

as per an agreement he has with his girlfriend he covers the rent in full, as she did so for the two of them in the past. However, his monthly food budget of \$1000 is solely for himself and his daughter.

On average his monthly expenses include \$220 for home maintenance and the phone, \$80 on gas for his vehicle, \$250 on oil and routine auto repairs, \$150 on clothing and incidentals, and \$425 for dental, health and car insurance.³ He spends about \$50 a month on school supplies for T, although in truth he is responsible for all her expenses as T's mother is insolvent and cannot not pay child support. While personal debt is generally not included when calculating monthly expenses, his additional monthly expenses of \$100 per month for credit card balances, \$362 for auto payments, and \$200 for entertainment are also noted as he is requesting a variance based on financial hardship. His monthly living expenses average \$5,037 per month before including a support payment for L.

Mr. S was active in the military until 2004. In the years immediately following his discharge he testified that he struggled with both mental health and addiction issues. He was ultimately diagnosed with schizophrenia, Post Traumatic Stress Disorder and Bipolar 1 Disorder, which were addressed through health care services provided by Veteran's Affairs. From 2014 – 2015 he left the state for drug treatment, returning to Alaska in 2016. He enrolled in school, graduating with a logistics degree in 2019. For the last year he has been employed full time as a Warehouse Associate at the Employer A, earning \$16 an hour, or an average of \$33,000 per year. He also receives an average of \$42,000 per year in veteran's benefits and the annual Permanent Fund Dividend, which was \$992 in 2020. His 2020 adjusted annual income is approximately \$71,370, or \$5,948 per month. After deducting monthly expenses, he seemingly has an estimated surplus of \$910 per month.

Ms. X lives on a Joint Base right outside of City B, Washington with her husband Z and their blended total of six children - the four eldest from their prior relationships - ages 18, 17, 17,16, 10, and 8. The three youngest children have various disabilities that include Attention Deficit Hyperactivity Disorder, cerebral palsy, hearing and speech impairments, autism, and Oppositional Defiant Disorder. As a household, every month they spend on average \$2675 on food, \$750 on gas to heat the home, and \$732 on utilities, dry cleaning for

³ Ex. 11.

military uniforms, renter's insurance, phones, internet and household maintenance.⁴ They spend approximately \$1,029 on gas and insurance for their three vehicles and small watercraft, and \$405 for storage, as their house is too small for their large family. They allocate \$41 for life insurance, \$33 for dental insurance, \$200 for a military debt stemming from a prior overpayment, and \$150 on personal expenses. Every month an average of \$350 is spent on entertainment, \$350 on credit card balances, \$425 for alcohol and tobacco and \$580 towards a debt consolidation agreement. Their monthly expenses average approximately \$9,305.

Regarding the household income, Ms. X testified that in 2020 she worked at an Employer B warehouse for approximately a month before being injured, then intermittently either worked in a reduced capacity or received workman's compensation the remainder of the year. She earned \$17.50 per hour working full or close to full time, and 75% of her wages while receiving workman's compensation, resulting in average annual wages of \$25,704 for the year. Her ability to work was seemingly compromised by both the workplace injury as well as other underlying health issues. Ms. X's wages combined with her husband's military income of \$60,468 and their military housing benefits of \$27,180 results in a 2020 gross household income of \$133,352, and an adjusted annual income of \$90,973.92 per year or \$7,581 per month. After deducting monthly expenses, they appear to have an estimated deficit of \$1,723.80 per month.

B. Procedural history

A telephonic hearing was held in this matter over three dates, June 2, June 23, and July 27, 2021. The Division was represented by Child Support Specialist Brandi Estes. Mr. S participated and was represented by his attorney, Marc Chicklo. Ms. X participated and represented herself. The record closed on July 27, 2021.

III. Discussion

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

Mr. S asserted that monthly support award of \$1,190 for L surpasses his ability to pay. He provided ample testimony regarding his job, wages, current living situation and associated expenses.

⁴ Ex. 11.

An obligor-parent may obtain a reduction in the ongoing support amount, but only if he shows that “good cause” exists for the reduction.⁵ To establish good cause, the parent must show clear and convincing evidence that manifest injustice would result if the support award were not varied.⁶ 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 consider the relevant factors that could affect the child, including a comparison of the available finances of both the obligor and the custodial parent.⁷

a. Economic situations of both households

A review of the budgets of both households initially suggests that Mr. S is in a better financial situation than Ms. X, having almost \$930 in surplus income every month as opposed to Ms. X’s average \$1700 monthly deficit. But beyond the balance sheets are other considerations.

Although in recent years Mr. S has consistently paid support for L, he fell behind about five years ago due to addiction issues and his enrollment in a drug treatment program out of state. This resulted in his accruing arrears, which are currently addressed through an automatic monthly withholding of \$500.⁸ That deduction alone reduces his monthly surplus from \$930 to \$430. From these remaining wages he is expected to pay L’s support obligation, which the parties agree is correctly calculated at \$1,190 monthly under the normal formula. Clearly, if \$1,190 were deducted from Mr. S’s remaining \$430, he would have a deficit of \$760 each month.

