

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

In the Matter of	)	
	)	
M E	)	OAH No. 19-0343-CSS
_____	)	Agency No. 001209547

**DECISION AND ORDER**

**I. Introduction**

M E appeals a Modified Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on March 21, 2019. The modification increased his child support obligation for his daughter S to \$303 per month, effective January 1, 2019. Mr. E requested a reduction based on financial hardship and argued that the Division did not calculate his income correctly.

Mr. E did not show by a preponderance of the evidence that the calculation, which was based on his actual income is incorrect, nor did he show clear and convincing evidence of manifest injustice if this obligation is not reduced. His request for a modification in the form of a hardship variance is therefore denied, and the order modifying his child support obligation for S to \$303 per month is upheld.

**II. Facts**

*A. Material Facts<sup>1</sup>*

Mr. E and D F are the parents of S E, who is four years old. Mr. E lives in Village A, while Ms. F and S live in Village B. Ms. F is the custodian of record.

Mr. E is currently working at Employer A in Village B where he is learning how to prepare cuisine. He is being given about 37.5 hours of work per week and is making \$11 an hour. He rents a room in Village A about 30 miles out of town and pays \$400 monthly. He owns his vehical outright, but every month pays \$55 for insurance, \$100 for vehicle maintenance, and \$320 for gas for the daily commute to Village B. His monthly food costs are \$400 per month and he pays \$60 per month for his cell phone. Finally, he pays \$100 per month against a \$9,000 prior medical debt.

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<sup>1</sup> Material facts are based on the documents admitted into the record, as well as all testimony offered by Ms. F and Mr. E at the May 9, 2019 and May 20, 2019 hearings.

In sum, not including his child support obligation to S, he makes approximately \$1650 per month and has about \$1435 in monthly debts and expenditures.

Ms. F is currently working at Employer B in Village B, being given between 20 and 39 hours of work per week and making \$11.43 an hour. She also works 11.75 hours a week at a local home health care facility making \$16 an hour. She averages about \$322 every two weeks for her home health care position, and \$600 every two weeks from Employer B. She lives in her own home in Village B with S and an older daughter from a previous relationship. There are no other residents in the home. She receives child support for the older child in the amount of \$288 per month. She pays \$760.44 per month for her mortgage, and her utilities average \$126 a month. She pays \$342 a month for her car and \$44 a week for gas. Her car insurance is \$313 a month and her cell phone bill is \$79.95 per month. She spends \$250 a month on food for the household. She has no other outstanding debts and all members of the household are insured under Medicaid.

In sum, not including a child support payment from Mr. E, Ms. F has an income of about \$2132 per month and has approximately \$2050 in monthly debts and expenditures.

### *B. Background*

In 2015 CSSD set Mr. E' child support for S at \$172 per month.<sup>2</sup> Ms. F requested a modification review on December 10, 2018, and CSSD served each parent with notice of the petition for modification on December 19, 2018.<sup>3</sup> The Division reports that Mr. E did not submit any income documentation; however, Mr. E provided a Certified Mail receipt of a packet or letter that was received by the Division at the correct address on January 9, 2019.<sup>4</sup>

Proceeding without the benefit of the information provided by Mr. E, on March 21, 2019, CSSD issued a Decision on Request for Modification Review and Modified Administrative Child and Medical Support Order setting Mr. E' ongoing child support obligation at \$303 beginning on January 1, 2019.<sup>5</sup> The calculation was based on employer-reported wages from the year prior and a projected Alaska Permanent Fund Dividend (PFD) of \$2,928.<sup>6</sup> The March 21, 2019 Decision and Order is the subject of this appeal.

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<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

<sup>4</sup> See packet submitted by Mr. E, labeled Exhibit 7 by OAH.

<sup>5</sup> Exhibits 3 and 5.

<sup>6</sup> Exhibit 5.

Mr. E requested a formal hearing. He argued that CSSD based its calculation on inaccurate figures as the Division did not receive the packet he submitted with his prior tax returns, pay stubs, proof of an independent child support payment, and PFD applications. Mr. E' argument was that had the Division received this information it would've realized that Mr. E could not afford the new child support obligation of \$303 due to financial hardship.

