

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

In the Matter of)	
)	
E X)	OAH No. 18-0231-CSS
<hr style="width:45%; margin-left:0"/>)	Agency No. 001207743

DECISION AND ORDER

I. Introduction

E X appeals the Child Support Services Division’s modification of his child support obligation for his child Z, aged three. A motorcycle accident in July 2017 has left Mr. X paraplegic and unable to work. His only income is a veteran’s administration disability benefit. The division granted Mr. X’s request for a modification of his child support obligation, reducing it from \$528 to \$325 a month. Mr. X appealed, requesting an exception to application of the Civil Rule 90.3 child support formula reducing his obligation to \$50 a month, the minimum amount that can be ordered.

Unusual circumstances exist in this case, making application of the current Civil Rule 90.3(a) child support formula unjust. However, considering the custodial parents income and the child’s needs together with Mr. X’s unusual circumstances, a minimum order is not appropriate. Mr. X’s child support obligation should be \$143 a month.

II. Facts

Mr. X is a veteran. His military service left him with service-connected health conditions, for which he receives \$1,626 a month from the Department of Veterans Affairs (VA).¹ This is currently his only income.²

Mr. X’s motorcycle collided with a truck in July 2017. Before the accident, he was employed. However, he has been hospitalized and confined to a bed or wheelchair since his accident.³ He sustained a burst fracture to his twelfth thoracic vertebra and underwent a spinal fusion. As a result, his legs are permanently paralyzed. He also suffered a head injury in the accident, and is still working on regaining mobility in his hands. He experiences spinal pain, neck pain, and migraines. He has wounds to his feet caused by being bed-bound. He was

¹ Div. Ex. 4 at 5.
² Div. Ex. 5 at 8.
³ Div. Ex. 3 - 4.

released to a Veteran's Home just four days before the hearing in this matter. Once his feet have healed, he expects to be released to the care of family members. He is currently working with the VA to arrange for a 24/7 in-home care nurse to work with his family to provide the care that he will require. He does not expect to be able to live independently, or to resume paid employment.⁴ Mr. X has applied for social security disability insurance (SSDI) benefits, but he may not have enough credits to qualify for the program.⁵

Mr. X received a small settlement related to his accident. Mr. X is involved in litigation with an insurance company related to his accident. However, the VA has a claim for reimbursement for the cost of Mr. X's medical care exceeding \$1.8 million.⁶

Mr. X has another child, older than Z. According to the State of Washington Division of Child Support, he owes \$911 a month in support for that child, but he has not been able to make payments since he was hospitalized. The account is in arrears.⁷ Mr. X also owes \$450 a month on his truck, and \$250 a month for credit card debt. He is not currently able to make these payments.⁸

Custodial parent B E lives with her significant other, Z, and her younger child. She stays home with the children and has no wage earnings. Her significant other is employed full-time as a welder. Her monthly household costs include: rent \$1,235, food at home \$600, internet and telephone \$350, car payment \$400, gas \$125, car insurance \$175, recreation \$30, personal care \$75, and credit card payments \$25. The household receives food stamp benefits.

In October 2017, Mr. X requested that the division modify his child support obligation for Z.⁹ The division notified both parents of the request for modification.¹⁰ The division recalculated Mr. X's child support obligation based solely on his income from the VA, and reduced his child support obligation for Z from \$528 a month to \$325 a month, effective November 1, 2017.¹¹ Mr. X appealed.¹²

⁴ Div. Ex. 4 at 1; Testimony of X.

⁵ Testimony of X.

⁶ Statement of Choate; X Ex. 3.

⁷ X Ex. 1; Testimony of X.

⁸ Testimony of X.

⁹ Div. Ex. 2 at 1.

¹⁰ Div. Ex. 3.

¹¹ Div. Ex. 1 at 1; Div. Ex. 5 at 8.

¹² Div. Ex. 6.

