

Development database of UIB disbursements, Mr. M received \$2,364 in 2015; \$8,000 in 2016; and \$6,270 in 2017.⁸

On September 25, 2018, CSSD issued a Modified Administrative Child Support and Medical Support Order, increasing Mr. M's monthly child support obligation to \$962 per month.⁹ The order indicated that because Mr. M had not provided any income information, the support amount was based on an estimated annual income, derived as follows: "The income calculation for 2018 was based on your employer reported wages for the second quarter of 2018 in the amount of \$17,791.65. This amount was multiplied by four for a total annual income of \$71,046.60. The Alaska Permanent Fund Dividend was included in the calculation."¹⁰

Mr. M appealed the new child support order.¹¹ In his request for a hearing, he argued that CSSD's income calculations were exaggerated and unrealistic.¹² He claimed to have earned only \$4,800 in 2018.¹³ He submitted an incomplete copy of a 2016 1040A tax form and an unsigned copy of a 2017 1040EZ tax form.¹⁴ According to the tax forms he submitted, his adjusted gross income for 2016 was \$29,912; and his adjusted gross income for 2017 was \$6,976.¹⁵ Mr. M did not submit any paystubs or other documentation of his 2018 income.

A telephonic hearing was held on November 19, 2018. Mr. M represented himself and testified on his own behalf. Brandi Estes, Child Support Specialist, represented CSSD. Ms. G did not participate.

At the hearing, Mr. M explained his financial circumstances.¹⁶ He works as a roofer, and his employment is seasonal.¹⁷ His ability to work depends on the weather.¹⁸ Mr. M explained that he had a good year in 2015 when he earned \$61,734.81, but that he has not been able to find the same employment opportunities since.¹⁹ He usually works from May to the end of September or October.²⁰ And if he can find other work during the off-season, he does.²¹ He was laid off in

⁸ Ex. 5 at 2.
⁹ Ex. 3 at 4.
¹⁰ Ex. 5 at 2.
¹¹ Ex. 4.
¹² Ex. 4 at 1.
¹³ Ex. 4 at 1, 2.
¹⁴ Ex. 4 at 3 – 4.
¹⁵ Ex. 4 at 3 – 4.
¹⁶ Testimony of K M.
¹⁷ M Testimony.
¹⁸ M Testimony.
¹⁹ M Testimony.
²⁰ M Testimony.
²¹ M Testimony.

October this year.²² He is eligible for unemployment benefits, but he has not applied.²³ Mr. M lives with his girlfriend and three children.²⁴ Two of the children are Mr. M's biological children.²⁵ Mr. M's girlfriend does not work, and he is the sole provider for the family.²⁶ They live rent-free in a family-owned property, where Mr. M does maintenance work and pays \$500 per month when he can.²⁷ In addition to disputing CSSD's income calculations, Mr. M claimed a financial hardship.

After the hearing, the record was left open to allow Mr. M and Ms. G to submit completed Hearing Expense Worksheets and any additional evidence they wanted considered for a financial hardship determination. A supplemental hearing was also scheduled.

The supplemental hearing was held by telephone on December 5, 2018. Ms. Estes again represented CSSD. Ms. G participated and testified. Mr. M submitted a completed Hearing Expense Worksheet, but he did not participate in the supplemental hearing.²⁸

Ms. G testified about her financial circumstances.²⁹ She is married.³⁰ In addition to S, she and her husband have two other children.³¹ She and her husband both work.³² He works full-time, earning \$13 per hour, 40 hours per week.³³ She works part-time, earning \$17 per hour, about 12 hours per week.³⁴

In addition to income information, Ms. G reported that Mr. M started a roofing company, Employer A, two years ago.³⁵ Ms. G expressed doubt about whether Mr. M had disclosed all his earnings and opined that the business was put in Mr. M's brother E's name to avoid garnishment by CSSD.³⁶ CSSD supplemented the record with information from the Department of Commerce, Community, and Economic Development, Corporations, Business & Professional Licensing database, confirming that Mr. M is a 50% shareholder in Employer A with his brother E M.³⁷

22 M Testimony.

23 M Testimony.

24 M Testimony.

25 M Testimony.

26 M Testimony.

27 M Testimony.

28 Ex. 6.

29 Testimony of L G.

30 G Testimony.

31 G Testimony.

32 G Testimony.

33 G Testimony.

34 G Testimony.

35 G Testimony.

36 G Testimony.

37 Ex. 7.

Mr. M did not submit any additional evidence. The record closed on December 5, 2018.

