

CSSD calculated Mr. S's income from all sources for each year at issue in this case: 2014 through 2019.⁵ The income determination for each year includes Mr. S's actual base pay, basic allowance for housing (BAH), basic allowance for subsistence (BAS), and in relevant years, cost-of-living adjustment (COLA). After deductions for matters including federal income taxes, Social Security/Medicare withholding, retirement contributions, and Mr. S's child support obligations for his prior children, his adjusted annual income for each year is as follows:

2014: \$31,185.96
2015: \$39,239.36
2016: \$48,215.23
2017: \$50,778.80
2018: \$52,221.20
2019: \$44,959.56.⁶

These determinations are based on actual income and allowable deductions. Though they include deductions for Mr. S's support obligations for prior children, they do not include his obligation for D.

Mr. S's regular monthly expenses include \$1,800 per month in rent, \$30 per month for renter's insurance, and approximately \$500 per month for food eaten at home or eaten out. He pays monthly utility bills of \$120 for electricity; \$35 for water; and \$25 for trash disposal. He also pays \$100 per month for internet service, \$180 per month for cell phone, and \$100 per month for cable fees. He owns one vehicle, a 2012 Cadillac LTS purchased in August 2018. He still owes \$16,500 on the car and pays \$350 per month toward his balance. His auto insurance is \$130 per month; car maintenance expenses average \$100 per month; and gas is about \$250 per month. Mr. S's expense for personal care items and services is about \$250 per month. He did not identify any expenses for entertainment or alcohol/tobacco. His own medical expenses are paid by the military, but he pays about \$80 per month for health insurance coverage for his other children. These expenses total \$4,050 per month or roughly \$48,600 per year.

One of Mr. S's older children plans to move to his home during the summer of 2019. She likely will remain in his primary physical custody through at least the next school year. This is likely to decrease Mr. S's support expense for prior children but increase some of his monthly living expenses.

⁵ Exhibit 6.

⁶ Exhibit 6, pp. 11-21. The reduced 2019 amount is due to lost COLA after Mr. S's transfer.

Some of Mr. S's expenses are high, for instance, his cell phone, cable tv, and personal care expenses. Even after accounting for expenses not captured by the hearing expense worksheet, he likely could reduce his regular living expenses. On the other hand, his expenses are likely to increase once his daughter moves in. Mr. S's expenses for prior years are not in the record but they likely are reasonably consistent with the above information.

In addition to the above, Mr. S has two significant debts: a \$16,000 credit card debt on which he pays \$250 per month, and a \$16,000 loan against his TSP or retirement savings plan account, on which he pays \$291 per month.

Ms. Q and D live in Virginia in a household of four, including Ms. Q's husband and another child. Ms. Q has exercised primary physical custody of D at all relevant times. A Virginia court recently issued a final custody order granting Ms. Q and her husband sole legal and physical custody of D.⁷

Ms. Q is medically retired from the military. She receives \$2,200 in monthly retirement pay. She currently participates in a vocational rehabilitation program and expects to complete her bachelor's degree in business management this spring. She has a work-study job as part of the program, and she receives a housing stipend of \$1,500 per month. Ms. Q's husband earns a comfortable income from employment. He also receives military retirement income.

The household's regular monthly living expenses are reasonable given Ms. Q's circumstances. In addition to expenses for typical living costs, the household pays \$376 in monthly health insurance premiums, medical expenses of approximately \$120 per month, and child support of \$460 per month for a child of Ms. Q's husband. Ms. Q's monthly car payments total \$1,092, and she makes regular payments toward three credit card debts. While Ms. Q faces financial challenges of her own, the evidence is that her household is financially stable. Ms. Q has been getting by and providing for D's needs, even without regular assistance from Mr. S.