A telephonic hearing was held on March 22, 2018. Attorney Mark Choate represented Mr. X. Child Support Specialist Brandi Estes presented the division's case. Mr. X testified. Ms. E testified. The record closed on March 22, 2018.

III. Discussion

Mr. X did not contest the calculations the division used to arrive at a child support obligation of \$325 a month under the primary physical custody formula in Civil Rule 90.3(a).¹³ The division's calculation is based on Mr. X's VA benefits, with no other income and no deductions.

Mr. X argues that an exception to application of the child support formula should be made in this case. Specifically, Mr. X argues that his child support obligation for Z should be reduced to \$50 a month, due to Mr. X's medical condition and inability to work.¹⁴ The minimum child support amount that may be ordered in primary custody cases is \$50 a month.¹⁵ Because Mr. X requested the hearing in this matter, Mr. X has the burden of proving that the division's decision modifying his existing child support obligation was incorrect.¹⁶

"A parent is obligated by both statute and common law to support his or her children."¹⁷ "Parents have a paramount duty to support their children" and "a parent should not be relieved of the duty to support his or her children except under the most extreme circumstances."¹⁸ An exception to the child support formula can be made only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹⁹

A. Unusual circumstances warrant a temporary exception to strict application of the Civil Rule 90.3(a) formula

To vary from the child support formula in Civil Rule 90.3(a), two findings are required: "first, that unusual circumstances exist, and second, that these unusual circumstances make

¹³ Div. Ex. 5 at 8.

¹⁴ Div. Ex. 6.

¹⁵ Civil Rule 90.3(c)(3). For cases where the noncustodial parent has exercised extended visitation of over 27 consecutive days with the child, a further reduction is permitted under Civil Rule 90.3(a)(3) for the period of the visitation. However, given Mr. X's hospitalization, it is assumed that he has not exercised extended visitation since his accident, so \$50 remains the relevant minimum order.

¹⁶ 15 AAC 05.030(h).

¹⁷ *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987); *quoted in Crayton v. Crayton*, 944 P.2d 487, 489 (Alaska 1997), *Dundas v. Dundas*, 362 P.3d 468, 482 (Alaska 2015). See AS 25.20.030.

¹⁸ *Kestner v. Clark*, 182 P. 3d 1117, 1123 (Alaska 2008).

¹⁹ Alaska Rule of Civil Procedure 90.3(c).

application of the usual formula unjust.”²⁰ In arguing for an exception to application of the child support formula in calculating his support obligation for Z, Mr. X cited his physical condition and inability to work as unusual circumstances.²¹ Mr. X introduced over 2000 pages of medical records to support his argument.²²

The only income reflected in the division’s calculation of Mr. X’s child support obligation is Mr. X’s monthly VA benefit. These benefits are clearly countable income for purposes of the child support formula.²³ The specific inclusion of veterans benefits as well as disability benefits in the definition of income indicates that disability is in itself is not an unusual circumstance justifying an exception to the rule. VA disability benefits “are intended to support not only the veteran but the veteran’s family as well.”²⁴

In general, VA disability payments reflect the extent of a veteran’s service-related disability. However, Mr. X’s VA benefits are based on his service-connected condition, not his condition after his motorcycle accident.²⁵ Counsel for Mr. X argued that the gravity of Mr. X’s physical condition following his motorcycle accident distinguished him from other veterans receiving partial disability benefits who enjoy a greater degree of independence and may have the ability to work in some capacity.

However, the fact that Mr. X has a greater level of disability now than is reflected in his VA payments does not in itself justify a hardship exception. Other veterans have non-service-related disabilities and needs related to those disabilities for which they do not receive compensation from the VA, and the formula in Civil Rule 90.3 applies.

The arguments at the hearing might be taken to suggest that Mr. X’s paraplegia and the high level of ongoing care he will require is in itself an exceptional circumstance justifying a reduction. This argument is rejected because the circumstance is not unique; there are other obligor parents living with major physical challenges requiring ongoing care.

