

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

In the Matter of)	
)	
D W. Q)	OAH No. 17-0074-CSS
_____)	Agency No. 001114062

DECISION AND ORDER

I. Introduction

D Q appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on December 27, 2016. The modified order increased his child support obligation from \$50 to \$1003 per month for his three minor children. Mr. Q requested a reduction of the modified obligation because of financial hardship.

Mr. Q’s monthly child support payment was correctly calculated under Civil Rule 90.3(a). However, he showed that this amount should be reduced due to financial hardship. After careful consideration and based on the totality of the evidence, this decision concludes that his support obligation should be adjusted to \$550 per month pursuant to Civil Rule 90.3(c).

II. Facts¹

A. Procedural Background

Mr. Q and custodial parent K N have four children. The oldest, A, is now 20 years old and emancipated. The other three children are B, 17, C, 16, and D, 14.² They live with Ms. N, who recently relocated to Texas.

In May 2003, when all four children were minors, CSSD set Mr. Q’s support obligation at \$50 per month.³ In September 2016, Ms. N requested a modification review. CSSD sent both parents notice of the petition on September 27, 2016.⁴

CSSD granted the modification request on December 27, 2016.⁵ It issued a modified child support order the same day.⁶ The modified order adjusted Mr. Q’s support obligation for his three daughters to \$1003 per month, effective October 1, 2016. CSSD calculated this obligation based

¹ Unless otherwise specified, material facts are based on the testimony of D Q.
² Exhibit 1.
³ *Id.*
⁴ Exhibit 2.
⁵ Exhibit 3.
⁶ *Id.*

on Mr. Q's income from his employment at No Name, plus his Alaska PFD.⁷

Mr. Q appealed the modification.⁸ He asserted that he cannot afford to pay the modified amount while also financially providing for his own basic needs. To support his assertion, Mr. Q provided copies of his paystubs, issued between October 14, 2016 and January 20, 2017, as well as a worksheet showing his monthly household income and expenses.⁹

The formal hearing took place on February 14, 2017. Mr. Q appeared telephonically and represented himself. Ms. N could not be reached at her telephone number of record, and she did not participate.¹⁰ Child Support Specialist Brandi Estes appeared telephonically and represented CSSD. The record closed at the end of the hearing.

B. Material Facts

Mr. Q is employed full-time at No Name.¹¹ He earns \$19 per hour and generally works a consistent schedule from week to week. He is paid every two weeks.¹² After deductions for taxes, health insurance and retirement plan contributions, his average paycheck totals \$1,350.¹³ This translates to an average monthly take-home amount of \$2,925.¹⁴

Mr. Q currently lives in a rented home with his son A, A's girlfriend, and A's young daughter. A provides full-time childcare and does not work outside the home. A's girlfriend is a student. She just began a new part-time job, working as a healthcare aide. At the time of the hearing, she had not yet received a paycheck.

Mr. Q is working hard and living as frugally as possible in order to make ends meet for his household. His monthly expenses are both reasonable and necessary. They include: rent and utilities, \$1300; food, \$500; gas, \$100; internet, \$87; and entertainment, \$60.¹⁵ He drives a car that Ms. N left with him in Alaska, though it is not insured. He did not indicate any spending for

⁷ Exhibit 3, pp. 7-8.

⁸ Exhibit 5.

⁹ Exhibits 4, 5, 6.

¹⁰ The person who answered at the telephone number of record indicated that it was a wrong number. The certified letters notifying Ms. N of the formal administrative hearing also were returned to the Office of Administrative Hearings as undeliverable. They were marked "Moved left no address, unable to forward."

¹¹ Exhibit 4.

¹² Exhibit 5.

¹³ Exhibit 5. \$1,350 is the average take-home amount of the 8 paychecks issued from October 14, 2016 through January 20, 2017.

¹⁴ $\$1,350 \times 26 \text{ yearly pay periods} / 12 \text{ months} = \$2,925$.

¹⁵ Exhibit 6. Mr. Q explained that he and Ms. N had shared a home for many years. He was forced to find new housing on short notice after she moved to Texas. Due to his timing and his poor credit history, the best housing option available charged \$1300 per month for rent.

clothing or personal care items, though he likely has some expenses in those areas, and he will need to insure the car. Mr. Q has two outstanding debts: one medical bill of roughly \$1,000 to \$1,500 for care provided to one of his daughters, and a car loan of \$18,000.¹⁶ At one time, he paid \$470 per month toward the car loan, but he is not currently paying on either debt.

III. Discussion

In a child support matter, the person who files an appeal bears the burden of proof.¹⁷ Mr. Q filed this appeal, so he must show that the December 27, 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 Alaska Civil Rule 90.3(a) provides the formula used to calculate child support awards in cases like this one, where one parent has primary physical custody. Mr. Q does not challenge the income information that CSSD relied on in this case, and he does not dispute that his income would result in a \$1003 support amount for his three daughters, as calculated under Civil Rule 90.3(a). He also agrees that his former support order should be modified. He only asserts that he cannot afford the modified amount, and he requests a reduction based on 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 injustice would result if the support award were not varied."²⁰ In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.

The evidence regarding Mr. Q's circumstances indicates that he is working very hard to bring in income and to stay current with his financial obligations. He wants to support his children financially, and he is keeping his expenses to a minimum. He is understandably concerned about likely financial repercussions if he cannot afford to pay his modified child support obligation. There is no evidence in the record regarding Ms. N's income or household

¹⁶ Mr. Q indicated that the seller has possession of his car, which was not working properly, so Mr. Q has not been able to benefit from its use.

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 Civil Rule 90.3(c).

circumstances, so it is not possible to compare her situation to Mr. Q's. Mr. Q knew only that she is living with or near family in Texas.

The evidence regarding Mr. Q's necessary expenses clearly establishes that he is not able to pay \$1003 in monthly child support on his current income. Mr. Q's asserted monthly expenses total \$2,047, though this likely understates his necessary expenses by a substantial amount, since it does not account for car insurance, clothing, or personal care items, among other possible necessities. It is also not clear that Mr. Q will retain free use of Ms. N's car, though he requires transportation to get to and from his job. If he regains possession of his own car, he owes a monthly payment of \$470. These factors weigh in favor of a significant reduction in his child support amount, based on hardship.

On the other hand, Mr. Q's household includes two other adults, who could be expected to make at least a minimal financial contribution to Mr. Q's rent expense. Taking the totality of these circumstances into account, Mr. Q's child support obligation for his three daughters should be adjusted to \$550 per month. This amount will still present a significant financial challenge, as it is likely to absorb all of Mr. Q's remaining monthly pay after necessary living expenses. It therefore may require him to make additional budget adjustments. However, it also should be manageable if he budgets carefully and receives some contribution for rent from the other adults in the home.

IV. Conclusion

CSSD's Modified Administrative Child Support and Medical Support Order dated December 27, 2016 correctly determined Mr. Q's monthly child support obligation under Civil Rule 90.3(a). However, Mr. Q met his burden to show that this amount should be reduced under Civil Rule 90.3(c), due to financial hardship. Accordingly, his support obligation is adjusted to \$550 per month, effective October 1, 2016 and ongoing.

V. Child Support Order

- Mr. Q's support obligation for B, C, and D is adjusted to \$550 per month, effective October 1, 2016 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated December 27, 2016 remain in full force and effect.

DATED: February 17, 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 3rd day of March, 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.]