The formal hearing took place in two parts, with the first being held on May 9, 2019. Mr. E represented himself and testified as to his current job, wages and expenses. Child Support Specialist Patrick Kase represented CSSD. The hearing was audio-recorded. Although a notice of hearing had been timely mailed to Ms. F, a call placed to her number of record went to voice mail. Accordingly, she did not participate in the first hearing session.<sup>7</sup>

To allow Ms. F another opportunity to participate and to give CSSD time to review the additional materials that Mr. E had submitted to CSSD in January but which seemingly were lost, a second hearing session was set. The hearing reconvened on Monday, May 20, 2019, Both Mr. E and Mr. Kase were present telephonically, as was Ms. F, who represented herself and testified as to her finances. The hearing was audio-recorded. All submitted documents were admitted into the record, which closed on May 20, 2019.

### **III. Discussion**

As the person who filed the appeal in this case, Mr. E bears the burden of proof. He must show by a preponderance of the evidence that the support amount calculated under the primary custody formula and applied in the March 21, 2019 Modified Administrative Child and Medical Support Order is incorrect.<sup>8</sup> Regarding his request for a variance based on financial hardship, Mr. E must show clear and convincing evidence that manifest injustice would result if the support award were not varied.<sup>9</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>10</sup> Child support orders may be modified upon a showing of "good cause and material change in

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<sup>7</sup> 2AAC 64.320(c).

<sup>8</sup> 15 AAC 05.030(h).

<sup>9</sup> Civil Rule 90.3(c).

<sup>10</sup> AS 25.20.030; *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987).

circumstances.”<sup>11</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a “material change in circumstances” has been established. Mr. E’ child support was previously set at \$172 per month, so a support calculation that changes his obligation by \$25.80 or more would be sufficient to modify his child support obligation.<sup>12</sup> When the newly calculated amount is less than a 15% change, CSSD still may grant the modification if three or more years have elapsed since the prior support order was issued.<sup>13</sup> Both conditions are met in the instant case: Mr. E’ most recent support obligation represents an increase of \$131 from the original calculation, and the prior support order was issued in 2015.<sup>14</sup>

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.<sup>15</sup> Here, CSSD provided proper notice on December 19, 2018, when it sent notice of the request for a modification to each parent’s address of record by first-class mail.<sup>16</sup> Therefore, the modification in this case is effective as of January 1, 2019.

#### *A. Child Support Calculation*

All parties agree that Ms. F exercises primary physical custody of S, meaning the child support calculation should be done under the primary custody formula.<sup>17</sup> Under Civil Rule 90.3(a), Mr. E’ support amount is to be calculated based on his “total income from all sources,” minus specified deductions. The relevant time period is the period for which the support is being paid.<sup>18</sup>

In the absence of the income information submitted by Mr. E, CSSD applied the primary custody formula and estimated his 2019 income as the same as the prior years reported wages, plus the PFD.<sup>19</sup> The Alaska Department of Labor and Workforce Development Database showed that Mr. E made \$17,569 in 2018, which was then added to \$2,928, the projected PFD under the Dunleavy administration, resulting in a total gross income of \$20,497.09.<sup>20</sup> Monthly deductions of \$192 were subtracted, resulting in \$18,193

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<sup>11</sup> AS 25.27.190(e).

<sup>12</sup>  $\$172 \times 15\% = \$25.80$ .

<sup>13</sup> 15 AAC 125.321(b)(2)(C).

<sup>14</sup> Prior obligation was set at \$172 in 2015, while 2019 calculation is \$303;  $\$303 - \$172 = \$131$ .

<sup>15</sup> 15 AAC 125.321(d).

<sup>16</sup> 15 AAC 125.316(c), Exhibit 2.

<sup>17</sup> Exhibit 2.

<sup>18</sup> 15 AAC 125.050(a); Civil Rule 90.3, Commentary III.E.

<sup>19</sup> Exhibit 3.

