical Support Order to correct a clerical error in the original order.<sup>8</sup>

Ms. G requested an administrative review.<sup>9</sup> She argued that Mr. G worked two jobs, and he was capable of providing more than \$171 in monthly support. CSSD then learned of Mr. G’s part-time hospital employment, which he had started in late November 2016.<sup>10</sup> During the administrative review hearing, Mr. G indicated that he typically worked 20-30 hours per week at the hospital and 20 hours at Facility X, where he earned \$11 per hour at that time.<sup>11</sup>

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<sup>1</sup> See Exhibit 14.

<sup>2</sup> Exhibit 11; G submission dated 2/23/17 (Facility Y termination letter).

<sup>3</sup> Exhibit 1.

<sup>4</sup> Exhibit 2.

<sup>5</sup> Exhibits 3, 4, 5.

<sup>6</sup> Exhibit 6.

<sup>7</sup> Exhibit 6.

<sup>8</sup> Exhibit 8. The correction did not affect the child support calculation in the original order.

<sup>9</sup> Exhibit 9.

<sup>10</sup> Exhibit 11.

<sup>11</sup> Exhibit 12.

On January 18, 2017, CSSD issued the Administrative Review Hearing Decision and Amended Administrative Child and Medical Support Order that are the subject of this appeal.<sup>12</sup> CSSD based Mr. G's 2017 child support obligation on his expected 2017 income from both part-time jobs, which it calculated at \$31,605.60.<sup>13</sup> After including the Alaska PFD, this income resulted in a 2017 and ongoing obligation of \$453 per month.<sup>14</sup> CSSD determined that Mr. G's 2016 gross income from all sources totaled \$12,318.13. This resulted in a \$188 monthly obligation for July through December 2016.<sup>15</sup>

Mr. G does not dispute the calculation of support owed for 2016. He asserts that he cannot afford to pay the 2017 support amount.<sup>16</sup> The formal administrative hearing took place on February 14, 2017. Mr. G and Ms. G both appeared telephonically, represented themselves, and testified during the hearing. Child Support Specialist Kimberly Sledgister appeared telephonically and represented CSSD. The hearing was recorded. The record closed on March 1, 2017.

After the hearing, Mr. G was given time to submit additional evidence of his income and living expenses.<sup>17</sup> Mr. G submitted a letter indicating that his employment at the hospital terminated on February 9, 2017, but he did not submit any other information.<sup>18</sup> As a result, CSSD did not propose any changes to its previous support obligation.

### **III. Discussion**

Mr. G filed the appeal, so he has the burden of proving by a preponderance of the evidence that CSSD's January 18, 2017 Administrative Review Decision and Amended Administrative Child and Medical Support Order are incorrect.<sup>19</sup>

#### *A. Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.<sup>20</sup> In cases establishing a new support obligation, CSSD collects child support from the date the custodial parent requested child support services, or the date public assistance or foster care was

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<sup>12</sup>

*Id.*

<sup>13</sup> Exhibit 12, p. 7.

<sup>14</sup> Exhibit 12.

<sup>15</sup> See Exhibit 12, pp. 9, 11.

<sup>16</sup> Exhibit 13.

<sup>17</sup> See Post-Hearing Scheduling Order dated 2/14/17.

<sup>18</sup> G submission dated 2/23/17 (Facility Y termination letter).

<sup>19</sup> 15 AAC 05.030(h).

<sup>20</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

initiated on behalf of the child.<sup>21</sup> Ms. G applied for CSSD services in July 2016, so that is the month Mr. G's obligation to support J through CSSD begins.

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 taxes and Social Security. Alaska law also provides a deduction from income for child support payments made on behalf of older children, if those payments are required by other court or administrative proceedings and actually paid.<sup>22</sup> In Mr. G's case, however, his prior children have emancipated, and he does not owe an ongoing support obligation for them. Therefore, his continuing payments on his arrears balance do not qualify for a deduction from income.<sup>23</sup>

Civil Rule 90.3 requires a determination of Mr. G's expected 2017 income over the course of the full year.<sup>24</sup> The rule recognizes that this determination is necessarily somewhat speculative, because the relevant income figure is expected future income. At the time CSSD calculated Mr. G's expected 2017 income, he was working two part-time jobs. By the time of the hearing, however, his circumstances had changed. Because Mr. G is no longer working his second job at the hospital, and he is instead increasing his hours at Facility X, he met his burden to show that his 2017 gross wages are likely to be less than previously estimated.

