

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

IN THE MATTER OF)	OAH No. 06-0288-CSS
M. G.)	CSSD No. 001124944
)	
_____)	

DECISION AND ORDER

I. Introduction

On May 2, 2006, a formal hearing was held to consider the child support obligation of M. G. (Obligor) for the support of his child, K. (Obligee).¹ Mr. G. appeared. The Custodian, S. R. H., also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on May 23, 2006.

This case is Mr. G.'s appeal of the Division's upward modification of his child support order. Having reviewed the record in this case and after due deliberation, I conclude that Mr. G.'s modified ongoing child support should be set at \$204 per month effective June 1, 2006 in order to prevent injustice.

II. Facts

A. History

Mr. G.'s monthly child support obligation was \$236 per month. The Division reviewed this child support order at Mr. G.'s request. The Division issued a Notice of Petition for Modification on February 7, 2006.

The Division issued a Modification of Administrative Support Order on April 14, 2005. The Division determined that Mr. G.'s ongoing monthly child support should be increased to \$445 per month. Mr. G. requested a formal hearing. The Division misplaced this appeal and did

not forward it to OAH until April 11, 2006.

B. Findings

After the hearing, the Division filed new calculations as requested. One of these calculations results in monthly child support of \$363.² Based on the evidence in the record, I conclude that it is more likely than not that this calculation and the income amounts in this calculation are correct.³ I also conclude that Mr. G. has presented clear and convincing evidence that it would be manifestly unjust to set his ongoing child support in that amount.

III. Discussion

Alaska Civil Rule 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."⁴ A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."⁵ Good cause includes a finding of unusual circumstances.⁶

The Division filed a Post Hearing Brief with new calculations. One calculation was based on Mr. G.'s estimated military benefits and pay as of June 1, 2006.⁷ That calculation resulted in a monthly ongoing child support amount of \$363.⁸ The Division, however, argued that Mr. G.'s current child support order for K., which is set at \$236 per month, should be modified and increased to \$428 per month based on Mr. G.'s income in March of 2005, which is right after the modification petition was issued.

To understand the unusual circumstances of this case, it's essential to understand the full extent of Mr. G.'s child support cases, and to consider his total obligation under all of those cases combined. Mr. G. has four children with four different mothers and four separate child support orders issued by four different jurisdictions. Mr. G. is listed as the non-custodial parent in the following four orders with the following monthly ongoing child support obligations:

- \$236 per month, the monthly amount currently set for K. in this order, which was established administratively by the Division in Alaska.
- \$500 per month for an older child, M., established by an Alaska court order.

¹ The hearing was held under Alaska Statute 25.27.190.

² Ex. 8.

³ Recording of Hearing & Ex. 8.

⁴ Alaska Civil Rule 90.3(a)(1)

⁵ Alaska Civil Rule 90.3(c).

⁶ Civil Rule 90.3(c)(1)(A).

⁷ Division's Post Hearing Brief.

- \$326 per month for a younger daughter, A., who is two years old, established by an Oklahoma state court order.
- \$336 for a daughter, M., who is one year old, established by a Texas state court order.

The above amounts are for Mr. G.'s ongoing child support amounts only, and do not include his monthly obligation to pay down his ever-increasing arrears. This modification action of the child support order for K. is only one of Mr. G.'s four child support cases. Strict adherence to the support guidelines of Civil Rule 90.3(a) for so many cases with the same non-custodial parent and different custodial parents would result in a total support obligation far in excess of anything reasonable or collectable, and would clearly work an injustice.

For example, looking at all four cases, suppose that each of four children was a separate Alaska case and Civil Rule 90.3(a) was used to set ongoing child support for each case. Set aside the issue of how Mr. G. will pay off his current arrearages. As a single child on a child support order, each dependent would be entitled to 20% of Mr. G.'s adjusted income, as per Civil Rule 90.3(a). The first child would get 20% of 100% of the income. The second child would then get 20% of the 80% that is left (assuming Mr. G. received full credit for his support obligations for older children). The third child would get 20% of 64% of Mr. G.'s adjusted income; finally the fourth child would get 20% of 51. The balance would leave Mr. G. with about 41% of his adjusted income. Even if Mr. G. did not have any child support orders, his take home pay would be less than 80% his adjusted income because he is in the military, and therefore more than 20% of his adjusted income is housing and food benefits that may not be paid in cash.⁹ With his child support calculated under Civil Rule 90.3(a), he would be left with less than 21% of his adjusted income to live on in addition to his food and housing benefits, or about \$6000 per year. Regardless of the fact that this balance would be below what he could live on and that his total ongoing child support would be in excess of what could be garnished from his pay,¹⁰ such strict adherence to the formula under Civil Rule 90.3(a) also would result in widely differing support obligations for the children.

⁸ Ex. 8.

⁹ See Ex. 8. Mr. G.'s Military Non-income Pay is \$5,746.44.

¹⁰ The jurisdictions seeking to collect child support will probably be able garnish no more than a total of 40% of Mr. G.'s net pay. See for example Alaska Regulations 15AAC 125.540(c) & 15AAC 125.571. The military also has its own similar independent limitations on garnishment of a service member's pay.

