

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

IN THE MATTER OF:)	OAH Nos.	04-0157-CSS
)		04-0158-CSS
D. J. M.)	CSSD Nos.	001129562
)		001119739
)	DOR Nos.	040759
)		040760

DECISION AND ORDER

I. Introduction

This matter involves the Obligor D. J. M.’s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 1, 2005. The Obligee children are A., DOB 00/00/88, and J., DOB 00/00/89.

The formal hearing was held on March 30, 2005. Ms. M. appeared in person. The custodian in this matter is the State of Alaska. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on April 25, 2005.

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 Ms.M.’s appeal should be granted and her child support should be varied pursuant to the “good cause” provisions of Civil Rule 90.3(c).

II. Facts

On June 13, 2004, CSSD served an Administrative Child and Medical Support Order on Ms. M.¹ She requested an administrative review.² Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on September 1, 2004, that set Ms. M.’s ongoing child support at \$665 per month, with arrears of \$22,239 for the period

¹ Exh. 2.

² Exh. 3.

from October 1999 through September 2004.³ Ms. M. filed an appeal and requested a formal hearing on October 22, 2004.⁴

Ms. M. is the parent of the Obligees A. and J. Both children were placed in state custody on October 14, 1999, and have been in state jurisdiction since that date. Believing the children would return soon, Ms. M. maintained her three-bedroom apartment until February 2000, at which time she placed the bulk of her belongings in storage and moved into a smaller apartment.

Ms. M., who is a hairdresser by profession, could not work for several months due to the trauma caused by the loss of her children. In March 2000, she obtained a job at R. H., where she worked for three years. In February 2003, Ms. M. moved to the O. S. and worked there for 13 months. From March 2004 through October 2004, Ms. M. received unemployment benefits, after which she started working at H.'s.

A. and J. are both currently in foster care. They attend high school, where J. is a ninth grader on the honor roll. A. and J. spent one month with Ms. M. in 2003, and J. spent one month with her in 2004. J. also spends weekends with Ms. M. fairly consistently, but A. does not. Ms. M. stated she hoped to get custody of J. if the boys' foster father has to leave Alaska due to his employment. Ms. M. spends most of her available spending money on J. during his visitations at her home. She provides his food and also pays for all of their entertainment activities, which include bowling and going to the movies. During their period of time in state custody, Ms. M. has provided all of A.'s and J.'s haircuts and has provided all of their shampoo and conditioner.

Ms. M. earned approximately \$1900 at H.'s during the fourth quarter of 2004, and she estimated she earned \$1500 from January 2005 through March 2005. She previously filed a worker's compensation claim against R. because of calluses that developed on her hands from the constant use of scissors. Ms. M.'s doctor told her she should not work more than 20 hours per week or her condition would become worse. Ms. M.'s partner W. provides her housing, but he does not give her any money, nor does he pay any of her bills.

This case was referred to CSSD on April 21, 2001.⁵ However, CSSD did not contact Ms. M. to establish the case until almost three years later.⁶ During the intervening time period,

³ Exh. 5.

⁴ Exh. 6.

⁵ Tape of hearing.

⁶ Post-Hearing Brief.

CSSD obtained Ms. M.'s correct address from the Division of Motor Vehicles, but CSSD's records were somehow changed to indicate her employer's national headquarters were located in Minnesota. An address inquiry was sent to the R. C. in Minnesota and the company responded that Ms. M. did not live at their address. CSSD finally obtained Ms. M.'s correct address from the PFD division, whose records indicate she had applied for a PFD every year since 1986. On February 18, 2004, CSSD used Ms. M.'s correct address from the PFD database to send her an administrative order to provide financial information, to which she responded.

Ms. M.'s total income is as follows: \$3216.84 for 1999⁷; \$10,333.74 for 2000⁸; \$16,992.71 for 2001⁹; \$16,747.25 for 2002¹⁰; \$23,411.48 for 2003¹¹; and \$16,753 for 2004¹². Ms. M.'s income for 2003 and 2004 was reduced by 10% for a salon fee she was required to pay to her employer. Ms. M. estimated her 2005 income would total \$8119.84, based on her quarterly income of \$1800, plus the PFD.¹³ These income figures result in monthly child support calculations of \$70 for 1999; \$207 for 2000; \$319 for 2001; \$325 for 2002; \$395 for 2003; \$316 for 2004; and \$169 for 2005 and ongoing. Absent payments that have already been received, Ms. M.'s arrears total approximately \$20,137 through July 2005.