Mr. G's likely 2017 income from Facility X can be broken into two parts. For approximately the first eight weeks of the year, he worked 20 hours per week. At his current \$12 hourly rate, this results in gross wages of \$1,920.<sup>25</sup> For the remainder of the year, he expects to work 30 hours per week. This results in gross wages of \$15,120.<sup>26</sup> Mr. G's job as a cook at the hospital lasted for approximately 6 weeks of 2017, from January 1 through February 9, 2017. Assuming an average 20-hour work week, at \$19.39 per hour, this work results in gross wages of \$2,326.80.<sup>27</sup>

The sum of these income sources is \$19,366.80. Including the expected value of the 2017 PFD (based on the prior year), Mr. G's total gross income is likely to be \$20,388.80. This

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<sup>21</sup> 15 AAC 125.105(a)(1)-(2).

<sup>22</sup> Civil Rule 90.3(a)(1)(C).

<sup>23</sup> CSSD regulations provide a different process for seeking a reduction of income withholding based on financial hardship. *See* 15 AAC 125.550.

<sup>24</sup> Civil Rule 90.3, Commentary III.E.

<sup>25</sup> \$12/hour x 20 hours x 8 weeks = \$1,920.

<sup>26</sup> \$12/hour x 30 hours x 42 weeks = \$15,120. Because Mr. G likely does not receive paid vacation benefits from this job, this calculation assumes he will earn income during 50 weeks of the year.

<sup>27</sup> \$19.39/hr x 20 hours x 6 weeks = \$2,326.80.

income results in a monthly child support amount of \$296.<sup>28</sup> Therefore, based on the evidence presented, Mr. G's 2017 and ongoing support for J should be \$296 per month under Civil Rule 90.3(a).

*B. Financial Hardship*

Mr. G's child support is now correctly calculated, and it is from this figure that Mr. G's request to lower the support amount based on financial hardship should be considered. He maintains that he cannot afford the monthly support amount and keep up with his other expenses.

Child support determinations calculated under Civil Rule 90.3 from an obligor'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."<sup>29</sup> 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.

Based on the evidence in its entirety, Mr. G has not shown clear and convincing evidence that manifest injustice would result if the child support calculated under Civil Rule 90.3(a) is not further reduced. Mr. G did not submit evidence of his current housing cost, so that is not accounted for in this analysis. His other regular monthly expenses include: \$300 for food; \$160 for cab fare; \$60 for his cell phone; and \$100 for personal care items.<sup>30</sup> Mr. G should be able to pay these expenses from his expected 2017 income. He has one unpaid medical debt, but his primary debt is his child support arrears for his adult children. However, Mr. G's primary legal obligation is to support J, based on his income, and this duty takes priority over other debts and obligations.<sup>31</sup>

This determination takes into consideration J and Ms. G's circumstances. Like Mr. G, Ms. G lives on a tight budget. Since June 2016, when she was terminated from her job as an

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<sup>28</sup> See Attachment A (child support calculation from <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

<sup>29</sup> Civil Rule 90.3(c).

<sup>30</sup> Mr. G testimony.

<sup>31</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998). Mr. G did not present information regarding the support he pays for his youngest child E, or any information about E's circumstances. Therefore, it is not possible to determine whether a hardship variance might be justified based on any substantial hardship to E. Mr. G may request a modification review if he is willing to provide complete information about his income and expenses, including his support payments for E.

administrative assistant, she has been unemployed and actively looking for work. She and J live in a rented home, and Ms. G is getting by on limited dividend payments from the No Name Native Corporation.<sup>32</sup> The evidence regarding her household income and expenses suggests that she and J are not in a position to forego the child support due under Civil Rule 90.3(a).

Based on the evidence in its entirety, Mr. G did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for J is not reduced. The support order undoubtedly will add to Mr. G's existing budget difficulties. However, he should be able to address these issues, particularly if considers taking on additional part-time work to supplement his income. Mr. G's ongoing child support should remain at \$296 per month, as calculated under Civil Rule 90.3(a).

#### **IV. Conclusion**

Mr. G agreed that CSSD correctly calculated his 2016 child support amount. Through the evidence brought forward during the hearing process, Mr. G showed that the January 18, 2017 Amended Administrative Child and Medical Support Order included incorrect information about his likely 2017 wage income. The calculation has been adjusted to reflect his current employment situation, and his 2017 and ongoing support for J is now correctly calculated at \$296 per month.

Mr. G requested a hardship variance under Civil Rule 90.3(c). However, he did not meet his high burden of proving by clear and convincing evidence that manifest injustice would result if his child support amount is not varied. This request is therefore denied.

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

1. Mr. G is liable for child support for J in the amount of \$188 per month, effective July 2016 through December 2016; and \$296 per month, effective January 2017 and ongoing;
2. All other provisions of the Amended Administrative Child and Medical Support Order dated January 18, 2017 remain in full force and effect.

DATED: March 10, 2017.

By: Signed \_\_\_\_\_  
Kathryn Swiderski  
Administrative Law Judge

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<sup>32</sup> Ms. G testimony.

## 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 29th day of March, 2017.

By: Signed  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge/OAH  
Title

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