

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

|                   |   |                     |
|-------------------|---|---------------------|
| IN THE MATTER OF: | ) |                     |
|                   | ) | OAH No. 04-0189-CSS |
| M. J. G.          | ) | CSSD NO. 001128846  |
| _____             | ) | DOR NO. 040791      |

**DECISION AND ORDER**

**I. Introduction**

This matter involves the Obligor M. J. G.'s appeal of an Amended Administrative Child Support and Medical Support Order the Child Support Services Division (CSSD) issued on September 16, 2004. The Obligee children are J., DOB 00/00/92, L., DOB 00/00/96, and A., DOB 00/00/98.

On August 9, 2004, CSSD served an Administrative Child and Medical Support Order on Mr. G.<sup>1</sup> He requested an administrative review.<sup>2</sup> Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on September 16, 2004, that set Mr. G.'s ongoing child support at \$297 per month, with arrears of \$1584 for the period from November 2003 through September 2004.<sup>3</sup> CSSD's Pre-Hearing Brief indicates the Obligees J., L. and A. receive Children's Insurance Benefits (CIB) from Social Security, so Mr. G.'s child support obligation after the CIB payment is credited to him would be \$114 per month.

The formal hearing was held on January 18, 2005. Mr. G. appeared telephonically; the Custodian, T. A. G., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on February 8, 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 Mr. G.'s appeal should be granted and his child support should be set at \$50 per month.

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<sup>1</sup> Exh. 3.

<sup>2</sup> Exh. 4.

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

## II. Facts

The Obligor M. J. G. is 45 years old. He and the Custodian, T. A. G., were formerly married, and they have three children together, J., L. and A. At the time of the hearing, the parties were in the process of obtaining a divorce. Ms. G. began receiving public assistance benefits for J., L. and A. in November 2003.<sup>4</sup>

Mr. G. has been physically disabled since July 1995, when he was injured at work and suffered a tear in his left knee which required surgery. Mr. G. has not worked since then. Mr. G. had a second surgery in October 1996, and as a result, he has had ongoing problems with pain, stiffness, chronic low back pain, and arthritis.

Mr. G. was diagnosed with carpal tunnel syndrome in 2001 or 2002. He also complains of hearing problems as a result of having a loud noise go off near his right ear in May 2004 when he was not wearing ear protection.

In 2004, Mr. G. consulted the Division of Vocational Rehabilitation (DVR) for assistance in vocational retraining. DVR referred him to a psychologist for a psychological evaluation, and also to an orthopedic surgeon for an evaluation of his physical problems. The psychological evaluation, which took place on November 17, 2004, indicated Mr. G. has average intellectual ability, but he shows indications of attention deficit hyperactivity disorder and depression.<sup>5</sup>

Mr. G. was evaluated by the orthopedic surgeon on November 15, 2004. The doctor reported that Mr. G. is fit to do sedentary work, but he should not return to general labor or any job that requires bending, stooping, lifting, climbing or squatting. Also, the doctor stated Mr. G.'s disability is considered "stable and permanent."<sup>6</sup>

Mr. G.'s income consists of annual Social Security disability benefits of \$7044, the PFD of \$919.84, and the Children's Insurance Benefit (CIB) amount of \$1836 (\$153 per month), for total annual income of \$9,799.84.<sup>7</sup> From this figure, Mr. G.'s child support obligation is calculated at \$269 per month for three children. The CIB payment of \$153 per month is credited

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<sup>4</sup> Exh. 8 at pg. 1.

<sup>5</sup> Exh. 11 at pg. 10.

<sup>6</sup> Exh. 11 at pg. 15.

<sup>7</sup> Pursuant to 15 AAC 125.475(b)(1)(B), the annual CIB amount is added to the Obligor parent's total annual income, from which a child support amount is calculated. The monthly CIB payment is then subtracted from the child support calculation as a credit against the Obligor's support obligation.

to Mr. G. and subtracted from \$269 per month to equal a balance of \$116 per month for three children that Mr. G. must pay.

Mr. G. pays approximately \$1215 per month for his minimum living expenses, which include \$300 for space rent, \$260 for the trailer payment, \$40 for electricity, \$65 for propane, \$100 for heating oil, \$32 for vehicle insurance, \$52 for trailer insurance, \$26 for property taxes, \$40 for telephone, and \$300 for food.

### **III. Discussion**

Mr. G. claims that he is disabled and cannot work, and as a result, he suffers from a financial hardship.

#### **A. Disability**

The Obligor has the burden of proving his or her earning capacity.<sup>8</sup> An Obligor who claims he or she cannot work, or pay child support, because of a disability, or similar impairment, must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.<sup>9</sup>

Mr. G. met his burden of proving by a preponderance of the evidence that he is physically disabled and cannot work in his traditional field of labor-associated jobs. Mr. G. has been determined to be disabled by the Social Security Administration (SSA), which provides him with benefits in the amount of \$587 per month. In addition, the children receive \$153 per month in CIB payments as part of Mr. G.'s Social Security benefit.

Even without the Social Security benefits both Mr. G. and his children receive, Mr. G. would still be considered disabled. He provided medical records from an orthopedic surgeon who stated Mr. G.'s ongoing problems with his knee, chronic low back pain, and arthritis prevent him from returning to any sort of general labor or physical job. His doctor indicated Mr. G. is fit to do sedentary work, but he has no marketable skills in that area as of yet. It may be that the Division of Vocational Rehabilitation will be able to help Mr. G. train for and obtain suitable employment that allows him to remain sedentary.

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<sup>8</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

<sup>9</sup> *Id.* at 1371.

## **B. Hardship**

Mr. G.'s child support is correctly calculated at \$116 per month, based on his actual income figures. This amount also includes as a credit the \$153 CIB payment the Obligees J., L. and A. receive from the Social Security Administration based on Mr. G.'s disability.

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 claimant 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 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 . . . .<sup>[10]</sup>

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).<sup>11</sup>

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. Mr. G. proved by clear and convincing evidence that manifest injustice will result if his modified child support is not varied from the amount calculated pursuant to Civil Rule 90.3. Mr. G. receives only \$587 per month in cash, but his rent and other minimum monthly expenses exceed this figure.

Based on his current inability to work, I conclude that setting Mr. G.'s child support at \$50 per month constitutes a reasonable measure of his ability to pay support under Civil Rule 90.3(c). Mr. G.'s child support order should be set in that amount.

## **IV. Conclusion**

Mr. G. met his burden of proving CSSD's calculation was incorrect and that manifest injustice would result if his child support was not varied pursuant to Civil Rule 90.3(c). Mr. G. receives disability benefits of \$587 per month, which do not meet his minimum living expenses.

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<sup>10</sup> Civil Rule 90.3(c)(1)(A).

A monthly child support amount of \$50 per month is a reasonable measure of Mr. G.'s support obligation for his children J., L. and A.

**V. Child Support Order**

- Mr. G. is liable for child support in the amount of \$50 per month for the period from November 2003 through June 2005, and ongoing.

DATED this 22nd day of June, 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, 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 M. J. G. 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 22nd day of June, 2005.

By: Signed  
Terry L. Thurbon  
Chief Administrative Law Judge

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

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<sup>11</sup> See Civil Rule 90.3, Commentary VI.E.1.