III. Discussion

A parent is obligated both by statute and common law to support his or her children.³⁸ A parent's child support obligation is determined primarily through a formula set out in Civil Rule 90.3. "The primary purpose of Rule 90.3 is to ensure that child support orders are adequate to meet the needs of children, subject to the ability of parents to pay."³⁹ Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁴⁰ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. A modification is effective beginning the first day of the next month after CSSD issues notice to the parties that a modification has been requested.⁴¹

In this case, Mr. M's child support obligation has been \$430 since July 2014, so a child support calculation that is at least \$64.50 higher or lower than \$430 would be sufficient to warrant modification. In reviewing Mr. M's request for modification, CSSD projected Mr. M's income based on the assumption that he would earn \$17,791.65 during each quarter of 2018, and as a result Mr. M's child support obligation was increased by \$532 per month. Mr. M argues that CSSD's calculation was incorrect because he works in a seasonal job, and the calculation is not based on his actual earnings. Because Mr. M requested the hearing, he has the burden of proving that CSSD's calculations were incorrect.⁴²

A. CSSD's income calculation was incorrect, but a modification is warranted.

Child support under Rule 90.3 is calculated based on the adjusted annual income of the non-custodial parent.⁴³ Rule 90.3(a)(1) provides that an obligor's child support obligation is to be calculated based on the obligor's "total income from all sources," minus mandatory deductions (such as taxes and social security).⁴⁴ Determining an obligor's annual income for purposes of calculating ongoing child support is "necessarily . . . speculative because the relevant income figure is expected future income."⁴⁵ Unless a parent was voluntarily and unreasonably unemployed

³⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

³⁹ Civil Rule 90.3, Commentary I.B.

⁴⁰ AS 25.27.190(e).

⁴¹ 15 AAC 125.321(d).

⁴² 15 AAC 05.030(h).

⁴³ Civil Rule 90.3(a).

⁴⁴ Civil Rule 90.3(a)(1).

⁴⁵ Civil Rule 90.3, Commentary III.E.

or underemployed, his or her child support obligation should be based on the best available information about his or her expected income, not potential income.⁴⁶ This requires consideration of the best available information, including:⁴⁷

- (1) the parent's current income as of the date of the agency's calculation of support, as reflected in recent pay stubs or other information from the parent or the parent's employer;
- (2) the parent's actual income during the immediately preceding calendar year or, if the parent's income is erratic or information is not available for the immediately preceding calendar year, the parent's actual income during prior calendar years;
- (3) partial wage information for periods of less than one year;
- (4) the parent's wage rate at a previous job;
- (5) the parent's job skills, training, work history, and education;
- (6) the average wage or salary available to a person in the parent's particular profession or occupation and, if applicable, location;
- (7) the availability of employment in the area where the parent physically resides;
- (8) the minimum wage for the area in which the parent physically resides; and
- (9) any physical or other restrictions on the parent's ability to work.

Here, CSSD had very little information to work with when it made its calculations. Mr. M requested the modification but failed to provide any information about his current income or his income in the past few calendar years. CSSD thus relied on records from the Alaska Department of Labor and Workforce Development. According to that information, Mr. M's income for 2015 was \$64,098.81.⁴⁸ His income for 2016 was \$28,495.89.⁴⁹ His income for 2017 was \$6,270.⁵⁰ And his income for the second quarter of 2018 was \$17,761.65.⁵¹

At the hearing, Mr. M credibly testified that he works as a roofer, and his employment is seasonal and weather-dependent.⁵² He usually works from May to October.⁵³ He explained that he had a good year in 2015 when he earned over \$61,000, but he has not been able to find the same employment opportunities since.⁵⁴

After the first hearing, CSSD submitted evidence that Mr. M is a 50% shareholder in a roofing company.⁵⁵ That business interest is evidence of a potential source of income for Mr. M. Yet Mr. M failed to produce any evidence related to his earnings from that business, and he did not

⁴⁶ *Benedixen v. Benedixen*, 962 P.2d 170, 172 (Alaska 1998).

⁴⁷ 15 AAC 125.050(c).

⁴⁸ Ex. 5. \$61,734.81 (Reported Wages) + \$2,364.00 (UIB) = \$64,098.81.

⁴⁹ Ex. 5. \$20,495.89 (Reported Wages) + \$8,000 (UIB) = \$28,495.89.

⁵⁰ Ex. 5 at 2.

⁵¹ Ex. 5 at 1.

⁵² M Testimony.

⁵³ M Testimony.

⁵⁴ M Testimony.

⁵⁵ Ex. 7.

participate in the supplemental hearing, so he was unavailable to answer questions or testify about his earnings from that business. There is no way to determine whether income from Employer A was reported in the Alaska Department of Labor and Workforce Development database.

