

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

IN THE MATTER OF:	)	
	)	OAH No. 04-0142-CSS
S. V. F.	)	CSSD NO. 001110615
_____	)	DOR NO. 040739

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor S. V. F.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 24, 2004. The Obligee child is J., DOB 00/00/01.

The formal hearing was held on December 14, 2004. Mr. F. appeared telephonically; the Custodian, C. J. R., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on December 14, 2004.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, was appointed to hear this appeal by the Chief Administrative Law Judge, Terry L. Thurbon. Having reviewed the record in this case and after due deliberation, I have concluded Mr. F.'s appeal should be granted in part because he does not receive the PFD. His appeal should be denied in part because his income for child support purposes includes his military benefits, and he did not establish good cause for varying the child support amount calculated pursuant to Civil Rule 90.3.

**II. Facts**

**A. History**

On June 3, 2004, CSSD served an Administrative Child and Medical Support Order on Mr. F.<sup>1</sup> He requested an administrative review on June 25, 2004.<sup>2</sup> Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on August 24, 2004, that set ongoing support at \$531 per month, with arrears of \$5178 for the period from November 2003 through August 2004.<sup>3</sup> Mr. F. filed an appeal on October 12, 2004.<sup>4</sup>

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<sup>1</sup> Exh. 4.

<sup>2</sup> Exh. 5.

<sup>3</sup> Exh. 7.

At the formal hearing, Mr. F. testified he cannot afford the child support amount calculated because he does not earn the income CSSD attributed to him. Mr. F. stated he is not eligible to receive a PFD, so it should not have been included in the support calculation. Mr. F. questioned why his military housing benefit is included as part of his income, since it is not a cash benefit.

Finally, Mr. F. asserted that he cannot afford to pay the amount calculated because he has a wife and family to support in his home. Mr. F. testified his wife C. is 21 years old, and she works at a local Wal-Mart store, where she earns between \$1000 and \$1100 net per month. Mr. F. had previously filled out CSSD's Expense Checklist for Hardship<sup>5</sup>, and he went over the numbers during the hearing. His monthly expenses include \$800 for rent; \$250 for food; \$100 for electricity; \$225 for telephone; \$24.78 for water; \$13.34 for sewer; \$15.50 for trash pickup; \$60 for cable; \$435.84 for the payment on a 2001 Mazda; \$250 for the payment on a 1999 Chevrolet SUV; \$190 for gasoline for both cars; \$13 for maintenance on both vehicles; \$291 for insurance on both vehicles; \$31.36 for home insurance; \$50 for entertainment; \$25 for personal-care items; \$50 for a bank loan; and \$315 for the payments on three credit cards. Also, Mr. F. and his wife have a two-year-old child in the home.<sup>6</sup> He said he and his wife do not work the same shift because of their child care needs. He said by varying their work schedules, they need extra babysitting usually only twice per week. This costs \$90 per month.

Mr. F. further testified he is a mechanic on aircraft support machines, and if he were working in the private sector, he would probably try to get a job doing electronics repair.

Finally, Mr. F. stated he has medical and dental insurance on the Obligee J. CSSD indicated its staff was handling the medical insurance issue for Mr. F.

Prior to the hearing, CSSD had revised Mr. F.'s child support calculations, which Mr. F. asked CSSD to explain. CSSD responded that for the 2004 calculation, for example, it used Mr. F.'s 2004 base pay from his Leave and Earnings Statement (LES) to determine his taxable income was \$21,769.20.<sup>7</sup> To this, CSSD added his monthly Basic Allowance for Housing (BAH) of \$793 and his Basic Allowance for Subsistence (BAS) of \$242.81, to determine his

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<sup>4</sup> Exh. 8.

<sup>5</sup> Exh. 10.

<sup>6</sup> Exh. 11.

<sup>7</sup> Exh. 9 at pg. 3.

total nontaxable income was \$12,569.52, for total annual income of \$34,338.72.<sup>8</sup> From this amount, CSSD deducted mandatory deductions of federal income and Social Security taxes. This resulted in an adjusted annual income of \$30,957.99, which yields a child support calculation of \$516 per month for one child.<sup>9</sup> The 2003 calculation was done with the same methodology, and resulted in a child support amount of \$449 per month.<sup>10</sup> CSSD said the PFD was mistakenly included in its prior calculations, but the dividend was not included in either revised calculation for 2003 or 2004.

