

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

In the matter of:)

J. N.)

OAH No. 07-0437-CSS

CSSD No. 001045702

DECISION AND ORDER

I. Introduction

J. N. appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on June 25, 2007, increasing his support obligation from \$154 to \$259 per month effective June 1, 2007. The obligee child is D. L., born 00/00/93. The custodial parent is M. L.

As Mr. N. correctly points out in a September 14 submission to this office, Ms. L. is an employee of CSSD. There is no indication that the case has received special treatment on account of her position, and care will be taken to ensure that this continues to be so.

The hearing took place on August 7, 2007. Andrew J. Rawls, Child Support Specialist, represented CSSD. Ms. L. appeared in person. Mr. N. participated by telephone. Following the hearing, the record remained open until September 14, 2007 so that CSSD could submit new calculations and the other parties could react to them. CSSD's initial set of revised calculations had a small mathematical error and, additionally, raised a significant legal issue. At the administrative law judge's invitation, CSSD then submitted further revised calculations and a very informative brief. Both parents also made post-hearing submissions.

Mr. N. raises two issues in his appeal. First, he seeks credit for Children's Insurance Benefits (CIB)¹ paid to D. Second, he seeks a reduction in the modified support amount on the basis of hardship.

¹ Children's Insurance Benefits are also known as "Child's Insurance Benefits," *see* 42 U.S.C. § 402(d), and the latter terminology may be more correct. This decision uses the former terminology because it seems to be more widely used in Alaska, having appeared in the relevant Supreme Court opinions in this state.

II. Children's Insurance Benefits

A. Facts

The facts relating to the Children's Insurance Benefit question are largely undisputed. Mr. N. has four children. His son J. was born prior to D. in another relationship and is not in Mr. N.'s custody. A child support order requires him to pay \$144 per month for J.'s support, and he does pay that amount through CIB. D., the obligee child in this case, is next in order. Ms. L. has primary physical custody of D. Two younger children from a later relationship, X. and Y., live with their mother in a household that Mr. N. also lives in at times. All four children receive CIB, a Social Security insurance benefit derived from past contributions by Mr. N. The CIB for each child has been \$145 per month up to this time.

Setting aside the CIB for the time being, Mr. N. receives the following income: (1) \$1,047 per month (\$12,564 per year) in Social Security payments directly to him;² and (2) \$112 per month (\$1,344 per year) in Veterans Administration payments due to a 10% disability from frostbite.³ At one time he received a pension, but it has been terminated.⁴ At times in the past he appears to have earned between \$160 and \$440 per month as a work stipend,⁵ but this has apparently been discontinued as well and no party has contended in this proceeding that it is presently available to him.

B. Discussion

1. General Methodology

When one parent has primary custody of the children, the other parent's presumptive child support obligation is "calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in [Civil Rule 90.3](a)(2)."⁶ By "adjusted annual income" the rule means "the parent's total income from all sources minus mandatory deductions ..." which include child support for any child from a prior relationship.⁷ Child support for one child is calculated at 20% of the resulting figure.⁸

² Testimony of Mr. N. on questioning by Mr. Rawls.

³ *Id.*; Exhibit 3, pages 2, 12.

⁴ Exhibit 3, page 14; testimony of Mr. N. on questioning by Mr. Rawls.

⁵ Exhibit 3, pages 1, 13.

⁶ *See* Alaska R. Civ. P. 90.3(a).

⁷ Alaska R. Civ. P. 90.3(a)(1).

⁸ Alaska R. Civ. P. 90.3(a)(2)(A).

Certain credits can be allowed against the child support amount this formula produces. The one that is relevant to this case is the credit for Children’s Insurance Benefits. The Alaska Supreme Court has held that an obligor parent such as Mr. N. “must be credited for the social security payments made to [the obligee child] on his behalf.”⁹ CSSD does not dispute that this credit must be applied.

2. Gross Income

The first step in calculating Mr. N.’s presumptive child support is to go back to determine his income to be used in the formula. There seems to be no dispute that Mr. N. has direct income payable to himself of \$13,908 per year. The only issue is how the four CIB payments should be handled in calculating income.

