

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

In the Matter of)	
)	
HH J)	OAH No. 21-0937-CSS
<hr style="width: 40%; margin-left: 0;"/>)	Agency No. 001142605

DECISION AND ORDER

I. Introduction

HH J appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD/Division) issued on April 28, 2021. The order increased his child support obligation for his son, B H, from \$186 per month as set forth in the preceding order issued in 2006, to \$1,255 per month. Mr. J appeals the decision, asserting that he cannot afford to pay the amount as set. He seeks a variance due to financial hardship.

A telephonic hearing was held in this matter on June 9, 2021, then reconvened on June 24, 2021. Mr. J did not show by clear and convincing evidence that manifest injustice would result if his monthly support obligation was not further reduced by way of a hardship variance. However, an updated calculation of Mr. J’s income requires a slight adjustment of his support obligation. Effective March 1, 2021 and ongoing his child support obligation will be set at \$1,248 per month for one child based on a primary custody calculation.

II. Facts

A. Relevant factual background¹

B H is 15 years old. His mother is deceased, so he lives with his grandparents in City A, Alaska. His custodian of record is his grandmother, H T, who works part time at a pull tab shop and earns approximately \$700 a month. She also receives retirement benefits from a former career. Her husband was recently approved to receive an unspecified amount in monthly Social Security disability benefits, but he has not yet received the first payment. B collects \$607 per month in Social Security survivor benefits due to the death of his mother. The gross annual income for the household is approximately \$67,000.

¹ Facts are based on testimony given by the parties at the hearings, as well as a hardship worksheet compiled by the Division during the hearings based on the testimony and submitted to the parties on June 9, 2021.

Regarding expenses, the Ts own their own home in City A. They pay for utilities, phone bills, cable and food, as well as annual costs associated with B's sports, including taekwondo and baseball. They own a vehicle and pay for the gas, insurance and general maintenance, and also have monthly out of pocket medical expenses. Their annual living expenses average about \$44,410.

Mr. J is also the father of two additional children younger than B who are not implicated in this support order. In February 2021 one of the custodial parents requested a modification review of his support order, triggering a review of all three of his cases. The Division initiated the review in this matter by soliciting updated income information from all parties. Mr. J did not provide any income documentation.

On April 28, 2021 the Division issued a Decision on Request for Modification Review and Modified Administrative Child and Medical Support setting Mr. J's ongoing monthly support obligation for B at \$1,255. The calculation was based on an average annual gross income of \$87,000 derived from veteran's benefits and unemployment compensation and augmented by the Alaska Permanent Fund dividend.

While currently living alone, Mr. J initially moved into his three-bedroom home two years ago when he was married and needed bedrooms for his partner's two children, as well. It was unfurnished, and he continues to pay \$805 monthly for the rental of furniture. He owes a monthly car payment of \$600 as he purchased a new vehicle. He pays \$250 monthly for car insurance and \$80 a month for gas. He spends on average \$820 monthly on food, utilities, internet and his phone. Mr. J also pays about \$450 per month for entertainment, including bowling dues and vaping. His annual living expenses average about \$53,500.

B. Procedural history

A telephonic hearing was held in this matter over two dates, June 9 and June 24, 2021. Mr. J and Ms. T represented themselves. The Division was represented by Child Support Specialist Patrick Kase. The record closed on June 24, 2021.

III. Discussion

As the person who filed the appeal, Mr. J has the burden of proving by a preponderance of the evidence that the Decision on Request for Modification and Modified

Administrative Child and Medical Support Order dated April 28, 2021 requires adjustment.² His written appeal requests a modification of his support obligation due to financial hardship. At the hearing he gave additional details regarding his household finances, including the significant monthly payments for his car and rental furniture.

A. Child support calculation under Civil Rule 90.3(a)

A parent is obligated both by statute and at common law to support his or her children.³ Under Civil Rule 90.3, a parent's child support obligation is calculated based on his or her total income from all sources during the period for which the support is being paid.⁴ Income includes any benefits that would have been available to the family unit should it have remained intact.⁵

Once a parent's total income from all sources is determined, Civil Rule 90.3 calculates the parent's adjusted annual income by subtracting specified deductions, such as for federal income taxes and Social Security/Medicare withholding.⁶ Alaska Civil Rule 90.3(a) provides the formula used to calculate child support awards in cases where one parent has primary physical custody. This formula applies in the situation at hand, as Ms. T exercises primary physical custody of B.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁷ 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. J's former obligation was \$186 per month, so a change of \$27.90 or more per month satisfies this standard.⁸ A modification is effective beginning the month after the parties are served with notice of the request for a modification

² 15 AAC 05.030(h).

³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

⁴ *See also* 15 AAC 125.020, 15 AAC 125.030.

⁵ *See* Civil Rule 90.3 Commentary, III. Defining Income.

⁶ *See* Civil Rule 90.3(a)(1). Other deductions include, for example, work-related childcare expenses, retirement plan contributions, and health insurance premiums for the paying parent.

⁷ AS 25.27.190(e).

⁸ $\$186 \times 15\% = \27.90 When the newly calculated amount is less than a 15% change, CSSD also has discretion to grant the modification if three or more years have elapsed since the prior support order was issued. 15 AAC 125.321(b)(2)(C). In the present case, the modified child support obligation of \$1,255 (an increase of \$1,069) justifies a modification. Also, fifteen years have passed since the establishment of the support obligation in 2006.

review.⁹ Here, CSSD provided notice in February 2021. Therefore, the modification is effective as of March 2021.

