

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

In the Matter of	)	
	)	
H M	)	OAH No. 19-0044-CSS
_____	)	Agency No. 001208383

**DECISION AND ORDER**

**I. Introduction**

H M appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on December 11, 2018. The modification increased his child support obligation for his son, B, to \$828 per month, effective October 1, 2018.<sup>1</sup>

Through the hearing process, Mr. M showed that the support amount should be adjusted to \$604 per month under the Civil Rule 90.3(a) primary custody formula. The calculation is based on his actual 2018 income and allowable deductions, including deductions for a prior child in his home, retirement contributions, and cost for Mr. M's own health insurance. Mr. M's expected 2019 income does not result in a material change of circumstances, so the 2018 obligation also applies as the 2019 and ongoing amount. Mr. M's request to exclude his income from a second job is denied, as he did not show unusual circumstances that make application of the usual formula unjust.

**II. Facts and Proceedings**

*A. Relevant factual background*

H M and W Z are the parents of one child, B, age 7.<sup>2</sup> B was born in August 2011. He lives with Ms. Z in Alabama. Ms. Z exercises primary physical custody.

Mr. M lives in City A. In 2018, his gross wages from two jobs totaled \$60,292.<sup>3</sup> His primary job is a full-time position with Employer A, where he works in flight operations. He also earns income from a second, part-time job with Employer B. His 2019 gross wage income is likely to be similar to his 2018 earnings. He received the 2018 PFD of \$1,600 and will receive the 2019 PFD. Mr. M contributes \$318.87 each month to a retirement plan. He pays \$85 per month for his

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<sup>1</sup> Exhibit 6.

<sup>2</sup> Exhibit 1; Z testimony.

<sup>3</sup> Exhibit 10-11; CSSD submission to record dated 3/21/19. Mr. M's 2018 gross wages from his part-time job were \$12,566.52. Gross wages from his primary job were \$47,725.48. The 2018 income shown on Exhibit 8, p. 1 understates Mr. M's actual gross wages, since his primary employer reported net rather than gross income figures.

own health insurance coverage.<sup>4</sup>

Mr. M and his wife, X M, were married on July 19, 2013.<sup>5</sup> Their household includes three children. The youngest is an infant who was born in March 2019. The next-youngest is a daughter who was born in September 2015, so she is younger than B.<sup>6</sup> The oldest child, F, was born in December 2006 and is older than B. A primary question during the hearing was whether F is Mr. M's biological child, thereby entitling him to a deduction for supporting a prior child in his home.

Mr. M and X M were in a relationship before Mr. M dated Ms. Z. After the relationship ended, Ms. M gave birth to F but did not tell Mr. M about the pregnancy or his possible paternity. She also did not identify Mr. M as the father on F's original birth certificate. At that time, Ms. M wanted to raise F alone and she did not inform anyone of the father's identity.<sup>7</sup>

After Mr. M's relationship with Ms. Z ended, he began dating X again. Sometime after that, she told him he is F's biological father. On October 24, 2016, at the Ms's request, the Bureau of Vital Statistics issued a new birth certificate for F that identifies Mr. M as her father.<sup>8</sup> During the formal hearing process, Mr. M and F underwent genetic testing, which showed that Mr. M is in fact F's biological father.<sup>9</sup>

### *B. Procedural history*

In 2015, CSSD set Mr. M's child support obligation for B at \$293 per month.<sup>10</sup> The calculation did not include a deduction from income for a prior child in Mr. M's home. On August 24, 2018, CSSD received a transmittal request from an out-of-state child support agency, asking it to review and modify the existing support order.<sup>11</sup> CSSD sent both parents notice of the petition for a modification on September 27, 2018.<sup>12</sup> Each parent responded and submitted income information.<sup>13</sup>

On December 11, 2018, CSSD granted the modification review and issued the Modified Administrative Child Support and Medical Support Order that Mr. M appeals.<sup>14</sup> The modified

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<sup>4</sup> H M testimony; Exhibit 5. Mr. M's April 30, 2019 submission to record states that he also pays \$67 per month for dental and vision insurance. This payment is documented on his paystubs; however, it is not clear what portion of the total is attributable solely to Mr. M's coverage.

<sup>5</sup> H M testimony.

<sup>6</sup> Exhibit 7, p. 18.

<sup>7</sup> X M testimony.

<sup>8</sup> Exhibit 7, p. 17.

<sup>9</sup> M submission received 4/30/19 (DNA Paternity Testing Centers report dated 4/24/19).

<sup>10</sup> Exhibit 1.

<sup>11</sup> Exhibit 2.

<sup>12</sup> Exhibit 3.

<sup>13</sup> Exhibits 4, 5.

<sup>14</sup> Exhibit 6.

support order set his ongoing obligation for B at \$828 per month, effective October 1, 2018.<sup>15</sup> The calculation was based on expected 2018 wages of \$65,994.40 plus the PFD. It included a deduction for retirement plan contributions, but not for a prior child or Mr. M's own health insurance costs.

