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

IN THE MATTER OF:	)	
	)	
A D. S	)	
	)	OAH No. 05-0305-CSS
	)	CSSD Case No. 001027624

CORRECTED[A] DECISION AND ORDER

I. Introduction

This case concerns the obligation of A D. S (Obligor) for the support of L E. J (DOB 00/00/77).

The Child Support Services Division issued an administrative child support order dated April 23, 1991, setting support in the amount of $792 per month effective May 1, 1991, with pre-order arrears in the amount of $39,154 for the period from April 1, 1985 through April 30, 1991.

Mr. S filed a request to vacate the order on November 29, 2004. The Child Support Services Division granted the request and issued a new administrative support order setting arrears in the amount of $5,898.22 for the period from April 1, 1985, through June 30, 1996. Mr. S appealed and requested a formal hearing. The administrative law judge conducted a telephonic hearing on June 14, 2005. Mr. S appeared and was represented by his attorney, Jody Davis. Andrew Rawls, Child Support Specialist, represented the division.

Based on the preponderance of the evidence in the record and the testimony at the hearing, arrears are set in accordance with the division's Exhibit 29.

II. Facts

A S was born in 1952. He is a member of no name Corporation and the no name Village Corporation. As a young man, Mr. S was married to K S. Three children were born of the marriage, on 00/00/72, 00/00/74, and 00/00/77. A few months later, on 00/00/77, Mr. S's son L was born to Y J.

[A] By drafting error, two dates in the support order were mistaken. The only changes to this decision are the changes to those dates, **shown in bold**, in the child support order, at page 6 of this decision.

In March, 1984, the superior court issued a child support order directing Mr. S to pay $150.00 per month per child as child support for the three children of his marriage, for a total obligation of $450.00 per month. Under the division's administrative support order, Mr. S is liable for any arrears on his child support obligation for L J that accrued from April 1, 1985 through June 30, 1996, when his child support obligation for L terminated.

During 1985-1996, Mr. S lived most of the time in no name. No name is a small town on the no name Highway, with limited job opportunities. Mr. S was generally unemployed, except during 1989-90, when he worked on the oil spill cleanup, and periodic short-term work as general laborer. He has supplemented his limited cash income with subsistence activities.

From 1985 through 1995, Mr. S's total income, including his Alaska Permanent Fund dividend, wages, and no name Native corporation distributions (showing the source of any annual income in excess of $1,000 for the year) was as follows: 1985, $2,421;[1] 1986: $3,866;[2] 1987, $7,399 (seasonal general labor);[3] 1988, $3,894 (seasonal general labor);[4] 1989, $16,563 (oil spill cleanup);[5] 1990, $15,613 (oil spill cleanup, unemployment compensation);[6] 1991, $6,892 (unemployment compensation, no name dividend);[7] 1992, $6,853 (wages, unemployment compensation);[8] 1993, $2,197;[9] 1994, $7,502 (wages, unemployment compensation);[10] and 1995, $4,083.[11] His income was above the federal poverty line in 1987,[12] 1989,[13] and 1990, and was below the federal poverty line in 1985, 1986, 1988[14] and 1991-1995.

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1 Ex. 8. Mr. S was a student at the University of Alaska, Anchorage during this year. *Id.*

2 Ex. 9. Mr. S was a student at the University of Alaska, Anchorage during this year. *Id.*

3 Ex. 10; Ex. 29, p. 1. According to Exhibit 11, p. 4, Mr. S's adjusted gross income in 1987 was $8,244.21.

4 Ex. 11; Ex. 29, p. 2. According to Exhibit 11, p. 8, Mr. S's adjusted gross income in 1988 was $4,635.24.

5 Ex. 12, p. 2; Ex. 29, p. 3.

6 Ex. 13; Ex. 29, p. 4.

7 Ex. 14; Ex. 29, p. 5.

8 Ex. 15; Ex. 29, p. 6.

9 Ex. 16; Ex. 29, p. 8.

10 Ex. 17; Ex. 29, p. 9.

11 Ex. 18. Exhibit 29, p. 10 shows income of $903, which is less than the Alaska Permanent Fund dividend for 1995.

12 Ex. 29, p. 2.

13 Ex. 29, p. 3.

14 Ex. 29, p. 1.

Mr. S made payments (by garnishment) to his prior children under the superior court support order in 1987 ($59.02 per month),[15] 1988 ($127.09 per month),[16] 1989 ($80.66 per month),[17] 1990 ($206.98 per month),[18] 1991 ($180.95 per month),[19] 1992 ($86.31 per month),[20] 1993 ($36.37 per month),[21] 1994 ($23.38 per month),[22] and 1995 ($57.23).[23]