If the above child support calculations were adopted, Ms. M. would not be able to meet her financial obligations, including providing for J.'s weekend visitations. Ms. M.'s 2005 take-home pay is just \$623.34 per month. If CSSD garnished 40% of that figure, which equals \$249.34, she would have only \$374 per month with which to support herself. Also, assuming her income and CSSD's collections stayed the same, after Ms. M.'s ongoing child support amount of \$169 per month was subtracted from the amount garnished, only \$80.34 per month would be available for the arrears payment. Thus, even without interest being added, it would take Ms. M. almost 21 years to retire the total arrears.

⁷ Exh. 5 at pg. 13.

⁸ *Id.* at pg. 14.

⁹ *Id.* at pg. 15.

¹⁰ Exh. 8 at pg. 2.

¹¹ Exh. 5 at pg. 17.

¹² Exh. 9 at pg. 2.

¹³ Exh. 10.

III. Discussion

This appeal raises the question whether Ms. M. is entitled to a variance in her child support amount based on manifest injustice. A parent is obligated both by statute and at common law to support his or her children.¹⁴ By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren), up to six years prior to the date the obligor was served with notice of the action.¹⁵

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." Ms. M.'s child support for all the years at issue is now correctly calculated, with her ongoing set at \$169 per month, based on her estimated 2005 income.

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. In order 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." Civil Rule 90.3(c). A finding that "unusual circumstances" exist in a particular case also may be sufficient to establish "good cause" for a variation 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^[16]

Civil Rule 90.3 also states that all the relevant factors in a particular case should be considered when child support arrears are established. The Commentary to the Rule provides:

It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. *Vachon v. Pugliese*, 931 P.2d 371, 381-382 (Alaska 1996). However, in some circumstances unfairness may result from rigid application of the rule. The court should consider

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ 15 AAC 125.105(a)(1)-(2).

¹⁶ Civil Rule 90.3(c)(1).

all relevant factors in such a situation, including whether the Obligor was aware of the support obligation, especially if the Obligor had children subsequent to that child. See also Commentary VI.B.2.^{17]}

This language indicates the arrears may be reduced if it would be manifestly unjust not to do so under the circumstances of a particular case. It is appropriate to consider all relevant evidence to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).

In applying the above language to Ms. M.'s arrears, several factors should be considered. The Oblige J. spends weekends and one month per year in Ms. M.'s home, and if the child support arrears calculated from her income were adopted, she would have scant resources with which to support J. while he is in her home. It seems unlikely Ms. M. would be able to earn much more in the future because the problems she encounters with her hands prevent her from working much more than half-time. In addition, Ms. M. does not have the resources to go to college or learn another trade.

I considered the totality of circumstances, and based on the evidence in the record, I find that this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. M. proved by clear and convincing evidence that manifest injustice would result if her child support arrears were calculated from her actual income. Setting Ms. M.'s child support at \$50 per month constitutes a reasonable measure of her ability to pay support under Civil Rule 90.3(c).

Therefore, in the presence of unusual circumstances, and clear and convincing evidence of manifest injustice, I find Ms. M.'s ability to pay child support is \$50 per month. This figure constitutes a reasonable measure of Ms. M.'s ability to pay support under Civil Rule 90.3(c), and I conclude it should be adopted.

IV. Conclusion

Ms. M. met her burden of proving by clear and convincing evidence that CSSD's calculations were incorrect and that manifest injustice would result if her child support was not varied from the amounts calculated pursuant to Civil Rule 90.3(c). A child support amount of \$50 per month is a reasonable measure of Ms. M.'s ability to pay child support.

¹⁷ Civil Rule 90.3, Commentary VI.E.1.

V. Child Support Order

- Ms. M. is liable for child support in the amount of \$50 per month for the period from October 1999 through July 2005, and ongoing.

DATED this 25th day of July, 2005.

By: Signed
Kay L. Howard
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Kay L. Howard, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of D. J. M. be adopted as of this date and entered in the 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 25th day of July, 2005.

By: Signed
Kay L. Howard
Administrative Law Judge

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