

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

IN THE MATTER OF:)

J. P. O.)

OAH No. 06-0037-CSS

CSSD No. 001137748

DECISION AND ORDER

I. Introduction

This matter involves the Obligor J. P. O.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on December 21, 2005. The Obligee child is I., DOB 00/00/05.

The formal hearing was held on February 2, 2006, and February 28, 2006. Both Mr. O. and Ms. M. appeared in person. Mr. O. was assisted by his guardian/payee, Ms. Peggyjo Whittington. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on March 31, 2006.

Kay L. Howard, Administrative Law Judge in the Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, I have concluded Mr. O.'s appeal should be granted and his child support should be set at \$50 per month pursuant to the "good cause" provisions of Civil Rule 90.3(c).

II. Facts

A. History

On November 9, 2005, CSSD served an Administrative Child and Medical Support Order on Mr. O.¹ He requested an administrative review.² Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on December 21, 2005, that set Mr. O.'s child support at \$121 per month, with arrears of \$726 for the period from July 2005 through December 2005.³ Mr. O. filed an appeal on January 3, 2006.⁴

¹ Exh. 5.

² Exh. 6.

³ Exh. 9.

⁴ Exh. 10.

B. Material Facts

Mr. O. and Ms. M. are the parents of I., DOB 00/00/05. Ms. M. lives in Anchorage with I., and Mr. O. has visitation with I. approximately once per week.

Mr. O. lives in the Mat-Su valley with his wife and their two children, both of whom are older than I. One of Ms. O.'s children from a different relationship also lives with them. Both Mr. O. and his wife are disabled and currently receive disability benefits and adult public assistance as their only sources of income. Their children receive public assistance. Mr. O.'s finances are handled by his guardian/payee, Ms. Peggyjo Whittington. She receives Mr. O.'s checks and pays his financial obligations.

On March 6, 2006, a hearing was held by the Social Security Administration on the issue of whether I. qualifies for children's insurance benefits (CIB) based on Mr. O.'s disability. It appears she will qualify, but the amount of the benefit is not known as of the date of this decision. I.'s payments will be retroactive to the date of her birth.

CSSD recommended that Mr. O.'s child support be set at \$50 per month, the statutory minimum pursuant to Civil Rule 90.3(c).

III. Discussion

This appeal raises the question whether Mr. O.'s child support should be varied from the amount calculated pursuant to Civil Rule 90.3 based on financial hardship and unusual circumstances. Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated from his or her "total income from all sources." Based on his current income figures, Mr. O.'s child support for 2005 is correctly calculated at \$121 per month for one child. It is from this calculation that Mr. O.'s request for a variance based on financial hardship should be considered.

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 . . .
[5]

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

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. O. proved by clear and convincing evidence that manifest injustice would result if his child support obligation were not reduced from the amount calculated to \$50 per month.

Mr. O. and his wife are both disabled and receive disability benefits and adult public assistance. They support three children in their home. Mr. O.'s income and bills are handled by a guardian/payee, who indicates he cannot afford to pay \$121 per month and still meet all of his financial obligations. Also, because he is disabled, Mr. O. has little hope of obtaining any employment to support his family in place of receiving disability benefits.

I. now appears to qualify for children's insurance benefits, which, when payments begin, will be retroactive to her date of birth. Also, it is likely that the amount of her benefit will exceed the \$121 per month amount at which CSSD initially calculated Mr. O.'s child support obligation. Thus, granting the request for a reduction in his child support amount will not have a negative financial impact on I.

Therefore, in the presence of unusual circumstances, and clear and convincing evidence of manifest injustice, I find Mr. O.'s child support should be set at \$50 per month for one child for all the time periods at issue. I find this amount constitutes a reasonable measure of Mr. O.'s ability to pay support under Civil Rule 90.3(c) and I conclude it should be adopted.

IV. Conclusion

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

⁵ Civil Rule 90.3(c)(1).

V. Child Support Order

1. Mr. O. is liable for child support in the amount of \$50 per month for the period from July 2005 through April 2006, and ongoing.

DATED this 20th day of April, 2006.

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. 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 4th day of May, 2006.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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