Mr. S’s monthly expenses are overall reasonable, do not reflect significant spending on non-necessities, and indicate good financial restraint. Another consideration when evaluating Mr. S’s finances is the wellbeing of T, a child born subsequent to L from a different relationship.⁹ Mr. S testified that he receives no financial support from T’s birth mother. Should he be required to pay over \$1000 per month for L, this could significantly impact Mr. S’s ability to meet T’s basic needs, including providing food and shelter.

⁵ See *Willis v. State, Dep’t of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).

⁶ Civil Rule 90.3(c).

⁷ 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.”

⁸ As verified by the Division. While a withholding alone is not an “unusual circumstance” in either Civil Rule 90.3 Commentary or 15 AAC 125.075, it is a debt that could be considered under 15 AAC 125.075(b)(2) if there is evidence of “unusual circumstances.”

⁹ Civil Rule 90.3(c)(1); Civil Rule 90.3, Commentary VI.B (2). The court should reduce child support if the failure to do so would cause substantial hardship to the “subsequent” children.

Ms. X's household budget is also tight, given the expenses associated with raising six children, three of whom have special needs and require added supervision and adaptive equipment. She described health issues compromising her ability to work a full-time job, as well as her husband's unpredictable work schedule which complicates childcare coverage. However, while there is little expendable income, there are several sources of income and expenses that merit further scrutiny.

Not included in the sources of income for the household are the child support payments Ms. X and Mr. X receive for the four oldest children, who were born of the X's prior relationships. According to Ms. X, while monthly payments for some of the children are less consistent, others are quite regular, including the support paid by Mr. S for L. These payments represent significant additional income to be considered when evaluating the financial health of each parent's household.

In addition, even considering the size of her household, some of Ms. X's monthly expenses seem high, which suggests spending on lifestyle choices that could be reduced if needed. Also, the number of individuals in Mr. S's household is likely to remain constant in the coming years, given that his daughter T is only 11 years old. Ms. X, in contrast, will soon have three children leaving her home. The eldest child has enlisted in the Navy and is slated to leave within the coming weeks. The two 17-year-olds also have also enlisted, although it is uncertain if they will begin basic training this year or next, based on the status of the global COVID-19 pandemic. Regardless, their eventual departure will have a significant impact on the Xs' monthly expenses.

Clearly both households are under financial strain. However, Ms. X's household also receives child support payments for several of the children in her home, helping offset some of their expenses. Additionally, the eldest child will be leaving this fall to enlist in the military, and two others will follow suit either this year or next. Having three of the six children out of the home will have a large impact on the household budget. Finally, her monthly budget reflects discretionary choices that could be reduced or eliminated.

Mr. S has many fewer variables in his household. He receives no additional child support payments for his daughter T, and there are no expected upcoming changes in his household composition. His monthly budget is conservative and includes no obvious expenses that could be eliminated or reduced. If he lives frugally, he ends each month with a \$910 surplus before

paying support for L, reduced to \$410 after the monthly withholding of \$500 is deducted from his paycheck for L's support arrears. Despite only having \$410 remaining he indicated to this tribunal his commitment to paying \$500 towards his ongoing monthly support obligation. This brings his actual monthly payments for L to \$1000, which shows his commitment to both pay off arrears accrued when he was seeking drug treatment as well as to contribute to L's ongoing support. His budget is already reasonably restricted with necessities, and he has fewer options to cut expenses or earn additional income than Ms. X's household. Requiring him to pay the full support amount as calculated would cause substantial hardship to his T, his subsequent child.¹⁰

Mr. S showed by clear and convincing evidence that his support obligation as calculated under Civil Rule 90.3(a) would result in manifest injustice. Weighing the situations of both parents and considering the wellbeing of both T and L, Mr. S's ongoing monthly obligation should be reduced to \$500 effective February 1, 2021.

IV. Conclusion

Mr. S met his high burden of proving that his monthly support amount under the regular formula exceeds his ability to pay and would be manifestly unjust. His request for a variance of that obligation is granted. Beginning February 1, 2021 and ongoing, Mr. S's support amount for L is set at \$500 per month.

V. Child Support Order

1. E S is liable for child support in the amount of \$500 per month for one child effective February 1, 2021 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated February 8, 2021 remain in full force and effect.

Dated: August 12, 2021

Signed

Danika B. Swanson
Administrative Law Judge

¹⁰ Civil Rule 90.3, Commentary VI.B (2), AAC 125.075(a)(1)(F).

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 1st day of September, 2021.

By: Signed _____
Signature
Lucinda Mahoney _____
Name
Commissioner of Revenue _____
Title

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