Another issue to consider is that Civil Rule 90.3 allows for credits for support paid for older children of prior relationships. Because Mr. G. has not made full payments on any of his four cases, he is not entitled to full credits for any of his cases. He would never receive full credit under Civil Rule 90.3(a) for his ongoing obligations for his older children because he would be unable to pay them in full until after they became arrears. Mr. G. or the custodial parents, the Division and the courts could have to go through the administrative process of recalculating multiple support orders every time Mr. G. made, or did not make, different payments on prior cases. In addition to the unfairness to Mr. G., the administrative and accounting work, and disruption in payment schedules, could be enormous. A better solution would be to set a support obligation that is independent of constant adjustments for credits that may or may not be paid on prior cases.

All of the above reasons, I believe, are clear and convincing evidence, as required under Rule 90.3(c) of the need to vary the support obligations in Mr. G.'s cases in order to prevent injustice.

To avoid injustice, Mr. G.'s cases should be treated as if they were one family, the way that Civil Rule 90.3(i) instructs for setting child support in third-party custody situations. If all four children were part of one family, with one custodial parent and one support order, Mr. G.'s obligation would be set at 36% of his adjusted income. I believe that is the correct approach in this case, with that 36% obligation then divided by four to establish the amount that should be awarded for each of Mr. G.'s children. I have jurisdiction only over K.'s order, but it is to be hoped that Mr. G. will be able to persuade the courts that have jurisdiction over his other three orders to take the same or a similar approach in modifying his other ongoing child support orders.

An argument could be made that this result is unfair to the mothers of Mr. G.'s children because the resulting child support amounts will be far less than half of the cost of providing for his children. However, Alaska Civil Rule 90.3(a)(2) appears to recognize the hard reality that it becomes progressively less just and more counter-productive to attempt to charge a noncustodial parent much more than 33% of his or her adjusted income for ongoing child support. This recognition is reflected in the Rule's reduction of the increased additional support for each child after the third child to a mere 3% of the obligor's adjusted income.

Moving to the next issue, the question is what number should be multiplied by 36% to arrive at Mr. G.'s total support obligation. Based, the record in this case, Mr. G.'s current adjusted gross income as of June 1, 2006, is \$28,458.36. That amount is calculated by taking the \$21,776.76 in adjusted gross income calculated at exhibit 3, and adding back in the \$556.80 per month for the deduction of child support for his older child. At \$28,458.36, applying the calculation under Civil Rule 90.3(a) for a family of four children, I arrive at a support obligation of \$853.75 per month which is 36% of is adjusted monthly income. Dividing that by the four children, I arrived at a per-child support obligation of \$204.

Mr. G.'s income as of June 1, 2006, rather than his income as of March 2005 should be used to calculate his ongoing child support because that information is more up-to-date and his ongoing child support should be based on his present and future earnings rather than his prior earnings.¹¹

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.¹² The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.¹³ Monthly child support of \$204 would be about four dollars less than a 15 percent decrease from the current order of \$236 per month.

The "15% rule" is a rule of *materiality*, not a definition of what constitutes a change of circumstances. There must be a change of circumstances, either factual or legal. If such exists, whether the change is material can be gauged by asking if it would result in a 15% change in the level of support. Where the change is factual, the same method of calculating support must be applied to the old and new facts. Otherwise, the materiality of the factual change cannot be measured.¹⁴

In this case, the change of circumstances is the addition of new child support obligations, which require the adoption of a new methodology for setting Mr. G.'s child support. For this reason, even though the resulting monthly amount in this case is slightly less than a 15% change from his current order, the change is material because of the importance of potential cumulative impact of this new methodology if it is applied to all of Mr. G.'s orders. This small decrease is

¹¹ Child support should be calculated based on the income that will be earned when the support is to be paid. Alaska Civil Rule 90.3, Commentary III E.

¹² Alaska Civil Rule 90.3(h)(1).

¹³ Alaska Civil Rule 90.3, Commentary X.

¹⁴ *Bunn v. House* 934 P.2d 753, 758 (Alaska,1997).

also material because Mr. G.'s finances are so strained that almost any reduction in his monthly ongoing child support obligations is important enough to be material.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition.¹⁵ There is good cause to move the modification's effective date forward to June 1, 2006, in this case. The petition was served in February of 2005, but Mr. G.'s income changed between that time and June 1, 2006. Furthermore, moving the effective date forward will decrease the impact of the modification on the custodial parent's finances.

IV. Conclusion

I conclude that the request for modification of Mr. G.'s child support should be granted. I also conclude that Mr. G.'s modified ongoing child support should be set at \$204 per month for one child, effective June 1, 2006.

V. Child Support Order

1. The Division's Modified Administrative Support and Medical Support Order issued on April 14, 2005 is overturned.
2. The Petition for Modification of Administrative Support Order is GRANTED.
3. Mr. G.'s modified ongoing child support amount will be set at \$204 per month, effective June 1, 2006.
4. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for K.

DATED this 27th day of September, 2006.

By: *Signed* _____
Mark T. Handley
Administrative Law Judge

¹⁵ Alaska Regulation 15 AAC 125.321.

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 Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 19th day of October, 2006.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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