

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

IN THE MATTER OF:)

E. H. L.)

) OAH No. 07-0526-CSS

) CSSD No. 001056583

DECISION AND ORDER

I. Introduction

The Obligor, E. H. L., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 6, 2007. The Obligee child is Q., DOB 00/00/95.

The hearing was held on September 10, 2007. Mr. L. appeared in person; the Custodian, M. M. M., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearings were recorded. The record closed on October 11, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Based on the record as a whole and after due deliberation, Mr. L.'s modified child support is calculated at \$652 per month, effective July 1, 2007.

II. Facts

A. History

Mr. L.'s child support was set at \$445 per month in May 2001.¹ Ms. M. requested a modification on June 25, 2007.² On June 29, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. L. did not provide income information.⁴ On August 6, 2007, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. L.'s modified ongoing child support at \$701 per month, effective July 1, 2007.⁵ Mr. L. appealed on August 11, 2007, asserting he has financial problems and cannot afford the modified child support amount due to a mortgage, car and credit card payments.⁶

¹ Pre-Hearing Brief at pg. 1.

² Exh. 1.

³ Exh. 2.

⁴ Pre-Hearing Brief at pg. 1.

⁵ Exh. 3.

⁶ Exh. 4.

B. Material Facts

Mr. L. has worked for Aircraft Service International for nine years.⁷ He earns \$17.99 per hour for fulltime work and occasionally is able to get some overtime. In 2006, he worked a much higher amount of overtime, so his income that year was about \$5,000 higher than it will be in 2007. Based on a September 13, 2007, paystub,⁸ Mr. L.'s projected 2007 income is \$49,496.72.⁹

Mr. L. has lived with his girlfriend, L., for seven years. She works at FedEx and earns close to what he does annually. She has medical bills from a recent organ transplant and pays the expenses for her car. As to their household, L. pays one half of the mortgage on the home they purchased in 2006. Apparently, Mr. L. pays the remainder of the household bills.

Mr. L.'s monthly expenses total approximately \$2902, and consist of \$876 for his half of the mortgage; \$81 for condo dues; \$300 for food; \$120 for natural gas; \$150 for electricity; \$100 for telephone and cell phone; \$40 for trash pickup; \$100 for cable; \$160 for the payment on a 1994 Lexus; \$40 for gasoline; \$95 for vehicle insurance; \$100 for entertainment; \$100 for personal care items; \$540 for a debt consolidation loan; and \$100 for a signature loan.

III. Discussion

A. Income

The first issue in this appeal is determining Mr. L.'s most accurate income figures for 2007. Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹⁰ If the newly calculated child support amount is more than 15% different than the previous order, the Rule assumes a material change in circumstances has occurred and authorizes a modification of the obligor's child support order.¹¹

Mr. L.'s child support was set at \$445 per month in 2001. CSSD calculated his modified child support at \$701 per month.¹² The agency used an annual income figure of \$53,212.61 in

⁷ Except where indicated, the facts are taken from Mr. L.'s hearing testimony.

⁸ Exh. 7.

⁹ Exh. 8.

¹⁰ AS 25.27.190(e).

¹¹ Civil Rule 90.3(h).

¹² Exh. 3 at pg. 6.

the calculation, which Mr. L. had earned during the previous four quarters.¹³ Mr. L. testified during the hearing that he had worked much more overtime in 2006, so he was given the opportunity to file his most recent paystubs after the hearing. From his paystub showing year to date earnings of \$34,267.11 through August 31, 2007, CSSD projected his total actual earnings for 2007 at \$49,496.72. When the PFD is added, it results in total taxable income of \$50,603.68, which results in a child support calculation of \$652 per month.¹⁴

Based on the evidence as a whole, this latest calculation of Mr. L.'s child support obligation is correct because it is based on the most recent projection of his actual income for 2007.

B. Financial Hardship

The second issue in this appeal is whether Mr. L. is entitled to a "good cause" variance of the child support calculation, pursuant to Civil Rule 90.3(c). Child support amounts 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. In order 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." Civil Rule 90.3(c). If there are "unusual circumstances" in a particular case, this may be sufficient to establish "good cause" for a variation in the support award:

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^[15]

It is necessary to consider all the relevant evidence in order to determine whether the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).¹⁶ Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. L. did not prove by clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3 is not varied.

¹³ *Id.*

¹⁴ Exh. 8.

¹⁵ Civil Rule 90.3(c)(1).

¹⁶ *See* Civil Rule 90.3, Commentary VI.E.1.

Mr. L.'s financial situation is definitely strained at this time, especially since it appears his monthly income is at least \$300 short of covering all of his monthly bills and the modified child support amount. However, Mr. L. is not without options. His girlfriend earns almost as much as he does, but apparently her contribution to the household consists of paying only one half of the mortgage. Granted, her medical bills might be pretty high, but it seems she should be able to help more with household expenses. In the event she cannot, Mr. L. may have to reduce his living expenses, refinance his debt consolidation or even find a part-time job. Overall, Mr. L.'s situation does not constitute "unusual circumstances."

IV. Conclusion

Mr. L. proved that CSSD's determination of his child support obligation should be corrected to reflect his actual income for 2007, but he did not prove by clear and convincing evidence that manifest injustice will result if the child support calculated pursuant to Civil Rule 90.3 is not varied. His modified child support is correctly calculated at \$652 per month, effective July 1, 2007.¹⁷ This figure should be adopted.

V. Child Support Order

- Mr. L. is liable for modified ongoing child support in the amount of \$652 per month, effective July 1 2007, and ongoing;
- All other provisions of the August 6, 2007, Modified Administrative Child Support and Medical Support Order remain in effect.

DATED this 7th day of November, 2007.

By: Signed _____
Kay L. Howard
Administrative Law Judge

¹⁷ The effective date of a modification is the first of the month after CSSD issues a notice that a petition for modification has been filed. 15 AAC 125.321(d). Here, CSSD issued the notice on June 29, 2007. See Exh. 2.

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 26th day of November, 2007.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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