Based upon his actual income, and including deductions for payments for the support of prior children, as well as other standard deductions, Mr. S's monthly child support obligation is as follows: 1985 and 1986, $25; 1987, $101;[24] 1988, $40; 1989, $212;[25] 1990, $196;[26] 1991, $79;[27] 1992, $89;[28] 1994, $112;[29] 1995 and 1996, $50.[30]

III. Discussion

The division and Mr. S are in agreement that the child support obligation should be based on Mr. S's actual income, not on imputed income or potential income. Furthermore, Mr. S has not disputed the division's calculations of his actual income. In addition, the division has conceded that Mr. S should be provided with a credit for support paid to prior children under his superior court support order and Mr. S has not contested the division's calculation of the amount of the credit, as shown on Exhibit 29. Finally, the division has provided a minimum support order for the four years (1985, 1986, 1988 and 1995) when Mr. S's total income was below the poverty line and his standard support obligation as calculated by the division in Exhibit 29 (20% of adjusted income) was less than the minimum support obligation in effect for that year. All that remains in dispute is whether Mr. S is entitled to a minimum order for the three years

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15 Ex. 29, p. 2.
16 Ex. 29, p. 2.
17 Ex. 29, p. 3.
18 Ex. 29, p. 4.
19 Ex. 29, p.5.
20 Ex. 29, p. 6.
21 Ex. 29, p. 8.
22 Ex. 29, p. 9.
23 Ex. 29, p. 10.
24 Ex. 29, p.1.
25 Ex. 29, p. 3.
26 Ex. 29, p. 4.
27 Ex. 29, p. 5.
28 Ex. 29, p. 6.
29 Ex. 29, p. 9.
30 Ex. 27, p. 4; Ex. 29, p. 10. The division has twice calculated Mr. S's 1995 support obligation as $50, although his income that year as shown on Exhibit 18 may support a higher amount at the standard calculations.

(1991, 1992, and 1994) when his income was below the federal poverty line, but his standard support obligation (20% of adjusted income) was greater than the minimum support obligation. The amount in dispute is $1,560, plus interest.[31]

A. Amended Civil Rule 90.3(c)(1) Applies.

Prior to April 15, 2005, an income below the poverty level was typically considered grounds for a minimum support order.[32] However, effective April 15, 2005, income below the poverty level is no longer treated as a separate ground for a finding of manifest injustice.[33] Under current law, all of the circumstances are considered, without any special consideration of the fact that income is below the poverty level.[34]

Mr. S argues that the prior rule should be applied to reduce his child support obligation for 1991, 192 and 1994 to the minimum because (1) a copy of former Civil Rule 90.3 was provided to Mr. S with the May 2, 2005 Notice of Hearing; and (2) the current rule should not apply retroactively, because (a) "it is a material change and not just a refinement or clarification of the old rule", and (b) retroactive application in this case is "unfair and inequitable" because other cases, previously closed, will escape retroactive application of the new version of Civil Rule 90.3.

That Mr. S was provided a copy of the version of the rule in effect prior to April 15, 2005 on May 2, 2005 does not warrant application of the older version of the rule to his case. To the extent that Mr. S suggests that the division is estopped, there is no showing of detrimental reliance, which is required for application of the doctrine of equitable estoppel.[35] Nor does the provision of the prior version of the rule by the Office of Administrative Hearings constitute an implied adoption of the prior version by the Division of Child Support Services.

With respect to retroactive application of the current version of the rule, the commentary to Civil Rule 90.3 states that "[w]hen establishing support for a period of time before a…petition was served, the court should apply the most current version of the

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[31] For the three years at issue, 1991, 1992, and 1994, the division's Exhibit 29 calculates support at $79, $89 and $112 per month respectively, or $29, $39 and $62 per month, respectively, more than the minimum. The amount in dispute is $1,560 [($29 x 12) + ($39 x 12) + ($62 x 12)].

[32] *See former* 15 AAC 125.075(a)(1), *former* Civil Rule 90.3(c)(1)(B), *both repealed eff.* April 15, 2005.

[33] *See*, Register 174, *amending* 15 AAC 125.075 *eff.* April 15, 2005; Supreme Court Order 1526, *amending* Civil Rule 90.3 *eff.* April 15, 2005.