Regarding Mr. J's "income from all sources," his income was originally calculated by the Division by combining a 2021 Permanent Fund dividend of \$992 with \$1,512 in unemployment benefits and \$72,851 of veteran's benefits, resulting in a gross income of \$75,355. Requisite deductions were subtracted for social security and Medicare, setting his adjusted annual income at \$75,318.64, making his annual support obligation for B \$15,063.73, and monthly support \$1,255. Over the course of the hearing, however, Mr. J testified that he makes \$31.50 per hour working full time for the Department of Veteran's Affairs. His annual gross income is approximately \$65,000. He also receives monthly veterans benefits of \$1800. Combining these sources of income with a dividend of \$992 results in total gross income of \$87,592. After subtracting federal income tax, social security, Medicare and unemployment insurance his adjusted annual income is \$74,859, with an annual support obligation of \$14,971.78 and monthly obligation of \$1,248.¹⁰

Therefore, while the Division originally calculated Mr. J's support obligation slightly differently prior to having the benefit of his testimony at the hearing, his monthly support obligation remains virtually the same, at \$1,248 per month for B.

B. Variance under Civil Rule 90.3(c) as applied to ongoing support

Mr. J's argument on appeal is that he is unable to pay the \$1,248 ongoing support obligation for B in addition to his monthly living expenses, the support he pays for his additional two children, and the mandatory withholding that applies to the arrears he owes for B. He requested a variance of his ongoing obligations.

An obligor-parent may obtain a reduction in the ongoing support amount, but only if he or she shows that "good cause" exists for the reduction.¹¹ To establish good cause, the parent must show clear and convincing evidence that manifest injustice would result if the support award were not varied.¹² This is a high standard, and reductions based on hardship are reserved for cases involving unusual circumstances. In making this determination, it is appropriate to

⁹ 15 AAC 125.321(d).

¹⁰ Calculation done using the Child Support Services calculator *available at* <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

¹¹ *See Willis v. State, Dep't of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).

¹² Civil Rule 90.3(c).

consider all relevant evidence, including the circumstances of the custodial parent and the child.¹³

The T household operates on a limited budget. With an adjusted annual household income of \$57,000,¹⁴ or \$4,750 monthly and monthly expenses averaging \$3,700, there appears to be a monthly surplus of \$1,000. Ms. T testified that she expects that her husband will eventually receive social security disability income, but to date has not received a check.

Mr. J has shown that he lives on a tight budget. With an adjusted annual income of \$74,859, or \$6,238 monthly, and monthly expenses averaging \$4,460, he appears to be left with a monthly surplus of approximately \$1800 per month. However, Mr. J testified that he has fallen behind in his support payments for B, so every month an arrears payment is also subtracted from his paychecks. Additionally, he pays a total of \$1,209 in support obligations for his two additional children that are younger than B.¹⁵ Should his support obligation for B remain as set at \$1,248 he will be operating at a deficit of over \$600 every month.

While the T household has little expendable income, Mr. J is clearly in even more difficult financial straits. However, in October 2006 the Division issued a child support order setting Mr. J's monthly support obligation for B at \$186 per month. The order indicates that as Mr. J did not provide the Division with any information about his sources of income, his support obligation was calculated based on wages reported to the Alaska Department of Labor the first and second quarters of 2006, combined with an estimated income for the remainder of the year based on full time hours at \$7.15 per hour (Alaska minimum wage). This resulted in an annual gross income of \$12,477.02. For the last 15 years, therefore, Mr. J's nominal support obligation has remained based on this outdated and exceptionally low calculation of his income.

Additionally, Mr. J has monthly expenses that could be reduced or eliminated, and he has made financial decisions that do not indicate B's support has been prioritized. Mr. J

¹³ Civil Rule 90.3(c)(1); Civil Rule 90.3, Commentary VI.B. *Note* 15 AAC 125.075(a)(2) states "...unusual circumstances **may** include...(G) a consideration of the incomes of both parents."

¹⁴ Calculation done using the Child Support Services calculator *available at* <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

¹⁵ Civil Rule 90.3 Commentary III. D.2. Support paid for a child from a prior relationship would generally only be a deduction if the child was born prior to B. However, *see* Commentary VI. Exceptions B. Unusual Circumstances 2. Subsequent Children. A support obligation may be reduced if failure to do so would cause substantial hardship to "subsequent" children.

has acknowledged that he has fallen behind in his support payments for B, despite the fact the obligation has been inappropriately low. His monthly expenses, including payments for bowling dues, rental furniture and a new car indicate that he has put his own lifestyle and comforts over remaining current with the nominal monthly financial obligation for his son. Making financial adjustments will undoubtedly be difficult, but Mr. J could augment his income by seeking a second job. Simply put, his circumstances do not meet the threshold of manifest injustice. Moreover, B will soon turn 18, and Mr. J will no longer be legally responsible for monthly child support payments.

IV. Conclusion

Mr. J has not shown clear and convincing evidence that manifest injustice would result if the support award calculated under the primary custody formula is not reduced. Based on an updated income calculation, the Modified Administrative Child Support and Medical Support Order that the Division issued on April 28, 2021 is adjusted slightly, setting Mr. J's support obligation at \$1,248 per month for B H effective March 1, 2021 and ongoing.

V. Child Support Order

1. HH J is liable for child support in the amount of \$1,248 per month for one child effective March 1, 2021 and ongoing based on a primary custody calculation.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated April 28, 2021 remain in full force and effect.

Dated: July 22, 2021

Signed _____
Danika B. 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 5th day of August, 2021.

By: Signed
Signature
Danika Swanson
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.]