Mr. X argued that he needs the money he receives from the VA to help him transition into a good living situation that will give him as much independence as possible as well as good care.

²⁰ Commentary to Civil Rule 90.3 at VI.B.

²¹ The division did not challenge Mr. X’s assertion that he is unable to work and did not suggest that he was voluntarily or unreasonably unemployed. In calculating Mr. X’s child support obligation, the division did not impute income to Mr. X. *See* Civil Rule 90.3(a)(4).

²² X Exhibits 4 - 9.

²³ *See* n. 14, *supra*.

²⁴ *Rose v. Rose*, 481 U.S. 619, 631 (1987).

²⁵ Div. Ex. 4 at 5.

However, it is not clear that the VA benefits will remain Mr. X's only source of income. Also, "[t]he 'good cause' inquiry 'must focus first and foremost on the needs of the children.'"²⁶

What is unique about Mr. X's case is that his accident has created extreme financial demands, and although Mr. X is receiving disability compensation from the VA, the VA and Social Security disability compensation systems have not yet caught up with Mr. X's current condition.

Mr. X's attending physician with the VA suggested that Mr. X's service connection for his low back pain be reviewed "given his new medical developments."²⁷ To the extent Mr. X's preexisting service-related condition was exacerbated by the motorcycle accident, he may be entitled to additional compensation from the VA.

Mr. X may also be eligible for other assistance based on his disability. He has applied for the social security disability insurance program, and testified that he may not qualify because his covered work history under Social Security may not be long enough. However, even if Mr. X does not qualify for SSDI, he may still qualify for supplemental security income (SSI) based on his disability. SSI is not counted as income in the child support formula because it is means-based source of income.²⁸ It is also possible that Z would be entitled to benefits if Mr. X is eligible for SSDI or SSI.

Mr. X has been hospitalized since his motorcycle accident, and is now living in a veterans' home. His financial needs may change significantly when he is discharged from the veterans' home into the care of his family. It is not clear when that will happen.

Mr. X emphasized the existence of the VA lien for the cost of Mr. X's medical care. He also argued that the accumulation of child support arrears he is unable to pay is causing him psychological stress. Because Mr. X is still involved in litigation with insurers, there remains the possibility of recovery from that litigation. Mr. X has documented medical bills exceeding \$2 million dollars, including a VA claim for reimbursement exceeding \$1.8 million.²⁹ However, those claims may still be compromised or written off, and it is not yet clear how much Mr. X will actually be required to pay. In this connection, the commentary to Civil Rule 90.3 provides:

²⁶ *Ruppe v. Ruppe*, 358 P.3d 1284, 1291 (Alaska 2015) (quoting *Koller v. Reft*, 71 P.3d 800, 807 (Alaska 2003), quoting *Doyle v. Doyle*, 815 P.2d 366, 373 (Alaska 1991)).

²⁷ Div. Ex. 4 at 1.

²⁸ Commentary to Civil Rule 90.3 at III.A.

²⁹ X Ex. 2, 3.

“[p]rior or subsequent debts of the obligor, even if substantial, will not justify a reduction in support. The obligation to provide child support is more important than the obligation to fulfill most other obligations.”³⁰ However, the commentary does allow room for argument on this point. Here, Mr. X could not control the size of his medical bills, and the total bill for his care is exceptionally large.

The custodial parent’s income must be considered before granting an exception to the child support formula in Civil Rule 90.3.³¹ The economic circumstances of the custodial parent’s household are strained, as evidenced by the household’s participation in the food stamp program. The custodial parent in this case is not currently working because she is staying home with Z and a younger child. Z is only three years old. The custodial parent needs financial assistance to meet Z’s needs now.

Mr. X experienced a catastrophic accident resulting in a major physical disability, extremely large medical bills, and an ongoing need for a high level of care going forward. Mr. X’s financial resources have not yet caught up to his current physical condition. There is a clear disconnect between the level of Mr. X’s current VA disability benefits and the current state of his disability post-accident. Although Mr. X’s disability is expected to be permanent, the lack of correspondence between his disability and his disability compensation is likely to change, and further major changes in his income and liabilities as well as his living situation are likely.

