

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

IN THE MATTER OF:)

J. L. W.)

OAH No. 06-0369-CSS

CSSD No. 001137230

DECISION AND ORDER

I. Introduction

This matter involves the Obligor J. L. W.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 21, 2006. The Obligee child is K., DOB 00/00/04.

The formal hearing was held on June 7, 2006. Mr. W. appeared in person; the Custodian, M. J., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on June 7, 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. W.'s appeal should be denied; CSSD correctly calculated his child support obligation.

II. Facts

A. History

Ms. J. began receiving public assistance benefits on K.'s behalf in July 2004.¹ Her state of residence submitted an application for services to CSSD on May 31, 2005.² Mr. W.'s paternity of K. was established by genetic testing and a court order issued on December 23, 2005.³

On February 9, 2006, CSSD served an Administrative Child and Medical Support Order on Mr. W.⁴ He requested an administrative review.⁵ Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on April 21, 2006, that set

¹ Exh. 8 at pg. 9.

² Exh. 4 at pg. 1.

³ Exhs. 1 & 2.

⁴ Exh. 5.

⁵ Exh. 6.

Mr. W.'s child support at \$511 per month, with arrears of \$8476 for the period from July 2004 through April 2006.⁶ Mr. W. filed an appeal on May 12, 2006.⁷

B. Material Facts

Mr. W. is a vehicle maintenance mechanic in the Air Force. He holds the rank of E-3 with approximately two years of service.⁸ In 2004, Mr. W. had income lower than the poverty level, so CSSD set his child support for that year at the minimum allowable amount of \$50 per month.⁹ In 2005, Mr. W. received \$17,474.40 in base pay and \$15,706.08 in non-income entitlements, including housing, food and cost-of-living (COLA) benefits, for total income of \$33,180.48.¹⁰ The child support amount calculated from this figure is \$513 per month.¹¹

Mr. W. is currently married but he is in the process of divorcing his wife, K. They are separated and he still lives on base in family housing, which he is not allowed to leave until the divorce is final. Mr. W. qualifies for and receives a housing allowance (BAH) of \$1256 per month, which is paid to the base contract housing authority for rent. In addition to his rent, Mr. W. has regular monthly expenses of \$400 for food; \$30 for telephone; \$50 for a cell phone; \$75 for cable TV and Internet; \$400 for the payment on a 1997 Chevrolet Silverado; \$300 for gasoline; \$50 for maintenance; \$250 for insurance; \$200 for entertainment; \$100 for personal care items; \$120 for tobacco; \$77 for the payments on two credit cards; and \$300 for spousal support.

III. Discussion

A. Mr. W.'s Income

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." Mr. W. objects to CSSD including the \$1256 housing allowance in his income for the child support calculation. He argues that he has to live on base until his divorce is final and that he does not receive the housing allowance -- it is paid directly to the housing authority for rent. In response, CSSD asserts Mr. W.'s housing allowance

⁶ Exh. 8.

⁷ Exh. 10.

⁸ Exh. 4 at pg. 3.

⁹ Exh. 9.

¹⁰ Exh. 4 at pg. 4.

¹¹ CSSD's Amended Administrative Child Support and Medical Support Order states that Mr. W.'s child support amount was calculated at \$511 per month, but this appears to be a typographical error because no other calculation is in the record. *See* Exh. 4 at pg. 4.

must be used in the child support calculation. Also, CSSD argues that Mr. W. can petition for a modification when his divorce is final and he moves out of government housing.

Based on his current income figures, Mr. W.'s child support obligation is correctly set at \$50 per month for 2004, and \$513 per month for 2005 and 2006.

B. Financial Hardship

Mr. W. requested a reduction in his child support obligation based on a financial hardship. 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 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^[12]

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).¹³

Based on the evidence presented, I find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. W. did not prove by clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3 is not varied. Mr. W.'s financial situation is difficult because he has to live on base until his divorce is final and his housing allowance is relatively high, but there are no "unusual circumstances" present to warrant varying his child support calculated under Civil Rule 90.3 for K.

Mr. W.'s monthly expenses are much higher than his income, even without the inclusion of the housing allowance in his income. Even if his child support amount were reduced to just \$50 per month, he still would not be able to pay all of his bills. In short, Mr. W. is over-extended by several hundred dollars each month. In order for him to be able to pay his child support

¹² Civil Rule 90.3(c)(1).

¹³ See Civil Rule 90.3, Commentary VI.E.1.

obligation and meet his other financial obligations, Mr. W. will have to make some difficult budgeting decisions. Simply having monthly living expenses or debts that exceed a parent's net income does not automatically entitle him or her to a reduction in the child support calculation.¹⁴ Mr. W. has a duty to support K., based on his total annual income, and this duty takes priority over other debts and obligations.¹⁵

Thus, in the absence of clear and convincing evidence of manifest injustice, I cannot conclude that good cause exists to vary Mr. W.'s child support amount as calculated by CSSD. I find CSSD correctly calculated Mr. W.'s child support obligation at \$513 per month, and conclude that amount should be adopted.

IV. Conclusion

Mr. W. did not meet his burden of proving by a preponderance of the evidence that CSSD's calculations were incorrect. CSSD correctly calculated Mr. W.'s child support obligation pursuant to Civil Rule 90.3, as set forth above, and I conclude the amounts calculated should be adopted.

V. Child Support Order

- Mr. W. is liable for child support in the amount of \$50 per month for the period from July 2004 through December 2004; and \$513 per month for January 2005 through June 2006, and ongoing.

DATED this 23rd day of June, 2006.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁴ Civil Rule 90.3, Commentary VI.B.4.

¹⁵ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

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 13th day of July, 2006.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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