[34] *Id.*; *see* 15 AAC 125.080.

[35] *See, e.g.*, Crum v. Stalnaker, 936 P.2d 1254 (Alaska 1997).

rule, except for portions of the rule that state dollar amounts. This is because Civil Rule 90.3, unlike most other court rules, is interpretive. The most current version of the rule is presumably the most refined interpretation to date…."[36]

The only portion of either version of Civil Rule 90.3(c)(1) that "state[s] dollar amounts" is the portion that sets the minimum order as $50. The federal poverty level, which changes over time, was referenced in the former version of the rule, and arguably that portion of the rule indirectly "state[s] dollar amounts," since the federal poverty level is an amount in dollars. But that portion of the prior version of Civil Rule 90.3(c)(1) (which not part of the current rule) was applied retroactively: the division used the version of the federal poverty line in effect at the time of the obligation for all its calculations. The portion of the current rule that Mr. S argues should not be retroactively does not reference the federal poverty line at all, and thus the commentary does not preclude its retroactive application. Consistently with the commentary, the elimination of the federal poverty line as independent grounds for issuing a minimum order should be given retroactive application.

This is not an unfair or inequitable result: it is inherent in the retroactive application of new rules of law that pending cases are treated differently than closed cases. Retroactive application of a new rule of law means that it applies to cases pending on the date the new rule comes into effect, not that previously closed cases may be reopened and relitigated under the newly announced rules. In this particular case, the reason that the current version of Civil Rule 90.3(c)(1) will apply is that Mr. S did not contest the initial support order. It is Mr. S's own delay that has resulted in the application of the new rule in his case. In that light, it is neither unfair nor inequitable that the new rule should be applied.

B. Manifest Injustice Was Not Established.

The support obligation may be reduced if the amount as calculated under 15 AAC 125.070 would result in a manifest injustice due to unusual circumstances.[37] The obligor must provide clear and convincing evidence of manifest injustice.[38] In determining whether manifest injustice exists, all of the relevant circumstances should be

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36 Civil Rule 90.3 Comentary at E(2).

37 15 AAC 125.075(a)(2).

38 15 AAC 125.075(a); *see* Civil Rule 90.3(c)(1).

considered.[39] Because the child support obligation as calculated under the formula is presumptively reasonable, there is no need to justify a decision not to depart from them.[40]

Mr. S asserts that there is good cause to reduce the support obligation to the minimum because "there simply wasn't enough work that would allow him to support his three older children and his one younger child and himself," and because he worked when work was available. He argues that the support collected in this case will not benefit his children, because it is reimbursement for public assistance benefits for a child who has long since reached the age of majority.

Mr. S's argument regarding his inability to find work would effectively nullify the revision of Civil Rule 90.3(c)(1). His argument that lowering the support obligation will increase the chance it is collected could be applied to anyone. Mr. S has not provided clear and convincing evidence of manifest injustice.

IV. Conclusion

Mr. S's child support arrears should be calculated at the amounts shown in the division's revised calculations, contained in Exhibit 29.

CHILD SUPPORT ORDER

1. A S is liable for any arrears accrued from **April** 1, 1985-December 31, 1986, at the rate of $25 per month; from January 1-December 31, **1987**, at the rate of $101 per month; from January 1-December 31, 1988, at the rate of $40 per month; from January 1, 1989-December 31, 1989, at the rate of $212 per month; from January 1, 1990-December 31, 1990, at the rate of $196 per month; from January 1, 1991-December 31, 1991, at the rate of $79 per month; from January 1, 1992-December 31, 1992, at the rate of $89 per month; from January 1, 1993-December 31, 1993, at the rate of $50 per month; from January 1, 1994-December 31, 1994, at the rate of $112 per month; from January 1, 1995-December 31, 1995, at the rate of $50 per month; from January 1, 1996-June 30, 1996, at the rate of $50 per month.

DATED: November 3, 2005

Signed
Andrew M. Hemenway
Administrative Law Judge

39 *See* 15 AAC 125.080.
40 Willis v. State, Department of Revenue, 992 P.2d 581 (Alaska 1999).

ADOPTION

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Andrew M. Hemenway, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of A D. S 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 ten (10) days after adoption of the written decision of the hearing officer, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief and, if mailed, must be addressed to: 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 thirty (30) days of the date of this decision.

DATED: November 3, 2005

Signed
Andrew M. Hemenway
Administrative Law Judge

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