When there is insufficient reliable evidence of actual income, child support may be set on earning capacity, rather than an estimate of actual income.⁵⁶ In those cases, the following factors are considered: the parent's past income, skills, work history, and education, and the job opportunities in the area where the parent physically resides.⁵⁷

The best available information for predicting what Mr. M's future income or earning capacity will be is the information he provided at the hearing combined with information gleaned from the Alaska Department of Labor and Workforce Development database. Mr. M earned \$17,761.65 in the second quarter of 2018.⁵⁸ Because his occupation as a roofer is seasonal—from May to October—he can expect earnings during half of the year.⁵⁹ Mr. M's estimated earnings are thus \$35,523.30.⁶⁰ Because he has historically received unemployment insurance benefits when he applied for them, and he conceded that he is probably eligible for the benefits now, he can expect some additional income in the form of unemployment benefits during the off-season.⁶¹ Most recently, he received \$418 per week.⁶² And his average unemployment benefits for the past two years was \$7,135.⁶³ Finally, Mr. M receives in-kind earnings in the form of rent-free housing, valued at \$500 per month, or \$6,000 per year.⁶⁴ Entering those numbers into the CSSD's online child support calculator with the PFD included yields a 2018 adjusted annual income of \$42,376.94.⁶⁵ This amount produces an annual child support payment of \$8,475.39, or \$706 per month. Because this is an increase of more than \$64.50 from Mr. M's previous child support order, modification is warranted.

⁵⁶ See for example *Laybourn v. Powell*, 55 P.3d 745, 747 (Alaska 2002). When a parent with a child support obligation makes it impossible to accurately determine his or her income, income must be imputed. The criteria used to estimate the proper amount of income to impute are the same as those used in a case where the noncustodial parent is voluntarily and unreasonably unemployed or underemployed. Rather than determining the parent's actual income, the parent's earning capacity is used to estimate the parent's potential income. See 15 AAC 125.060(a); 15 AAC 125.020(b); 15 AAC 125.030(c).

⁵⁷ 15 AAC 125.020(b); 15 AAC 125.030(c).

⁵⁸ Ex. 5 at 1.

⁵⁹ Ex. 5 at 1. M Testimony.

⁶⁰ Ex. 5 at 1. $\$17,761.65 * 2 = \$35,523.30$.

⁶¹ Civil Rule 90.3, Commentary III.A.12Ruth3rford.

⁶² Ex. 5 at 2. M Testimony.

⁶³ Ex. 5 at 2. $(\$8,000 + \$6,270) / 2 = \$7,135$.

⁶⁴ Civil Rule 90.3, Commentary III.A.19.

⁶⁵ See 15 AAC 125.050(e)(1) (requiring CSSD to include PFD in calculation "unless the evidence available to the agency indicates that the parent is not eligible for a permanent fund dividend.")

B. Mr. M is not entitled to a hardship variance.

Civil Rule 90.3(a) requires a non-custodial parent to pay 20% of his or her adjusted gross income as support for one child. The law presumes that child support calculated under Civil Rule 90.3(a) is appropriate and should only be departed from for good cause.⁶⁶ Civil Rule 90.3(c) allows for variance from the usual support formula in cases where a party shows by clear and convincing evidence that “manifest injustice would result if the support award were not varied” or “unusual circumstances make application of the formula unjust.”⁶⁷ When deciding whether child support should be set at a different level than that provided under Civil Rule 90.3(a), it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and obligee child.⁶⁸

The testimony of the parties did not support a variance in this case. Mr. M’s duty to financially support S takes precedence over virtually all other financial obligations. Both Mr. M’s and Ms. G’s finances are stretched. It would be unjust to S and Ms. G to reduce Mr. M’s support obligation beneath what is provided for by Rule 90.3(a). Mr. M has failed to meet his very high burden of showing good cause to calculate his child support obligation under Civil Rule 90.3(c) instead of Rule 90.3(a).

IV. Conclusion

Mr. M met his burden of showing that his monthly child support obligation was calculated incorrectly. That obligation is modified through this decision and order. No hardship variance is granted.

V. Child Support Order

1. K M is liable for child support in the amount of \$706 per month for 1 child, effective July 1, 2018 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated September 22, 2018 remain in full force and effect.

Dated: December 12, 2018

By: Signed
Signature

⁶⁶ Civil Rule 90.3, Commentary VI.B.

⁶⁷ Civil Rule 90.3(c).

⁶⁸ Civil Rule 90.3, Commentary VI.E.1.

Jessica L. Leeah
Name
Administrative Law Judge
Title

[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 within 30 days after the date of this decision.

DATED this 3rd day of January, 2019.

By: Signed
Signature
Stephen Slotnick for Jessica L. Leeah
Name
Administrative Law Judge
Title

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