

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

In the matter of:)

M. E. C.)

) OAH No. 07-0634-CSS

) CSSD No. 001030078

DECISION AND ORDER

I. Introduction

M. E. C. has appealed a Notice of Denial of Modification Review issued by the Child Support Services Division (“CSSD”) on September 27, 2007.¹ Mr. C., obligor, is the father of E. A. (DOB 00/00/91). K. A.-A. is the custodian of record for E.

The hearing in this matter commenced on November 29, 2007. M. E. C. attended in person, with his spouse, J. D. C.² Andrew J. Rawls, Child Support Specialist with CSSD, attended in person. The hearing was recorded. At the hearing, CSSD withdrew its Motion for Summary Adjudication filed on October 25, 2007. The record was left open until January 3, 2008 to allow the parties additional time to gather and present evidence. For other good cause shown, the hearing in this matter was continued until January 3, 2008

The formal hearing resumed on January 3, 2008. James T. Stanley, Administrative Law Judge for the Alaska Office of Administrative Hearings, conducted the hearing. Mr. C. and his wife, J. C., appeared in person. The custodian, K. L. A., did not appear. Andrew Rawls, Child Support Specialist, appeared and represented CSSD. The hearing was recorded. The record closed on January 10, 2008.

Having reviewed the record in this case and after due deliberation, Mr. C.’s appeal is granted; he is entitled to a hardship variance pursuant to Civil Rule 90.3(c) because he is disabled.

¹ Exhibit 7.

² J. C. has previously requested that her personal information provided to CSSD not be released or published. In the wake of what appears to be inadvertent disclosure of her personal information, Ms. C. strongly renews her request that her personal information **not** be published or released, and that pertinent documents should be redacted as necessary.

II. Facts

A. History

Mr. C.'s child support obligation for E. was set at \$195 per month in 2002. Following a hearing on December 1, 2005, a decision and order was issued on January 26, 2006, which increased the child support to \$250 per month, effective August 1, 2005.

Ms. A. initiated the instant child support modification action when she filed a Request for Modification of a Child Support Order on June 13, 2007. On June 25, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. C. provided financial information, and on May 7, 2007, CSSD issued a Notice of Denial of Modification Review.⁴ Mr. C. appealed the denial on October 12, 2007.⁵ CSSD filed a motion for summary adjudication on October 25, 2007; but later withdrew the motion at the hearing on November 29, 2007

B. Material Facts

The Obligor, M. E. C., lives with his son C., (DOB 00/00/94). Mr. C. graduated from college in 2004 and had been working in the computer industry. He began having serious medical problems in 2002 and was eventually diagnosed with bipolar disorder in August 2002. His condition deteriorated to the point that he had to take large amounts of time off from work. Mr. C. has not worked since July 2005. In August, 2005, he was terminated from his job.

Mr. C.'s wife is employed in property management and pays all of his bills, including his child support obligation of \$250. Although still married, Mr. and Mrs. C. were separated but were temporarily together in the same household because Mr. C. had lost his apartment for reasons beyond his control.

Mr. C.'s only income as the time of the January 3, 2008 hearing was \$1070 per month from Social Security as a result of his disability. Beginning on or about January 16, 2008, the net payment to Mr. C. would be \$998 per month, after deducting the medical insurance premium of \$96.40.⁶

³ Exhibit 2.

⁴ Exhibit. 5.

⁵ Exhibit. 7.

⁶ Exhibit 10.

III. Discussion

The central issue raised in this appeal is whether Mr. C. is entitled to a variance of his modified child support amount as a result of being disabled. Ms. A. did not attend the hearing to present evidence. CSSD does not oppose the variance.

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The obligor 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). A finding that "unusual circumstances" exist in a particular case 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^[7]

It is appropriate to consider all relevant evidence, including the Custodian's income, to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).⁸

I have considered the totality of circumstances, and based on the evidence in its entirety, I find that this case presents unusual circumstances of the type contemplated by Civil Rule 90.3(c). Mr. C. proved by clear and convincing evidence that manifest injustice will result if his modified child support is not varied from \$250 per month as set by order dated January 26, 2006. Mr. C.'s difficult bipolar disorder has caused his doctor to place him on disability status. Based upon Mr. C.'s candid testimony and the record developed in this case, maintaining gainful employment is not now possible for Mr. C. No evidence or inference suggests that Mr. C. is underemployed or voluntarily unemployed

CSSD does not oppose reduction of Mr. C.'s child support obligation for E. to \$50 per month. Accordingly, I find Mr. C.'s child support obligation should be modified to \$50 per month. This modification is effective July 1, 2007. Mr. C. has shown by clear and convincing evidence that a reduction of child support to \$50 per month reflects his ability to pay and his

⁷ Civil Rule 90.3(c)(1).

⁸ See Civil Rule 90.3, Commentary VI.E.1.

problematic medical condition; failure to make this reduction would result in “manifest injustice” to him.

A secondary issue raised by Mr. C. is whether or not he is entitled to a credit for the child living with him. While CSSD does not oppose the variance, CSSD would oppose credit for the expenses related to a child of a subsequent relationship

The commentary to Civil Rule 90.3 provides that child support payments paid to another person arising from a different case are deductible if: the child support is actually being paid; the payment of child support is required by court or administrative order; and, the child support being paid must relate to a prior relationship.⁹ Mr. C.’s implied request to modify the existing child support order does not satisfy the foregoing requirements. The critical commentary language which applies to Mr. C.’s request for consideration of the child living in his home is:

A child support order for children of a second marriage should take into account an order to pay support to children of a first marriage, **but not vice versa** (emphasis added).¹⁰

Applying the rule to Mr. C.’s situation and request, the existence of a “subsequent” child in the obligor’s home born *after* the support obligation arose (for E.) does not provide good cause to vary the child support guidelines.¹¹

IV. Conclusion

Mr. C. met his burden of proving that manifest injustice would result if his child support was not varied pursuant to Civil Rule 90.3(c). A child support amount of \$50 per month is a reasonable measure of Mr. C.’s ability to pay, and should be adopted. Mr. C. is not entitled to any credit for the expenses of raising C. in his home.

V. Child Support Order

Mr. C. is liable for modified ongoing child support in the amount of \$50 per month, effective July 1, 2007.

Dated this 21st day of April, 2008.

By: Signed _____
James T. Stanley
Administrative Law Judge

⁹ Civil Rule 90.3 Commentary, section II.D.

¹⁰ Civil Rule 90.3 Commentary, section III.D.

¹¹ Civil Rule 90.3 Commentary, section VI.B.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 9th day of May, 2008.

By: Signed _____
Signature
James T. Stanley _____
Name
Administrative Law Judge _____
Title

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