**B. Findings**

Based on the evidence in the record and after due consideration, I hereby find:

1. As required by 15 AAC 05.030(h), Mr. F. met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect regarding his PFD;
2. Mr. F. did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect regarding his income and whether there is good cause to vary the child support amount calculated;
3. Mr. F.'s total income from all sources in 2003 was \$30,004.97, which includes his military benefits for housing and subsistence;
4. Mr. F.'s 2003 income results in a child support calculation of \$449 per month;
5. Mr. F.'s total income from all sources in 2004 was \$34,338.72, which includes his military benefits for housing and subsistence;
6. Mr. F.'s 2004 income results in a child support calculation of \$516 per month;
7. Mr. F. did not prove by clear and convincing evidence, as required by Civil Rule 90.3 (c), that manifest injustice will result if his child support amount is not varied from the amount calculated pursuant to Civil Rule 90.3(a).

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Exh. 9 at pg. 2.

### **III. Discussion**

#### **A. Mr. F.'s Income**

A parent is obligated both by statute and at common law to support his or her children.<sup>11</sup> Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources."

Mr. F. objects to CSSD adding his military benefits to his income because they are not cash income to him. Civil Rule 90.3 specifically provides that a noncustodial parent's total income from all sources includes "Armed Service Members base pay plus the Obligor's allowances for quarters, rations, COLA and specialty pay."<sup>12</sup> The military pays for Mr. F.'s housing and food costs through the BAH and BAS payments. These employer-provided benefits are considered income because Mr. F. is able to use the rest of his income to pay his other bills and expenses.<sup>13</sup> CSSD correctly included Mr. F.'s BAH and BAS in his income figures.

#### **B. Good Cause (Hardship)**

In addition to challenging the amount of the calculation, Mr. F. stated he cannot afford the child support payment. Child support determinations calculated under Civil Rule 90.3 from an Obligor's actual income figures are presumed to be correct. An Obligor parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish "good cause," the Obligor must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>14</sup> If the Obligor proves that "unusual circumstances" exist in his or her case, this may be sufficient to establish "good cause" for a reduction in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children . . . .<sup>[15]</sup>

Based on the evidence presented, I have concluded Mr. F. failed to meet his burden of proving by clear and convincing evidence that manifest injustice will result if his child support amount is not varied. Mr. F.'s wife works outside the home and has net income of up to \$1100

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<sup>11</sup> *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>12</sup> Civil Rule 90.3, Commentary III.A.29.

<sup>13</sup> See Civil Rule 90.3, Commentary III.A.19.

<sup>14</sup> Civil Rule 90.3(c).

<sup>15</sup> Civil Rule 90.3(c)(1)(A).

per month, which is used to help support the family. The income Mr. F. receives is not, of course, added to Mr. F.'s income for the child support obligation, but her income is a factor to be considered in determining whether there is a hardship in this case. Because Mr. F.'s household has two sources of income, Mr. F. did not prove he will suffer a hardship in the absence of a variation in the child support amount.

Mr. F. asserted that after paying his child support, he does not have enough money to pay the rest of his bills, even with his wife's income. However, having expenses that exceed one's income does not automatically entitle an Obligor parent to a reduced child support amount.<sup>16</sup> Mr. F. may have to make difficult budgeting decisions. Mr. F. has a duty to support J., based on his total annual income, and this duty takes priority over other debts and obligations, including a subsequent family.<sup>17</sup>

Thus, in the absence of clear and convincing evidence of manifest injustice, I find there is no good cause to vary Mr. F.'s child support amount calculated under Civil Rule 90.3. CSSD's determination is based on Mr. F.'s most recent employment and income information, and the calculations should be adopted.

#### **IV. Conclusion**

Mr. F. met his burden of proving by a preponderance of the evidence that he does not receive a PFD, but he did not meet the burden regarding his total income or whether good cause exists to vary his child support award. CSSD's calculations are correct and should be adopted.

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

1. Mr. F. is liable for child support in the amount of \$449 per month for November 2003 through December 2003;
2. Mr. F. is liable for child support of \$516 per month for 2004, and ongoing.

DATED this 9th day of May, 2005.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>16</sup> Civil Rule 90.3, Commentary VI.B.4.

<sup>17</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

**Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry L. Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of S. V. F. be adopted as of this date and entered in his file as the final administrative determination in this appeal.

Under AS 25.27.062 and AS 25.27.250 the Obligor's income and property are subject to an order to withhold. Without further notice, a withholding order may be served on any person, political subdivision, department of the State or other entity.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

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 of the date of this decision.

DATED this 9th day of May, 2005.

By: Signed \_\_\_\_\_  
Terry L. Thurbon  
Chief Administrative Law Judge

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