These unusual circumstances warrant an exception to the usual child support formula, at least for a limited period. At the same time, the custodial parent’s income, the needs of the child, and the precedent indicating that VA disability benefits are intended to benefit not just the veteran but also the veteran’s family make a minimum order inappropriate in this case.

B. Limited exception under Civil Rule 90.3(c)

The division calculated Mr. X’s ongoing child support obligation at \$325 a month, based on his VA income with no deductions. Mr. X has been ordered by the Superior Court of Washington to pay \$911 in child support for a child older than Z.³² Mr. X has not paid support for the older child under the Washington order since he has been hospitalized.³³ The division’s

³⁰ Commentary to Civil Rule 90.3 at VI.B.4.

³¹ Alaska Rule of Civil Procedure 90.3(c).

³² X Ex. 1 at 12 - 21. That order, signed in 2014, required Mr. X to pay support for a two-year old child. The child in this case was born in 2015. Div. Ex. 1 at 1.

³³ Testimony of X.

calculations do not give Mr. X a deduction for child support for an older child because the current version of Civil Rule 90.3 does not permit a deduction for child support for an older child unless that child support is actually paid.³⁴

The Alaska Supreme Court recently amended Civil Rule 90.3 to remove the requirement that child support for a prior child actually be paid in order for an obligor to receive a deduction.³⁵ This change will take effect April 16, 2018. Although the rule change has not yet taken effect and thus does not govern to Mr. X's case, it provides a useful guideline for tailoring a Civil Rule 90.3(c) exception in this case.

When a deduction for child support for Mr. X's older child under the current Washington child support order is added to the calculations, Mr. X's Alaska child support obligation under the formula drops to \$143 a month for one child.

In this case, an exception to application of the formula and adjustment of Mr. X's obligation during the period November 2017 through April 2018, when Mr. X was hospitalized and dealing with the immediate aftermath of his accident, is warranted to prevent injustice. Application of the formula in the rule as amended with the deduction for child support for a prior child that has been ordered but not actually paid will reduce Mr. X's obligation during this period. Although the amount Mr. X's child support obligation for the older child may change along with Mr. X's other financial circumstances, \$143 a month appears to be a reasonable balance between the unusual circumstances that would make strict application of the current formula unjust, the circumstances of the custodial parent, and the needs of the child.

At the same time, application of the formula in Civil Rule 90.3 as amended beginning in May 2018 is sufficient to avoid injustice going forward, and a continuing exception to application the formula is not necessary.

IV. Conclusion

The division correctly calculated Mr. X's child support obligation based on the current child formula, reducing it from \$528 to \$325. Mr. X established that there are unusual circumstances in his case that justify an exception under Civil Rule 90.3(c) to application of the usual child support formula in Civil Rule 90.3(a) for the period November 2017 through April

³⁴ Civil Rule 90.3(a)(1)(C), as amended effective October 15, 2013.

³⁵ Supreme Court Order 1919, dated December 15, 2017, effective April 16, 2018. The division has proposed to adopt the amended Civil Rule by reference as part of the agency's child support guidelines. http://www.csed.state.ak.us/Regulations/Notice_Regulations_Brief-Description_1-10-18.pdf.

2018. Because of the change to the formula effective April 16, 2018, a continuing exception is not warranted in this case.

V. Child Support Order

1. Mr. X’s child support obligation for Z is \$143 a month, effective November 2017 through April 2018.

2. Mr. X’s child support obligation for Z for May 2018 and ongoing is \$143 a month.

3. All other provisions of the division’s Modified Child Support and Medical Support Order issued on February 8, 2018 remain in effect.

Dated: April 6, 2018.

Signed

Kathryn L. Kurtz
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 27th day of April, 2018.

By: *Signed*

Signature
Jessica Leeah

Name
Administrative Law Judge
Title

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