

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

In the Matter of	)	
	)	
B N. M	)	OAH No. 18-0965-CSS
<hr style="width: 80%; margin-left: 0;"/>	)	Agency No. 001224070

**DECISION AND ORDER**

**I. Introduction**

B M appeals an Administrative Review Hearing Decision and Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on September 13, 2018. The amended child support order set Ms. M’s 2018 and ongoing obligation for her son, D, at \$328 per month. It also set pre-order arrears of \$516 per month for November and December 2017. Ms. M disputed both calculations and requested a reduction based on financial hardship

This decision concludes that Ms. M’s 2017 and 2018 support amounts require some adjustment under Civil Rule 90.3(a). For 2017, it appears Ms. M’s unemployment income is lower than CSSD originally calculated. This change results in a \$509 monthly support obligation for November and December 2017. For the 2018 and ongoing amount, Ms. M provided additional information about her actual income. CSSD agreed her 2018 income warrants an adjustment to the calculation, resulting in a 2018 and ongoing child support obligation of \$277 per month. Ms. M requested a reduction due to financial hardship, but she did not meet her high burden on this issue. Her request for a variance under Civil Rule 90.3(c) is therefore denied.

**II. Facts**

*A. Material Facts*

B M lives in Anchorage. She is the biological mother of D, age 1, her only child. D has been in nonfederal foster care since November 2017.<sup>1</sup>

Since 2015, Ms. M has worked for at least ten different employers.<sup>2</sup> In 2016, she earned total employer-reported income of \$37,749.44. In 2017, the year D was born, her reported wages

---

<sup>1</sup> Exhibit 5, p. 11.  
<sup>2</sup> Exhibit 7.

were \$29,588.41.<sup>3</sup> Among her employers that year were an Employer A, an Employer B, and an Employer C.<sup>4</sup> In 2017, Ms. M also received the PFD of \$1,100 and unemployment income totaling \$5,787.<sup>5</sup> This results in total 2017 gross income of \$36,475.41.

In 2018, Ms. M worked two jobs during the first quarter of the year, earning gross wages of \$3,806.20. She also received unemployment income of \$1,596 and the PFD of \$1,600.<sup>6</sup> From April through July 2018, she worked for cash with Employer D. She worked full time and earned \$15 per hour. In total, she earned \$8,900 from this work.<sup>7</sup> Ms. M started a new job in mid-October as a shuttle driver for Employer E. She earns minimum wage and works 25 hours per week. She expects to earn approximately \$2,665 from this job through the end of the year.<sup>8</sup> Ms. M's expected 2018 gross income from all sources is likely to be \$18,567.20.<sup>9</sup>

Ms. M's living situation is in flux. She and her boyfriend do not have a permanent place to live. They have been sleeping at various friends' homes in recent months. Ms. M hopes to save enough money to get an apartment in the relatively near future. Her current housing cost is \$100 to \$200 per month, since she pays friends whatever she can. She and her partner receive Food Stamp assistance, but still spend \$100 out of pocket for additional food each month. Ms. M owns a 1994 D pickup truck, but it is not working. As a result, she has no additional vehicle expenses like gas or insurance. She spends \$100 to \$200 per month for personal care and other expenses. Ms. M has significant debts. She owes \$10,000 on a Ford Escape that is no longer operational and approximately \$10,000 on three credit cards. She pays about \$100 per month toward these debts.

### *B. Procedural History*

CSSD received a request to establish a child support order effective November 21, 2017, because D was placed in foster care.<sup>10</sup> It issued an administrative order to provide financial information on December 4, 2017, and received some responsive information from Ms. M.<sup>11</sup> On March 10, 2018, CSSD issued an Administrative Child Support and Medical Support Order,

---

<sup>3</sup> *Id.*

<sup>4</sup> M testimony.

<sup>5</sup> Exhibit 7, p. 2.

<sup>6</sup> Exhibit 7.

<sup>7</sup> This total is net of a \$1,500 reduction for wages the employer refused to pay Ms. M.

<sup>8</sup> \$9.84/hour x 25 hours/week x 10.83 (weeks from Oct 15 through Dec 31) = \$2,664.18.

<sup>9</sup> Exhibit 9.

<sup>10</sup> CSSD pre-hearing brief; CSSD hearing representative statement.

<sup>11</sup> Exhibit 1, 2.

setting Ms. M's monthly ongoing and pre-order arrears amount at \$516 per month for one child.<sup>12</sup> After being served with the order, Ms. M requested an Administrative Review Hearing.<sup>13</sup> However, she did not appear at the hearing.<sup>14</sup>

On September 13, 2018, CSSD issued the Administrative Review Hearing Decision and Amended Administrative Child and Medical Support Order at issue in this appeal.<sup>15</sup> CSSD concluded that it correctly relied on Ms. M's actual 2017 income to calculate the \$516 monthly obligation for November and December 2017. However, recognizing that her expected 2018 income was significantly below her 2017 earnings, it adjusted the 2018 and ongoing calculation. It did so by relying on her actual first quarter income from all sources, plus potential income from a full-time job at minimum wage for the remainder of the year. Including the PFD, this income resulted in a \$328 monthly support amount.