In the case of the CIB payment to D., the answer is directly controlled by Alaska Supreme Court precedent. The court has held that CIB to the obligee child is income to the obligor parent.¹⁰ In reaching this conclusion, the court appeared to have two rationales. First, it said that the definition on income in Rule 90.3 “should be interpreted broadly to include benefits with would have been available for support if the family had remained intact.”¹¹ Second, the court had already held that CIB to the obligee child should operate as a credit against the child support obligation of the person who earned the CIB, and it reasoned that if the obligor received a credit for the payment, the payment had to be counted as income to avoid a windfall.¹²

As to the CIB payments to Mr. N.’s older child J., there is no direct court precedent. J. is not the obligee child in this case, and the Supreme Court cases to date have involved only the simple situation of how to handle CIB to the obligee child. Nonetheless, one, and perhaps both, of the rationales above apply to J.’s CIB.

The rationale that clearly applies is avoidance of a windfall: Mr. N. never has to make child support payments for J. because the CIB to J. is discharging that obligation—yet by law Mr. N. will receive a deduction from his income for his court-ordered, paid support to a child of

⁹ *Miller v. Miller*, 890 P.2d 574, 577 (Alaska 1995); *see also State, Department of Revenue v. Fry*, 926 P.2d 1170 (Alaska 1996).

¹⁰ *Miller v. Miller*, 890 P.2d at 578. 15 AAC 125.030(a), which has been revised since *Miller* and *Fry* were decided, is presumably intended to encompass CIB through subparts (8) or (10), and one might rely on it here. The language of the regulation is so general, however, that it seems best to go back to the Supreme Court cases for specific guidance on the way CIB should be accounted for in child support calculations.

¹¹ *Id.*

¹² *Id.* & n.6.

a prior relationship.¹³ If he received a deduction for that obligation but the financial source used to discharge it were not included as part of his total income, he would receive a windfall in the form of an artificial reduction in income. By including CIB to J. as income, the CIB actually becomes a wash, added on one side of the ledger and subtracted on the other.

The second of the Supreme Court’s rationales—including benefits that would have come to the family “if the family had remained intact”—is harder to apply in this instance because, so far as we know, J. and D. were never part of one family that could have “remained intact.” Still, if one imagines a hypothetical situation where D. and J. were in the same household, the CIB to each of them would be part of the income usable for that household’s expenses.

The CIB to X. and Y. fits the general thrust of the second rationale in the same way that CIB to J. does. If X., Y., and D. were all living under one roof, the CIB to all three of them would be part of the income usable for that household’s expenses. Moreover, the CIB to X. and Y. comes into a household that Mr. N. presently resides in much of the time. It is income derived from his work (in the past), and it benefits his household.

For these reasons, CIB to all four children must be added in arriving at Mr. N.’s total yearly income. Each child is currently receiving CIB at the rate of \$1,740 per year. Mr. N.’s gross income is therefore:

\$12,564	Social Security paid to Mr. N.
1,344	VA disability benefit to Mr. N.
1,740	CIB to D.
1,740	CIB to J.
1,740	CIB to X.
<u>+1,740</u>	CIB to Y.
\$20,868	

This corresponds to the most recent figure calculated by CSSD, which can be seen on the calculation at Exhibit 9, page 2.

3. Adjusted Income

Mr. N. has established that he is entitled to one deduction, his court-ordered child support of \$144 per month (\$1,728 per year) for J.¹⁴ None of the other deductions in Civil Rule

¹³ See Civil Rule 90.3 Commentary, Part III-D (child support to a child in another case is deductible if (1) the support is “paid;” (2) it is required by court or administrative order; and (3) it relates to a prior relationship).

¹⁴ The child support to J. meets the three criteria set out in Civil Rule 90.3 Commentary, Part III-D.

90.3(a)(1), such as income taxes or union dues, applies to Mr. N.'s situation. His adjusted annual income is therefore:

\$20,868	Gross income
<u>- 1,728</u>	Support for J.
\$19,140	

4. Child Support Amount

The child support amount yielded by the regular methodology is twenty percent of the above figure. That is \$3,828 per year, or \$319 per month. Exhibit 9, page 2 correctly reflects this calculation.

5. Credits

Under the Supreme Court holdings discussed above, the \$145 per month that D. presently receives in CIB (or whatever amount he may receive in the future) must be credited against the child support obligation of \$319. Under present circumstances, therefore, Mr. N. will have a net obligation of **\$174** per month.

