

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

IN THE MATTER OF )  
 )  
 J. C. )  
 )  
 \_\_\_\_\_ ) Case No. OAH-06-0819-CSS  
 CSSD Case No. 001049247

**DECISION & ORDER**

**I. Introduction**

The obligor, J. C., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on November 20, 2006. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on January 8, 2007. Mr. C. appeared by telephone, as did the custodian, P. M. Andrew Rawls represented CSSD. The child is C. C. (DOB 00/00/94). The administrative law judge vacates the modified order in favor of the existing order, under which support will remain at \$50.00 per month.

**II. Facts**

Mr. C. lives in Anchorage and works as a detailer for a car and truck dealer, where he earns \$9.35 per hour. Although he is entitled to work up to 40 hours per week, Mr. C. relies on the bus for transportation, and for this reason he is not always able to work a full eight hours per day; his weekly hours vary between 35 and 40 hours. Mr. C. has been working at this job for about four and a half years.

Mr. C. is a single parent with two children at home, both of whom are younger than C. Mr. C. does not receive any support from the children's mother. Mr. C. lives in an apartment, for which he pays \$825 per month. Rent includes all utilities except telephone, for which Mr. C. pays \$30-\$35 per month, and cable, for which he pays \$71 per month. Mr. C. also pays \$15 per month for his cell phone. His only other listed expenses are food at \$350-\$400, \$50 for a bus pass, and \$50 for cigarettes. Mr. C. receives food stamps, but no other public assistance.

As can be seen, Mr. C.'s expenses roughly equal his pay, even before taking into account a support obligation of any amount and the need to buy clothes or any other items for his two younger children.

C. lives with her grandmother, P. M., in Kotzebue. Ms. M. testified about her financial situation, which can be summed up by noting that Ms. M. has no more extra money to spare than Mr. C. Ms. M. does collect public assistance on behalf of C., however, and for that reason the amount of support that Mr. C. is ordered to pay is unlikely to have any effect on the amount Ms. M. receives for C.'s support.

### **III. Discussion**

A child support obligation is generally calculated as a percentage of the obligor parent's income for the year in which the support is paid, calculated according to a formula contained in Civil Rule 90.3. Child support can be varied from the standard formula if unusual circumstances would cause manifest injustice to result from adherence to the standard formula.<sup>1</sup>

Generally, Civil Rule 90.3(a) does not allow consideration of the costs of supporting younger children when calculating an obligor's support obligation to an older child. In most cases, this fact may have a slight effect on the resources available to the younger children, but it would not normally cause them a significant hardship.

Mr. C.'s situation is unusual. In spite of working full time at a steady job, Mr. C.'s income is rather lean. Because he relies on public transportation and is raising two children, Mr. C. does not have the option of simply working more hours. His job does not allow for overtime, and sometimes his hours are trimmed by the schedule of the bus.

Besides supporting himself, Mr. C. is raising two children with no assistance from anybody. Mr. C. does not receive child support from the children's mother, and she does not provide any other kind of assistance with the children. While he receives food stamps, Mr. C. does not receive any public assistance for the children. Mr. C.'s budget is so tight that any additional strain on it will result in the loss of basic needs for the two younger children. Mr. C. does not spend any money on any items that could be considered unnecessary except for his cigarettes and his cable TV. Even if he eliminated these expenses completely, the proposed amount of support would leave his other children wanting for their basic needs. To the extent he spends on anything unnecessary, Mr. C. makes up for it by not owning a car.

When considering whether to vary the amount of support from the standard formula, it becomes appropriate to also look at the custodian's financial situation, as well as the obligor's. Ms. M.'s situation is nearly as tight as Mr. C.'s. However, this case is also unusual in that Ms. M. receives public assistance on C.'s behalf, and therefore any increase in Mr. C.'s support

obligation will be used first to reimburse the state for public assistance. At this time, neither C. nor Ms. M. would receive any benefit from an increase in Mr. C.'s support obligation. For this reason, CSSD does not oppose any variation from the Civil Rule 90.3(a) formula in this case.

#### **IV. Conclusion**

A variation from the standard Civil Rule 90.3(a) formula for calculating support is necessary in this case to avoid manifest injustice to Mr. C.'s two younger children. The modified order should be vacated in favor of the existing order, under which support has been set at \$50 per month for one child.

#### **V. Order**

IT IS HEREBY ORDERED that the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on November 20, 2006 be VACATED. Support will continue under the previous existing order at \$50 per month for one child.

DATED this 12<sup>th</sup> day of January, 2007.

By: Signed \_\_\_\_\_  
DALE WHITNEY  
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 7<sup>th</sup> day of February, 2007.

By: Signed  
Dale Whitney  
Administrative Law Judge

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