Mr. M appealed.<sup>16</sup> The formal hearing took place in two sessions: on February 11, 2019 and April 1, 2019. Mr. M appeared telephonically and represented himself, with assistance from X M. Mr. M and Ms. M both testified. Attorney Jody Reausaw appeared in person and represented Ms. Z, who participated by telephone. Child Support Specialist Brandi Estes represented CSSD. The record remained open until May 7, 2019, so Mr. M could submit genetic test results and other information. CSSD and Ms. Z were provided an opportunity to respond. All submitted documents were admitted to the record.

### **III. Discussion**

As the person who filed the appeal, Mr. M has the burden to show that the Modified Administrative Child Support and Medical Support Order issued on December 11, 2018 is incorrect.<sup>17</sup> Through the information provided during the hearing process, he met this burden.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>18</sup> 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. M's former obligation was \$293 per month, so a change of \$43.95 or more per month satisfies this standard.<sup>19</sup> A modification is effective beginning with the month after the parties are served with notice of the request for a modification review.<sup>20</sup> Here, CSSD provided notice in September 2018. Therefore, the modification is effective as of October 1, 2018.

Mr. M agrees that Ms. Z exercises primary physical custody of B. An Alabama custody and visitation order dated May 24, 2018 also requires that the calculation be done under the primary custody formula.<sup>21</sup>

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<sup>15</sup> Because Ms. Z pays for B's health insurance coverage, the modified support order also applied a medical debit of \$187 per month to the case. CSSD calculated the debit through its separate administrative process, described at 15 AAC 125.432. The medical debit or credit determination is not subject to a formal appeal, so that calculation is not at issue here. 15 AAC 125.432(g).

<sup>16</sup> Exhibit 7.

<sup>17</sup> 15 AAC 05.030(h).

<sup>18</sup> AS 25.27.190(e).

<sup>19</sup>  $\$293 \times 15\% = \$43.95$ .

<sup>20</sup> 15 AAC 125.321(d).

<sup>21</sup> Exhibit 7.

*A. Child Support Calculation*

Under Civil Rule 90.3(a), Mr. M's support amount is to be calculated based on his or her "total income from all sources," minus specified deductions. The relevant time period is the period for which the support is being paid.<sup>22</sup>

At the April 1<sup>st</sup> hearing session, CSSD concluded that Mr. M's actual 2018 gross wages from both jobs was \$60,292. Both parents agreed. The parties also agreed on the amount of Mr. M's monthly retirement contributions (\$318.87) and cost for his own health insurance coverage (\$85). In his April 30<sup>th</sup> submission, Mr. M argued for the first time that he also pays \$67 per month for dental and vision insurance. His paystubs document a deduction for this expense, which appears to cover himself and his dependents. Mr. M did not show what portion of the total is solely for his own coverage. He therefore did not meet his burden on this issue, and an additional deduction for dental/vision insurance is not included.

The parents initially disagreed whether Mr. M is entitled to a deduction for a prior child in his home, since it was not clear when Mr. M's legal obligation to support F arose. As her biological father, his duty began at her birth and she is a prior child under Civil Rule 90.3(a)(1)(D). However, if she had become his child by legitimation after his marriage to X M, or his child by acknowledgment when the new birth certificate was issued, the duty would have arisen after B was born and the prior child deduction would not have applied.

The uncertainty regarding paternity of F caused unusual delays in this administrative proceeding. After the February 11<sup>th</sup> hearing session, Mr. M agreed to undergo genetic testing to settle the question. However, the results he submitted showed a testing protocol that was not generally acknowledged as reliable.<sup>23</sup> After an additional delay, on April 30<sup>th</sup> Mr. M submitted results from a second genetic test, which show with 99.99% likelihood that he is F's biological father.<sup>24</sup> CSSD and Ms. Z do not contest the reliability of this result.

Because Mr. M established that he is F's biological father, he is entitled to a deduction from income for supporting a prior child in his home. The amount of the prior child deduction is \$755.<sup>25</sup>

Under the primary custody formula, Mr. M's actual 2018 income and allowable deductions – including a deduction for support of a prior child in the home – result in a support amount of \$604

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<sup>22</sup> 15 AAC 125.050(a); Civil Rule 90.3, Commentary III.E.

<sup>23</sup> See AS 25.20.050(d). See also M submission received 3/15/19 (DNA Direct Solutions test results).

<sup>24</sup> M submitted received 4/30/19 (DNA Paternity Testing Centers results dated 4/24/19).

<sup>25</sup> Attachment A (from CSSD online calculator at <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

per month for B, effective October 1, 2018.<sup>26</sup> This calculation relies on the best evidence of his income and deductions, and it should be adopted. A new calculation for 2019 will result in substantially the same obligation, since Mr. M's income and allowable deductions are not expected to change significantly. As a result, there is no material change of circumstances that justifies a different support amount, and the 2018 obligation carries through as the 2019 and ongoing amount.

*B. Unusual Circumstances*

Mr. M asked that the calculation exclude his income from his second job. He argued that he uses that income to pay support for B. He also uses it to pay the significant expenses he incurred for travel and attorney's fees while he and Ms. Z resolved disagreements about visitation issues.