In discussing credits, CSSD appears to suggest that Mr. N. has not yet proven that D. has actually received CIB.¹⁵ With respect to months up to the time of the hearing, this is not a supportable contention. If CIB is established by a preponderance of the evidence for purposes of setting income—and CSSD contends that it is—then surely it is also established for purposes of credits. Moreover, Ms. L. was present at the hearing and did not dispute in her testimony that D. has been getting CIB of \$145 per month. With respect to the future, however, CSSD's point is well taken. Mr. N. will have to provide CSSD with proof that these CIB payments continue to be made.¹⁶ This would ordinarily be done by sending his caseworker a copy of a Social Security Administration statement showing the payments.

¹⁵ Response to Interim Order, page 1, text accompanying note 2. The text references CIB for Mr. N.'s "children," but of course only CIB to D. is relevant to the calculation of credits.

¹⁶ 15 AAC 125.475(a).

III. Hardship

A child support obligation may be varied from the standard calculation if unusual circumstances exist and those circumstances make application of the usual formula unjust.¹⁷ The injustice, characterized as “manifest injustice” in the rule, must be demonstrated by clear and convincing evidence.¹⁸ The tribunal must consider the circumstances of the custodial parent when making the evaluation of whether there would be manifest injustice in applying the usual formula.¹⁹ The rule goes on to permit the tribunal to weigh the “amount of support which is just and proper for the parties to contribute toward the nurture and education of their children.”²⁰ This inquiry is not limited to the child subject to the order: the tribunal “should reduce child support if the failure to do so would cause substantial hardship to the ‘subsequent’ children” of the obligor.²¹ Finally, the Alaska Supreme Court has noted that

debts of the obligor, even if substantial, normally will not justify a reduction in support. The obligation to provide child support is more important than the obligation to fulfill most other obligations.²²

Mr. N. has asked that his child support obligation of \$319, which is reduced to a net of \$174 so long as CIB payments continue, should be further reduced because of the hardship principle above.

Mr. N. was resistant to providing information at the hearing, and his testimony did not show “manifest injustice” by clear and convincing evidence. Although his income is small, Mr. N. did not show that he has significant expenses beyond paying about \$200 a month for food. He has no rent obligation of his own, sometimes contributing to the rent wherever he happens to be to the extent that he can. He has no vehicle. When asked, he gave no information on his non-food expenses. In short, the evidence shows mandatory spending of only \$200 per month against a direct income from Social Security and the VA of more than \$1100 per month.

Mr. N. has debts totaling about \$15,000 (exclusive of child support arrears), but he makes no payments against them apart from an occasional \$20. In any event, debts do not normally

¹⁷ Civil Rule 90.3 Commentary, Part VI-B.

¹⁸ Alaska R. Civ. P. 90.3(c)(1).

¹⁹ Civil Rule 90.3 Commentary, Part VI-B.

²⁰ Alaska R. Civ. P. 90.3(c)(1).

²¹ Civil Rule 90.3 Commentary, Part VI-B-2.

²² Civil Rule 90.3 Commentary, Part VI-B-4.

justify a reduction in support. He is a high school graduate with some college, carrying a 10% disability rating, but he is not working and is not pursuing vocational rehabilitation.

Mr. N. did not show that any of his other children would suffer if he were to pay his support to D. Ms. L. has a somewhat higher income than Mr. N.: approximately \$36,000 per year in contrast to his roughly \$20,000, but she is raising a child and running a household. A small child support payment would assist D. It is not a “manifest injustice” that Mr. N. be required to contribute \$174 per month, plus CIB, to raising D.

IV. Conclusion

The standard child support calculation yields a monthly support amount of \$319. Mr. N. has not shown any basis to depart from the standard calculation in this case. CIB credits, if they continue at the present level, will reduce his out-of-pocket obligation to \$174.

V. Child Support Order

1. J. N. is liable for child support in the amount of \$319 per month effective June 1, 2007 and ongoing.
2. For the months of June through August, 2007 CSSD shall apply a credit of \$145 per month against this child support obligation.
3. For the month of September, 2007 and ongoing, CSSD shall administer credit for CIB paid to the obligee child in accordance with 15 AAC 125.475.

DATED this 20th day of September, 2007.

By: Signed
Christopher Kennedy
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 15th day of October, 2007.

By: Signed _____
Signature
Jerry Burnett _____
Name
Director, Admin Services _____
Title

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