

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

In the Matter of)	
)	
E S)	OAH No. 17-0883-CSS
<hr style="width:45%; margin-left:0"/>)	Agency No. 001176778

DECISION AND ORDER

I. Introduction

E S appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division increasing his child support obligation for his daughter C from \$349 to \$532 a month.

After Mr. S filed his appeal, the division recalculated his child support obligation based on actual income information provided by Mr. S, reducing the ongoing obligation to \$471 a month.

Because the division’s revised calculations reflect Mr. S’s likely earnings going forward, and because Mr. S has not demonstrated that it would be manifestly unjust to set his child support obligation according to Civil Rule 90.3(a), Mr. S’s ongoing child support obligation should be set at \$471 a month.

II. Facts

This case concerns E S’s child support obligation for his daughter C. C’s mother has primary custody.¹ Mr. S’s child support obligation was set in 2014 at \$349 a month.² In December 2016 custodial parent T D asked the division for another modification.³ The division notified both parties of the modification review in April 2017.⁴ On July 31, 2017, the division issued a Modified Administrative Child Support and Medical Support Order setting Mr. S’s child support obligation at \$532 a month, based on actual income information.⁵ Mr. S appealed.

¹ Testimony of S.
² Division Exhibit 1.
³ Division Exhibit 2.
⁴ Division Exhibit 3.
⁵ Division Exhibit 4 at 4, 6.

Mr. S currently has two jobs. He works at a hotel and at a hospital.⁶ As part of his appeal, Mr. S provided copies of his recent paystubs to the division.⁷ The division obtained employer-reported earnings information for Mr. S for 2016 and 2017 from the Department of Labor and Workforce Development.⁸ Mr. S also has other children, but they are younger than C.⁹

A telephonic hearing was held on September 12, 2017. Mr. S represented himself. Child Support Specialist Joe West presented the division's case. The record closed on September 12, 2017.

III. Discussion

Alaska Rule of Civil Procedure Rule 90.3 governs the calculation of child support. Civil Rule 90.3 sets child support as a percentage of the obligor parent's adjusted annual income. For one child, the obligation is 20 percent of adjusted income. Adjusted annual income is calculated from annual gross income by subtracting only those deductions specifically allowed under Alaska Rule of Civil Procedure 90.3(a)(1).¹⁰ Because Mr. S requested the hearing in this matter, Mr. S has the burden of proving that the division's modified order is incorrect.¹¹

The division calculated Mr. S's income using the year to date figures on the paystubs Mr. S provided. For the pay period ending July 1, 2017, the hospital reported year to date gross pay of \$6,177.¹² The hotel reported \$10,816 for the period ending July 2, 2017.¹³ Total gross earnings as reflected on the paystubs Mr. S submitted for the first six months of 2017 were therefore \$16,993. The division doubled this figure to project annual gross income of \$33,984. From this, it deducted federal income tax, FICA, and union dues for an adjusted annual income figure of \$28,252.

Mr. S argued that this figure should be further adjusted to take into account his support obligation to his younger children. Mr. S testified that he had been voluntarily contributing to the support of his younger children pending a formal child support order applicable to those children from the child support authorities in Florida. Alaska's child support formula allows a

⁶ Testimony of S.

⁷ Division Exhibit 5.

⁸ Division Exhibit 7.

⁹ Testimony of S.

¹⁰ Alaska Rule of Civil Procedure 90.3(a)(1) and (2).

¹¹ 15 AAC 05.030(h).

¹² Exhibit 5 at 9.

¹³ Exhibit 5 at 5. Mr. S testified that the larger paycheck was from the hotel.

deduction only for child support paid for children from a prior relationship that is required by court or administrative proceedings and actually paid.¹⁴ Because Mr. S's other children are younger than C, and Alaska law only allows a deduction for support paid for older children, Mr. S is not entitled to a deduction for child support.

Mr. S argued that his Alaska child support obligation was too high because he had to cash out personal time off (PTO) from his job at the hospital in July 2017 to pay.¹⁵ However, the division did not consider the cash value of the PTO as part of Mr. S's annual income. It based its calculations on Mr. S's wages for January through June of 2017, and did not include July, the month in which he cashed out the PTO.

Mr. S also argued that an exception to the formula should be made in his case. He said that he could afford the previous ongoing amount of \$341 a month, but that paying \$471 a month would be a hardship for him and his other children. Mr. S explained his monthly household expenses, which include rent on an efficiency apartment, utilities, a car payment and related vehicle expenses, and monthly payments of \$120 under a chapter 13 bankruptcy plan.

To justify a hardship exception to the formula under Alaska Civil Rule 90.3, an obligor must demonstrate by clear and convincing evidence that unusual circumstances exist that would make application of the usual formula unjust. However, obligations to younger children and debts are generally not considered unusual circumstances.¹⁶ Because the division correctly based Mr. S's ongoing child support on his actual income, and because Mr. S did not show that application of the formula would result in manifest injustice in his case, Mr. S's ongoing child support obligation for C should be set at \$471 a month.

Mr. S testified that he provides health insurance coverage for C. If Mr. S is paying for this coverage, he may submit insurance and cost information to the division and request that the division adjust his monthly child support obligation to reflect the cost of that health insurance coverage.¹⁷

IV. Conclusion

Mr. S's ongoing child support obligation for C is \$471 a month, based on his actual current income.

¹⁴ Alaska Rule of Civil Procedure 90.3(a)(1)(C).

¹⁵ Exhibit 5 at 7 - 8.

¹⁶ Rule 90.3(c)(1); Commentary to Rule 90.3 at VI.B.

¹⁷ 15 AAC 125.432.

A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁸ The division provided notice of the petition for modification in this case in April 2017, so this modification is effective as of May 1, 2017.¹⁹ The child support amount in this order was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Mr. S’s child support obligation for C is \$471 a month, effective May 1, 2017 and ongoing.
2. All other provisions of the division’s Modified Child Support and Medical Support Order issued on July 31, 2017 remain in effect.

Dated: September 23, 2017.

Signed _____
Kathryn L. Kurtz
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 within 30 days after the date of this decision.

DATED this 10th day of October, 2017.

By: *Signed* _____
Signature
Kathryn L. Kurtz _____
Name
Administrative Law Judge _____
Title

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

¹⁸ 15 AAC 321(d).
¹⁹ Exhibit 3.