

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

In the Matter of: )  
 )  
 J. A. W. ) OAH No. 07-0722-CSS  
 ) CSSD No. 001135258  
\_\_\_\_\_)

**DECISION AND ORDER**

**I. Introduction**

On December 15, 2007, J. A. W. appealed the Modified Administrative Child Support Order (“modified order”) distributed and issued by the Child Support Services Division (“CSSD”) on October 15, 2007.<sup>1</sup> The modified order increased ongoing child support paid by Mr. W. from \$465.00 per month to \$643.00 per month.<sup>2</sup>

The formal hearing in this matter commenced on January 15, 2008, before Administrative Law Judge (“ALJ”), James T. Stanley, with the Alaska Office of Administrative Hearings (“OAH”). J. W., obligor, and B. J., custodian of N. J. (DOB 00/00/04), appeared and testified in person. David Peltier, Child Support Specialist, appeared on behalf of CSSD. The record was closed on January 25, 2008.

**II. Facts<sup>3</sup>**

Mr. W. is employed by S. E. at the time of the hearing. The evidence<sup>4</sup> shows that in 2007, Mr. W. earned \$46,617.17. Public records show that Mr. W. has applied to the State of Alaska for a permanent fund dividend each year since 1985.

**III. Discussion**

Mr. W.’s argument on appeal from the modification order has several components. He believes that: (1) his income is not correctly stated, (2) he has not received a PFD for the past 5 years, and (3) he provides health insurance for N., but he may not be receiving proper credit.<sup>5</sup>

Mr. W. has not presented any evidence to establish that his income as used by CSSD to calculate the child support payment for his child is incorrect or overstated. In a similar fashion,

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<sup>1</sup> Exhibit 8

<sup>2</sup> Exhibit 6

<sup>3</sup> The facts stated herein are drawn from the testimony received at the hearing, and the exhibits admitted into evidence, unless another source is cited.

<sup>4</sup> CSSD pre-hearing brief reciting Alaska Department of Labor data.

<sup>5</sup> Exhibit 8.

Mr. W. has not presented evidence that he is not receiving proper credit for the medical insurance coverage that he is providing for his child.<sup>6</sup>

The evidence shows that Mr. W. has received a permanent fund dividend during all relevant years. While the record is not complete as to the overall financial situation of Mr. W., there is a strong inference that Mr. W. has applied for permanent fund dividends on a regular basis, but the dividends have been executed on, or garnished by other third party creditors. In this sense, Mr. W.'s statement that he has not *personally* received permanent fund dividends in the last five years may be true, but the evidence is that dividends have been issued in his name and may have been paid to his creditors which is to his financial benefit. Accordingly, permanent fund dividends which did not find a home in Mr. W.'s pocket or bank account are still properly characterized as income to be considered for child support calculation purposes.

Ms. J. opines that Mr. W. is a skilled electrician and may have income not reflected on state labor records. She urges that the amount of monthly child support should be increased because Mr. W. is now earning more income than when last reviewed for child support purposes. No evidence was submitted by Ms. J. or CSSD to indicate that Mr. W. is receiving "off-book" income.

Child support amounts calculated under Civil Rule 90.3 from Mr. W.'s actual income figures are presumed to be correct. Civil Rule 90.3(a) (1) provides that Mr. W.'s child support amount is to be calculated based on his "total income from all sources." The percentage of income approach used to determine child support has a fair and substantial relationship to the goals of Civil Rule 90.3.<sup>7</sup> Mr. W. may obtain a reduction below the amount calculated, but only if he shows that "good cause" exists to support the reduction. To establish good cause, the parent must prove by clear and convincing evidence<sup>8</sup> that "manifest injustice would result if the support award were not varied."<sup>9</sup> Depending upon the facts of a particular case, "good cause" might be established by showing "unusual circumstances."

Alaska case law provides that when an obligor parent experiences an increase in income, the obligor cannot avoid paying additional support merely by showing that the children's needs

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<sup>6</sup> If the amount of medical insurance paid by Mr. W. for his child changes, he should contact his caseworker at CSSD to make the proper adjustment.

<sup>7</sup> *Lawson v. Lawson*, 108 P.3d 883(Alaska 2005).

<sup>8</sup> The clear and convincing standard of proof is more difficult to meet than the preponderance of the evidence standard.

<sup>9</sup> Civil Rule 90.3(c).

are being met by an existing child support award.<sup>10</sup> The adequacy of an existing child support order is not an obstacle to raising the amount of child support when the obligor's income increases, as Mr. W.'s has since June 26, 2006, the date his child support obligation for N. was set at \$465 per month.

Mr. W.'s income may change from time to time. If his adjusted annual income should materially change<sup>11</sup> as a result of being laid off, or fewer overtime hours, Mr. W. is entitled to expeditiously make application for a change in the child support amount.<sup>12</sup> The effective date for a modified child support order is the first day of the month following the request for a modification, even though the formal hearing may not occur soon after the request.<sup>13</sup> Accordingly, an obligor such as Mr. W. should not be subject to a child support order that no longer reflects his income for any significant period of time.

#### **IV. Conclusion**

Mr. W. did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order issued December 15, 2007 is incorrect. Based upon the best available information, CSSD correctly calculated Mr. W.'s modified child support amount.

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

Mr. W. is liable for modified ongoing child support in the amount of \$643.00 per month, effective November 1, 2007.

Dated this 9<sup>th</sup> day of April, 2008.

*Signed*  
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James T. Stanley  
Administrative Law Judge

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<sup>10</sup> *Berkbigler v. Berkbigler*, 921 P.2d 628 (Alaska 1996).

<sup>11</sup> Civil Rule 90.3(h) (1). A material change is presumed if the child support amount calculated pursuant to Civil Rule 90.3 changes more than 15%, up or down.

<sup>12</sup> AS 25.27.190.

<sup>13</sup> 15 AAC 125.321(d).

**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 28<sup>th</sup> day of April, 2008.

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

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