

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

IN THE MATTER OF:)

C. I. W.)

) OAH No. 07-0661-CSS
) CSSD No. 001120951
)

DECISION AND ORDER

I. Introduction

The Obligor, C. I. W., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 4, 2007. The Obligee child is T., DOB 00/00/01. The hearing was held on December 3, 2007. Mr. W. appeared in person; the Custodian, J. A. B., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. 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. W.'s modified child support is calculated at \$338 per month, effective September 1, 2007.

II. Facts

A. History

Mr. W.'s child support was set at \$221 per month in February 2005.¹ Ms. B. requested a modification on August 14, 2007.² On August 28, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ CSSD did not receive income information from Mr. W.⁴ On October 4, 2007, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. W.'s modified ongoing child support at \$371 per month, effective September 1, 2007.⁵ Mr. W. appealed on November 5, 2007, asserting he has two children in the home; he pays \$506 per month in child support; and CSSD already garnishes his PFD and tax returns.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. 5.

B. Material Facts

Mr. W. has worked for American Tire as a tire technician for several years.⁷ He earns \$12 per hour for full-time work and occasionally is able to get some overtime during the busy times of year. In 2006, he received wages totaling \$23,886⁸, based on his pay rate of \$11 per hour. For the four consecutive quarters ending in September 2007, Mr. W. received \$24,894.32.⁹ This is his approximate annual income at this time.

Mr. W. and his fiancée C. have two boys in the home; one is two years old and the other is six months old. They live with C.'s parents and in addition to their family of four, five other people live in the house. Mr. W. and C. have monthly expenses of about \$1700, which includes \$300 for rent; \$200 for food; \$100 for lunches; \$200 for daycare; \$20 for cable; \$110 for cell phones; \$270 for gasoline for two vehicles (paid for); \$82 for car maintenance and insurance; \$96 for health and dental insurance; \$183 for tobacco; and \$146 for the minimum payments on C.'s four credit cards. Mr. W. has about \$1500 in outstanding medical bills that have gone to collections.

C., who was off work for about a year during their pregnancy with their youngest child, started to work at a local retailer in October 2007 and currently brings home about \$800 per month. At the same time, she is attending school full-time to study medical coding and billing and expects to finish in June 2008. She testified that certified individuals in this profession earn \$25 per hour, but uncertified people earn much less. C. plans to take the test to become certified. She is currently in class four nights per week, which requires Mr. W. to care for the children in the evening. Her sister takes care of them during the day.

Mr. W. has a prior child named G., for whom he pays \$161 per month in support.

III. Discussion

A. Income

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

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

⁸ Exh. C.

⁹ Exh. 4.

¹⁰ AS 25.27.190(e).

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

Civil Rule 90.3(a)(1) provides that a parent who pays support for a prior child pursuant to a court or administrative order is entitled to have the prior child support amount included as a deduction from the parent's income in the support calculation for the child at issue.

Mr. W.'s child support was set at \$221 per month in 2005. In this modification action, CSSD calculated his modified ongoing child support at \$371 per month.¹² The agency used an annual income figure of \$26,548.32 in the calculation, which includes the \$24,894.32 in wages Mr. W. had earned during the previous four quarters, plus the 2007 PFD of \$1654.¹³ This is an accurate determination of Mr. W.'s estimated annual income, so one would expect the monthly child support calculation to be correct, but CSSD inadvertently failed to include Mr. W.'s \$161 per month child support payment for G. in the deductions section. The agency corrected that oversight prior to the hearing and revised the modified ongoing child support calculation to \$338 per month.¹⁴ This latest calculation of Mr. W.'s child support obligation is correct because it is based on his most recent income figures.

B. Financial Hardship

The second issue in this appeal is whether Mr. W. is entitled to a "good cause" variance of the child support calculation, pursuant to Civil Rule 90.3(c). This is also referred to as a hardship request.

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:

¹¹ Civil Rule 90.3(h).

¹² Exh. 4.

¹³ *Id.*

¹⁴ Exh. 6.

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 That relevant evidence consists of Mr. W.'s income and take-home pay, his expenses and his fiancée's take-home pay.¹⁷

Mr. W.'s income for the four quarters immediately preceding CSSD's calculation was \$24,894.32.¹⁸ For this analysis, the PFD was removed from the equation so as to have a better sense of his typical take-home pay prior to wage garnishment.¹⁹ This results in adjusted annual (net) income of \$18,903.08.²⁰ Dividing this number by 12 equals average monthly take-home pay of \$1575.26. Subtract from that number the amount of child support Mr. W. pays on a monthly basis – usually \$506 – and he is left with \$1069.26 per month to take home. Obviously, this is not nearly enough to pay his monthly bills, but fortunately C. is working and brings home approximately \$800 per month. Adding this amount to Mr. W.'s take-home pay leaves them with \$1869.26 per month with which to pay their monthly expenses. This amount probably does not seem adequate to Mr. W.; it is likely that he and C. have some hidden expenses that did not get into the evidence or testimony at the hearing. But fortunately C. will be finished with school within a few months and hopefully will quickly get a better paying job.

Mr. W.'s financial situation is definitely strained at this time, but given the evidence as a whole, his situation does not constitute “unusual circumstances.” Mr. W. 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.

¹⁵ Civil Rule 90.3(c)(1).

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

¹⁷ Of course, C.'s income is not included in Mr. W.'s for the purpose of calculating his child support obligation, but her income is relevant to the issue whether he has a financial hardship that warrants a reduction in his child support obligation.

¹⁸ Exh. 4.

¹⁹ CSSD's computer system uses the “single” tax rate, which is the highest rate and which gives the greatest advantage to an obligor in a child support calculation.

²⁰ See Attachment A, which is included only for the purpose of illustrating this analysis. The attachment should not be seen as an accurate child support calculation because the PFD was removed for this discussion. Although Mr. W.'s PFD is usually garnished, it is considered income to him because it is distributed to CSSD and credited to him as a child support payment. Civil Rule 90.3, Commentary III.A.6.

IV. Conclusion

Mr. W. proved that CSSD's determination of his child support obligation should be corrected to reflect the support he pays for a prior child, 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 \$338 per month, effective September 1, 2007.²¹ This figure should be adopted.

V. Child Support Order

- Mr. W. is liable for modified ongoing child support in the amount of \$338 per month, effective September 1, 2007, and ongoing;
- All other provisions of the October 4, 2007, Modified Administrative Child Support and Medical Support Order remain in effect.

DATED this 6th day of December, 2007.

By: Signed
Kay L. Howard
Administrative Law Judge

²¹ 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 August 28, 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 24th day of December, 2007.

By: Signed _____
Signature

Christopher Kennedy _____
Name

Deputy Chief Administrative Law Judge
Title

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