Ms. M appealed, arguing that she cannot afford the ordered support amount.<sup>16</sup> The formal administrative hearing took place on October 15, 2018. Ms. M appeared telephonically, represented herself, and testified during the hearing. Child Support Specialist Patrick Kase appeared telephonically and represented CSSD. The hearing was audio-recorded. All submitted documents were admitted to the record, which closed at the end of the business day.

### **III. Discussion**

As the person who filed the appeal, Ms. M bears the burden of proof. As to the support amount calculated under the Civil Rule 90.3(a) primary custody formula, her burden is to show by a preponderance of the evidence that the calculation is incorrect.<sup>17</sup> Regarding her request for a variance based on financial hardship, she must show clear and convincing evidence that manifest injustice would result if the support award were not varied.<sup>18</sup>

#### *A. Child Support Calculation*

---

<sup>12</sup> Exhibit 3.  
<sup>13</sup> Exhibit 4.  
<sup>14</sup> Exhibit 5.  
<sup>15</sup> Exhibit 5.  
<sup>16</sup> Exhibit 6.  
<sup>17</sup> 15 AAC 05.030(h).  
<sup>18</sup> Civil Rule 90.3(c).

A parent is obligated both by statute and at common law to support his or her children.<sup>19</sup> In cases establishing a new support obligation, CSSD collects child support from the date the custodial parent requested child support services or the date public assistance or foster care was initiated on behalf of the child.<sup>20</sup> Here, foster care was initiated in November 2017, so that is the month Ms. M's obligation to support D through CSSD begins.

Civil Rule 90.3(a)(1) provides that a noncustodial parent's child support amount is to be calculated based on his or her "total income from all sources," minus specified deductions such as taxes and Social Security. The 2017 calculation requires a small adjustment, because it appears Ms. M's unemployment benefits that year totaled \$5,787, rather than the \$6,320 used in CSSD's calculation.<sup>21</sup> After applicable deductions, her total income from all sources results in a \$509 monthly support amount for November and December 2017.<sup>22</sup> Ms. M did not dispute CSSD's revised 2018 income calculation, which results in a monthly support amount of \$277 per month for 2018 and ongoing.<sup>23</sup> This calculation is based on her actual income rather than any imputed amounts.

*B. Financial Hardship*

Ms. M's child support is now correctly calculated under the regular formula, and it is from these figures that her request to lower the support amount based on financial hardship should be considered. She maintains that she cannot afford the monthly support amount, particularly the obligation for November and December 2017, while also saving enough money for a down payment on an apartment and several months' rent.

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. 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."<sup>24</sup> This is a high standard, and reductions based on hardship are reserved for cases involving unusual circumstances. In making this

---

<sup>19</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>20</sup> 15 AAC 125.105(a)(1)-(2).

<sup>21</sup> See Exhibit 7, p. 2. (2017 total IUB of \$5,787); Exhibit 5, p. 9 (\$6,320 used in the calculation).

<sup>22</sup> Attachment A.

<sup>23</sup> Exhibit 9.

<sup>24</sup> Civil Rule 90.3(c).

determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.

Based on the evidence in the record and after careful consideration, Ms. M has not shown clear and convincing evidence that manifest injustice would result if the child support calculated under Civil Rule 90.3(a) is not reduced. Ms. M's primary financial problems are her need for stable housing and her significant car and credit card debts. Her work and income history show that she has marketable skills, she is capable of working a full-time schedule (or multiple part-time schedules), and she can earn significant income. She did not explain why her 2018 income will fall so far below her recent earning history, other than to say she had made some mistakes. Further, her prior debts are not a basis for a hardship reduction. Ms. M's primary legal obligation is to support D, and this duty takes priority over other debts and obligations.<sup>25</sup>

The child support order undoubtedly will add some stress to Ms. M's budget difficulties. However, she is clearly capable of earning additional income that can be used to support D and provide a more stable living situation for herself. Ms. M did not discuss what financial contributions her partner can make to the household's finances, but he should be expected to assist. This too should help reduce Ms. M's budget stress.

There is no evidence of manifest injustice if the pre-order arrears and ongoing child support amounts are not reduced. Ms. M's request for a hardship reduction of her child support obligation is therefore denied.

#### **IV. Conclusion**

Through the evidence brought forward during the hearing process, Ms. M showed that her child support obligation for November and December 2017 should be adjusted to \$509 per month. Beginning January 1, 2018 and ongoing, her income results in a support amount of \$277 per month. These amounts were calculated under the primary custody formula at Civil Rule 90.3(a). Ms. M's request for a hardship variance under Civil Rule 90.3(c) is denied.

---

<sup>25</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

**V. Child Support Order**

- Ms. M is responsible for child support for D in the amount of \$509 per month, effective November and December 2017;
- Ms. M is responsible for child support in the amount of \$277 per month beginning January 1, 2018 and ongoing;
- All other provisions of the Amended Administrative Child and Medical Support Order issued September 13, 2018 remain in full force and effect.

DATED: October 16, 2018.

By: Signed  
Name: Kathryn A. Swiderski  
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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

DATED this 30<sup>th</sup> day of October, 2018.

By: Signed  
Name: Karen L. Loeffler  
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]