B. Procedural Background

Ms. Q applied for child support services in Virginia. The Virginia child support services agency later sent CSSD a transmittal request, instructing it to establish Mr. S's support obligation for D, with pre-order arrears dating to July 2014.⁸

In response, CSSD initiated this child support matter.⁹ On June 7, 2017, it issued an Administrative Child Support and Medical Support Order.¹⁰ The order did not include a

⁷ Q Exhibit 1, pp. 3-4.

deduction for the child support Mr. S pays for his prior children. It set his ongoing support amount for D at \$1,162 per month, effective July 1, 2017.¹¹

On September 19, 2017, Mr. S timely requested an administrative review hearing to contest the calculation.¹² The request was not properly routed within CSSD, and the review hearing did not take place in 2017 or 2018.¹³ In January 2019, while it was addressing Mr. S's ongoing efforts to have the 2017 support order corrected, CSSD discovered the misfiled administrative hearing request.¹⁴ It then scheduled an administrative review hearing, which took place on February 4, 2019.

On February 19, 2019, CSSD issued the administrative review hearing decision and Amended Administrative Child and Medical Support Order at issue in this appeal.¹⁵ The amended order was based on Mr. S's actual income and allowable deductions, including retirement contributions and the support he has been ordered to pay for his prior children. It set his ongoing support amount for D at \$804 per month, effective March 1, 2019. It set pre-order arrears of: \$520 per month for July 2014 through December 2014; \$654 per month for January 2015 through December 2015; and \$804 per month for January 2016 through February 2019.¹⁶ In total, Mr. S's pre-order arrears came to \$41,520 over a 44-month period.

Mr. S requested a formal hearing to contest the amended order.¹⁷ The telephonic hearing took place on March 26, 2019. Mr. S and Ms. Q represented themselves and testified. Child Support Specialist Brandi Estes represented CSSD. The hearing was recorded. All offered exhibits were admitted to the record, which closed at the end of the hearing.

Mr. S requested a hardship variance. He explained that his job requires him to have a security clearance. The appearance of such a significant debt for child support arrears has resulted in an alert on his credit report, which in turn has resulted in an alert on his security clearance. This puts his employment in jeopardy. If Mr. S cannot continue working in this position, he is likely to be transferred to a unit that requires him to be deployable. However, due to his current medical

⁸ CSSD pre-hearing brief; CSSD hearing representative statement.

⁹ Exhibit 1.

¹⁰ Exhibit 2.

¹¹ *Id.*

¹² Exhibit 3; Exhibit 5.

¹³ Exhibits 5, 6.

¹⁴ Exhibit 5.

¹⁵ Exhibit 6.

¹⁶ *Id.*

status, he would not qualify for such service and his military career could end prematurely. This would not be in D's best interests. It is in his and all parties' interests that Mr. S continue working, earning income, and building on his career.

Mr. S explained that he pays monthly child support ranging from \$350 to \$615 per month for his children from other relationships, and each of those children lives in a single-parent household. He does not believe his support for D should be significantly higher than these amounts, particularly when D lives in a financially secure, two-adult home. Since neither parent nor D reside in Alaska, Mr. S also asked that the case be transferred to Virginia.¹⁸

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁹ A parent's duty of support begins on the child's date of birth.²⁰ In cases where support is determined by CSSD, the agency collects from the date a parent requests child support services or the date public assistance is initiated on behalf of the child.²¹ Because Ms. Q requested services in July 2014, the pre-order arrears set by the amended child support order start with that month.

As the person who filed the appeal, Mr. S bears the burden of proof. He does not contest the calculations under the primary custody formula. He requests a reduction pursuant to Civil Rule 90.3(c) because of financial hardship or unusual circumstances.

Child support determinations calculated under Civil Rule 90.3(a) are presumed to be correct. An obligor may obtain a variance of the ongoing or pre-order arrears amount, but only if he or she shows "good cause" for the reduction.²² To establish good cause, the parent must show clear and convincing evidence that manifest injustice would result if the support award were not varied.²³ Good cause also may include a finding that unusual circumstances require an adjustment

¹⁷ Exhibit 7.

¹⁸ Mr. S did not contest Alaska's jurisdiction to establish his support obligation for D. Alaska appropriately exercised jurisdiction, since Mr. S lived in Alaska when the case was initiated and he only recently moved away. Once this order is final, he can discuss a transfer with his CSSD caseworker.

