



## **II. Facts<sup>3</sup>**

Mr. M. is single and has been employed by Arctic Office Products for two and one-half years. At the time of the hearing, his rate of pay was \$17.50 per hour. As of May 31, 2007, Mr. M.'s annual income, including his permanent fund dividend, was \$36,600.71.<sup>4</sup> The total of Mr. M.'s monthly expenses set forth in the "hardship expense checklist" completed by him is \$2304.00.<sup>5</sup> Mr. M. claims to be paying monthly child support in the amount of \$244.00 per month.<sup>6</sup> Ms. V. was not employed at the time of the hearing.

## **III. Discussion**

The issue in this appeal is whether Mr. M. is entitled to a reduction in his child support obligation based on a financial hardship as contemplated by Civil Rule 90.3(c). The purpose of the hearing was to inquire of Mr. M. and obtain a current and accurate picture of his income and expenses. While not articulated in detail, the essence of Mr. M.'s testimony is that he does not have sufficient income to comfortably support his household and pay child support in the amount of \$498.00 per month. Stated differently, if child support is increased from \$ 50.00 per month to \$498.00 per month, Mr. M. claims that he will be saddled with an unreasonable financial hardship.

Child support amounts calculated under Civil Rule 90.3 from Mr. M.'s actual income figures are presumed to be correct. Civil Rule 90.3(a)(1) provides that Mr. M.'s child support amount is to be calculated based on his or her "total income from all sources." Mr. M. may obtain a reduction below the amount calculated, but only if he shows that "good cause" exists to support the reduction.<sup>7</sup> To establish good cause, the obligor must prove by clear and convincing evidence<sup>8</sup> that "manifest injustice would result if the support award were not varied."<sup>9</sup>

Depending upon the facts of a particular case, "good cause" might be established by showing "unusual circumstances":

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<sup>3</sup> The facts stated herein are drawn from the testimony received at the hearing, and the exhibits admitted into evidence, unless another source is cited.

<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibit 6.

<sup>6</sup> Exhibit 6.

<sup>7</sup> Civil Rule 90.3(c)(1).

<sup>8</sup> The clear and convincing standard of proof is more difficult to meet than the preponderance of the evidence standard.

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

Good cause may include a finding...that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children....<sup>10</sup>

Mr. M. had monthly expenses at the time of the hearing of approximately \$2300-2400.00 per month, and gross income (before taxes) income of approximately \$3000.00 per month. It is true that Mr. M. is under pressure to manage his expenses carefully; this is not unreasonable or unfair<sup>11</sup> While Mr. M. cannot spend lavishly due to his income only slightly exceeding his expenses, he has a reasonably good employment history and he has the ability to budget his expenditures. To meet his financial obligation to his child, he may need additional or different employment, but Mr. M.'s physical and financial situation does not support a finding of "unusual circumstances". The record shows that Mr. M. is making several monthly installment payments that will eventually be paid in full, thereby increasing his spendable income.<sup>12</sup>

Based on all of the evidence presented, and considering the aggregate circumstances of Mr. M., I do not find that Mr. M.'s case presents unusual circumstances as contemplated by Civil Rule 90.3(c). Mr. M. has not proven by clear and convincing evidence that manifest injustice will result if the child support amount calculated for his child under Civil Rule 90.3 is not reduced.

#### **IV. Conclusion**

Mr. M. did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order issued May 31, 2007 is incorrect or that it is manifestly unjust. Based upon the best available information, CSSD correctly calculated Mr. M.'s modified child support.

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<sup>10</sup> Civil Rule 90.3(c) (1).

<sup>11</sup> Exhibit 6. The record is not clear why the amount of \$244.00 per month is claimed as a child support expense by Mr. M.; the most likely explanation is that Mr. M. is paying arrearages.

<sup>12</sup> Exhibits 5 and 6. Mr. Marquez is paying \$50.00 per month against an automobile damage claim for which he is liable; and, he is paying \$100.00 per month as reimbursement for damages which he inflicted to his (former) apartment. Assuming that payments are kept current, these debts will be paid in the next several years.

**V. Child Support Order**

Mr. M. is liable for modified ongoing child support in the amount of \$498.00 per month, effective May 1, 2007.

Dated this 19<sup>th</sup> day of July, 2007.

By: Signed  
James T. Stanley  
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 8<sup>th</sup> day of August, 2007.

By: Signed  
Signature  
James T. Stanley  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to technical standards for publication.]