<sup>20</sup> Exhibit 3 and 5.

for an adjusted annual income, or \$3,638.62 monthly.<sup>21</sup> Twenty percent of \$3,638.62 is equal to \$303.00, resulting in CSSD's ultimate monthly child support calculation for S.<sup>22</sup>

Mr. E argued that this is not reasonable and urged the consideration of the additional documents that he submitted that included pay stubs and tax returns from 2017 and 2018.<sup>23</sup> However, he is currently working at Employer A in Village B an average of 37.5 hours a week at a wage of \$11.00.<sup>24</sup> If he continues in this position at this pay rate, he will make an average gross income of \$19,800. Presuming his deductions and the amount of the PFD remain as calculated by CSSD, his total gross income will be \$22,728, and he will have an adjusted annual income of \$20,424.

Under the primary custody formula his child support obligation would then be \$340, or \$37 more than the amount calculated by the Division. However, it is noted that Mr. E did not start his position at Employer A until February, and prior to that he was not being given consistent hours at his job at a local restaurant.<sup>25</sup> Additionally, at this point the 2019 PFD amount is purely speculative and could ultimately be much more in line with the 2018 PFD, which was \$1600. Therefore, with these variables taken into consideration, the calculation done by CSSD based on Mr. E's projected 2019 income is wholly appropriate; his ongoing support for S should be \$303 per month under Civil Rule 90.3(a).

#### *B. Financial Hardship*

Mr. E's secondary argument is that he is unable to pay the modified support amount because he doesn't make considerable wages and that he has a lot of monthly expenses. This raises the issue of a financial hardship variance under Civil Rule 90.3(c).

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>26</sup> It is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and child, to determine if the support amount should be set at a different amount than the one determined under Civil Rule 90.3(a).<sup>27</sup>

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<sup>21</sup> Exhibit 3.

<sup>22</sup> Civil Rule 90.3(a).

<sup>23</sup> Exhibit 7.

<sup>24</sup> E testimony, May 9 hearing.

<sup>25</sup> E testimony, May 9 hearing.

<sup>26</sup> Civil Rule 90.3(c).

<sup>27</sup> Civil Rule 90.3(c)(1); Civil Rule 90.3, Commentary VI.B.

As explained above, Mr. E' child support obligation is correctly calculated. Mr. E has not shown by clear and convincing evidence that manifest injustice would result if the child support calculated under Civil Rule 90.3(a) is not further reduced. Mr. E admittedly lives on a budget with little flexibility, as his monthly expenses are significant and come close to eclipsing his monthly income. However, he could possibly make different financial choices, including assuming additional part time work to supplement his income. Also, while he credibly testified to legitimate vehicle and medical expenditures, his primary legal obligation is to support S based on his income, and this duty takes priority over other debts and obligations.<sup>28</sup>

This determination takes into consideration Ms. F and S's circumstances, as well. Ms. F's finances are similarly tight; she has monthly household debts, is the primary custodian for two children, and is paying a mortgage.<sup>29</sup> She has two jobs and mentioned seeking a third in the near future.<sup>30</sup> The testimony regarding her household income and expenses suggests that she and S are not in a position to forego the child support due under Civil Rule 90.3(a).

Based on the evidence, Mr. E did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for S is not reduced. The support order undoubtedly will add to Mr. E' existing financial difficulties. However, his prior work history and his own testimony establishes that he is physically capable of addressing these issues through other means, namely a second job. Mr. E' ongoing child support is appropriately calculated under Civil Rule 90.3 as \$303 per month.

#### **IV. Conclusion**

CSSD correctly calculated Mr. E's 2019 child support obligation. Mr. E requested a hardship variance under Civil Rule 90.3(c). However, he did not meet his high burden of proving by clear and convincing evidence that manifest injustice would result if his child support amount is not varied. This request is therefore denied.

#### **V. Child Support Order**

1. CSSD's March 21, 2019 Decision on Request for Modification Review is affirmed.
2. The Modified Administrative Child Support and Medical Support Order dated

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<sup>28</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

<sup>29</sup> F testimony, May 20 hearing.

<sup>30</sup> F testimony, May 20 hearing.

March 21, 2019 remains in full force and effect.

Dated: May 23, 2019

*Signed* \_\_\_\_\_  
Danika Swanson  
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 6<sup>th</sup> day of June, 2019.

By: *Signed* \_\_\_\_\_  
Signature  
Danika Swanson  
Name  
Administrative Law Judge  
Title

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