¹⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

²⁰ *State of Alaska, Department of Revenue, Child Support Enforcement Division ex rel. Hawthorne v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997).

²¹ 15 AAC 125.105(a)(1)-(2).

²² Civil Rule 90.3(c); *Willis v. State, Dep't of Revenue, CSED*, 992 P.2d 581 (Alaska 1999).

²³ Civil Rule 90.3(c).

to an amount that is “just and proper.”²⁴ In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.²⁵

The evidence in this case supports Mr. S’s request for a variance, since the ongoing and pre-order arrears amounts exceed his ability to pay. For instance, Mr. S’s expected 2019 adjusted annual income is \$44,959.56, or \$3,746.63 per month.²⁶ His living expenses are approximately \$4,050 per month. This shows a monthly shortfall of \$303.37, without accounting for Mr. S’s support obligation for D or his payments on other debts. Mr. S’s living expenses exceed his adjusted income in most of the other years at issue as well. The two exceptions are 2017 and 2018, when his income exceeded his regular living expenses by \$2,178.80 and \$3,621.20 per year, respectively.²⁷

A parent’s prior or subsequent debts do not normally justify a reduction in the child support amount, because the duty of support is more important than most other obligations.²⁸ In this case, Mr. S has significant debts. However, the larger problem is his monthly budget shortfall, even without considering debts or his support obligation for D. This is particularly problematic for a service member, since members who fail to pay child support are subject to disciplinary action and even separation from military service.²⁹ It would not help D if Mr. S’s support obligation is above his ability to pay and risks the loss of Mr. S’s military career and regular source of income.

It is in all parties’ interests that Mr. S be granted some relief under Civil Rule 90.3(c). Determining the amount of the reduction is challenging, since Mr. S’s financial difficulties will exist regardless of his support amount for D. Mr. S argued that a support amount of \$400 per month is reasonable. Ms. Q opposed any reduction from the regular calculation. CSSD did not oppose a variance but took no position on the appropriate amount.

Considering the income and expenses of both parents’ households, the undersigned finds that Mr. S’s child support obligation for July 2014 through December 2018 should be \$350 per month.³⁰ Beginning January 1, 2019, the monthly support amount should increase to \$550. This

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Id.

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Id.; Civil Rule 90.3 Commentary, VI.B.

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Exhibit 6, p. 21.

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For 2017: \$50,778.80 – \$48,600 = \$2,178.80. For 2018: \$52,221.20 - \$48,600 = \$3,621.20.

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

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S testimony.

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During the hearing, Mr. S and Ms. Q both addressed an agreement in which Ms. Q planned to seek enforcement

provides significant relief from the problems posed by Mr. S's large arrears. It also grants a reduction of the ongoing support amount, but it places more emphasis on that obligation. These amounts should provide Ms. Q with meaningful financial assistance for D while avoiding an unsustainable financial burden for Mr. S.

IV. Conclusion

There is no dispute regarding CSSD's calculations and the ordered support amounts under the Civil Rule 90.3(a) primary custody formula. Mr. S's request for a variance under Civil Rule 90.3(c) is granted, both as to his ongoing obligation and his pre-order arrears. The 2019 and ongoing obligation is varied to \$550 per month, effective January 1, 2019. For July 2014 through December 2018, the monthly amount is reduced to \$350.

V. Child Support Order

- Mr. S is liable for child support for D in the amount of \$550 per month, beginning January 1, 2019 and ongoing;
- Mr. S is liable for support of \$350 per month, effective July 1, 2014 through December 31, 2018;
- All other provisions of the Amended Administrative Child and Medical Support Order dated February 19, 2019, remain in full force and effect.

DATED: April 12, 2019.

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

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of Mr. S's support obligation starting only with May 2018. Ms. Q indicated that this remains an option, but the Virginia child support agency requires Alaska's support order to be final before other action can be taken. This decision does not preclude an agreement between the parties on this topic. It also does not take the potential for such an agreement into consideration.

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 30th day of April, 2019.

By: Signed

Name: Kathryn A. Swiderski

Title: Administrative Law Judge

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