Under Alaska law, child support in the great majority of cases should be awarded under the usual support formula.<sup>27</sup> A variance under Civil Rule 90.3(c) is available for good cause, which exists if the requesting parent presents clear and convincing evidence that manifest injustice would result if the support award were not varied. Good cause also may be based on the determination that unusual circumstances exist, and they make application of the usual formula unjust.

The existence of subsequent children, with their attendant expenses, does not generally constitute good cause for a variance. However, the support amount may be reduced if the failure to do so would result in substantial hardship to the subsequent children. In considering whether substantial hardship exists, the tribunal is to consider the income (including potential income) of both parents of the subsequent children.<sup>28</sup> The interests of a subsequent family also may be considered when the paying parent proves he or she took a second job specifically to better provide for the subsequent family.

Under Civil Rule 90.3, Mr. M's part-time job results in income that is available for support of B, and it should continue to be considered available for that support. Mr. M characterized the job as his way of paying his support obligation. Though he showed that his household also faces some financial pressures, he did not meet his high burden to show manifest injustice or substantial hardship to his younger children if the usual formula applies. In addition to his income, Mr. M's household is supported by his wife's income from her daycare business as well as rental income from rooms rented to daycare workers. In addition, though Mr. M incurred significant expenses in other legal proceedings, it is not appropriate to reduce his child support obligation for B to offset

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<sup>26</sup> Attachment B.

<sup>27</sup> See Civil Rule 90.3 Commentary, VI.A.

<sup>28</sup> Civil Rule 90.3 Commentary VI.B.2.

those costs. The totality of the circumstances does not justify a finding of unusual circumstances or good cause for a variance.

*C. Other Issues*

During the February 11<sup>th</sup> hearing session, Mr. M argued that he should receive a prior child deduction for the middle child in his home, since she was born before he received genetic test results confirming his paternity of B. He also argued he should receive a deduction for work-related childcare costs he incurs when B is visiting him. He did not pursue these claims during the April 1<sup>st</sup> hearing or in written submissions after the first session, and the evidence does not support deductions for either matter.

Clearly, B is older than Mr. M's middle child in his home. Mr. M was aware of Ms. Z's pregnancy with B, and he knew of his potential paternity.<sup>29</sup> There is no basis for applying a prior child deduction for a child who is younger than B.

When B visits Mr. M in City A, he attends a day care owned and operated at the Ms' home by X M. In 2018, B visited for approximately six weeks during the summer and another week or so in October 2018.<sup>30</sup> These childcare payments are paid to his wife, and Mr. M financially benefits from that business's income. Therefore, the payments do not qualify for a deduction from income for purposes of calculating Mr. M's support amount for B. Mr. M did not meet his burden on this issue.

Mr. M's written appeal argued that his support amount should be reduced because Alabama's cost of living is lower than Alaska's. He also asserts that Ms. Z makes a good living in Alabama, suggesting that she does not need the full support amount to provide for B's needs. The amount has been correctly calculated under the Civil Rule 90.3(a) primary custody formula, which does not take cost of living differences into consideration. The evidence does not support a finding of manifest injustice if Mr. M's support amount for B is set at \$604 per month. This decision therefore does not evaluate the parents' relative financial circumstances or consider the cost of living in Alabama.

During the hearing, Mr. M asked about his eligibility for an extended visitation credit, since B spends about six weeks with him during the summer. He can pursue this issue by contacting his CSSD caseworker. It cannot be addressed in this appeal.

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<sup>29</sup> M testimony.

<sup>30</sup> See M submission received 3/15/19 (copies of checks to Business A dated 6/25/18, 7/10/18, and 10/11/18).

Through a separate administrative process, CSSD applied a medical debit of \$187 per month to Mr. M's case. This reflects Mr. M's share of B's health insurance expense. When the debit is added to the support obligation, Mr. M's total monthly obligation for B comes to \$791.<sup>31</sup> Mr. M can pursue any questions or concerns about the medical debit with his CSSD caseworker.

#### **IV. Conclusion**

Through the evidence presented in the hearing process, Mr. M showed that his support obligation for B should be adjusted. Under Civil Rule 90.3(a), his actual income and allowable deductions result in a support amount of \$604 per month. This obligation should be adopted, effective October 1, 2018 and ongoing. A variance under Civil Rule 90.3(c) was requested but denied.

#### **V. Child Support Order**

- Mr. M is liable for child support for B in the amount of \$604 per month, effective October 1, 2018 and ongoing;
- CSSD will apply a medical debit for Mr. M's share of B's health insurance costs, as calculated through its separate administrative process;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated December 11, 2018, remain in full force and effect.

DATED: May 15, 2019.

By: Signed  
Kathryn Swiderski  
Administrative Law Judge

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<sup>31</sup> \$604 + \$187 = \$791.

## 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 29<sup>th</sup> day of May, 2019.

By: Signed  
Signature  
Cheryl Mandala  
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.]