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

In the Matter of	)	
	)	
C. L.	)	OAH No. 25-1646-CSS
	)	

DECISION AND ORDER

I. Introduction

C. L. appeals a Modified Child Support Order that the Child Support Enforcement Division (CSED) issued on May 21, 2025. The order increased his monthly child support obligation for his daughter, N. L., from $541 per month as set forth in the preceding order issued June 17, 2021, to $966 per month. Mr. L. appeals that decision, seeking a hardship variance based on his other monthly expenses.

A telephonic hearing was held in this matter on June 27, 2025, and again on July 8, 2025. Because Mr. L. changed jobs, the record was held open for CSED to provide an updated child support calculation. Based on his new employment, CSED calculated a revised support obligation of $809 per month. The record remained open to allow the parties to file objections.

Mr. L. did not show by clear and convincing evidence that manifest injustice would result if his monthly support obligation was not reduced through a hardship variance. Nor did Mr. L. prove that the modified support obligation would cause "substantial hardship" to his subsequent child. However, given his change in employment, CSED's revised calculation is adopted. Effective May 1, 2025, and ongoing, his child support obligation will be set at $809 per month for one child based on a primary custody calculation.

II. Facts

A. *Background*[1]

C. L. and B. B. are the biological parents of one daughter, N. L., age 8. N. lives full time with Ms. B., her custodian of record, in Alaska.

On March 28, 2025, CSED received an email from Ms. B. asking to review Mr. L.'s income. CSED interpreted this as a modification request and sent the parties a Notice of Petition for Modification of Administrative Support Order on April 7, 2025.[2] Mr. L. responded to the

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1 Facts are based on testimony given by the parties at the hearings, submissions by CSED, and a hardship worksheet completed by Mr. L.

2 Ex. 2.

notice providing a Child Support Guidelines Affidavit, four paystubs from his current employer, and some related court documents.[3]

Based on the paystubs Mr. L. provided, CSED multiplied his gross biweekly salary of $2,776.50 by 26 weeks, for a gross annual wage of $72,189. With the addition of the PFD and Alaska Native Claims Settlement Act (ANCSA) dividends, CSED calculated Mr. L.'s gross annual income at $74,207.[4] CSED applied deductions for federal income tax, Social Security, Medicare, SBS, and retirement contributions, resulting in an adjusted annual income of $58,986.12, or $4,915.51 per month.[5] CSED issued a modified support order on May 21, 2025. That order had an effective date of May 1, 2025, and set the new monthly support obligation for one child at $966.[6]

During the hearing Mr. L. testified that due to an issue acquiring the required hours to become a journeyman plumber, he was forced to leave his current job and accept a job as an apprentice plumber.[7] This change in employment will reduce Mr. L.'s income as he accumulates the necessary hours but will increase his long-term earning potential. As a result of Mr. L.'s change in employment the record was held open to allow Mr. L. to submit new paystubs once he received them, and for CSED to recalculate his support obligation based on those paystubs.

On August 4, 2025 Mr. L. submitted his final paystub from his previous employer and his first paystub from his current employer. The final paystub from his previous employer showed year to date gross earnings of $31,423.51.[8] The first paystub from his current employer showed a standard wage of $30 per hour.[9] Mr. L.'s first paystub from his current employer also showed an overtime wage of $45 an hour.[10] However, CSED declined to include overtime in the calculation of Mr. L.'s income as there was no information "regarding Mr. L.'s prospects for overtime opportunities as a new hire."[11] CSED's decision is well taken and, for reasons that will be discussed further, is adopted.

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3 Ex. 3.
4 Ex. 4.
5 Ex. 4.
6 Ex. 4.
7 Testimony of Mr. L..
8 Ex. 8.
9 Ex. 8.
10 Ex. 8.
11 CSED's August 11, 2025 submission to the record.

CSED calculated Mr. L.'s wage for the remainder of the year by multiplying his regular hourly wage by 80 hours per pay period for 11 pay periods remaining in the year. This resulted in a calculation of $26,400. With his wage income, the PFD, and his ANCSA dividends, CSED calculated his gross annual income as $59,841.51. Mr. L. was given deductions for federal income tax, FICA, SBS, retirement contributions, and unemployment insurance. This resulted in an adjusted annual income of $48,543.27, or $4,045.27 per month. Based on the recalculated income CSED proposed a support obligation of $809 a month, effective May 1, 2025.[12]

Other than filing a letter indicating her opposition to Mr. L.'s arguments, Ms. B. did not participate in the hearing. As a result, little is known about her financial situation.

Mr. L. has lived with family since September of 2022. He does not have a rental agreement and does not directly pay rent.[13] On average he spends $700 monthly on food for himself, his son, and N. when she visits. Mr. L. also pays $163.10 for phone and internet service.[14] Mr. L.'s vehicle-related spending includes a $396.14 car payment, $240 in gas, and $192 in insurance. Mr. L. also has a significant amount of debt on credit cards and personal loans, making monthly payments of $395. In total, his annual living expenses average about $25,034.88, or $2,086.24 a month.[15]

In addition to N., Mr. L. has a subsequent child, a son. Mr. L.'s son lives with him full time, and Mr. L. receives limited to no support from that child's mother. Mr. L. receives free childcare from family members.

B. *Procedural history*

The hearing on Mr. L.'s appeal was held over two dates, June 27, 2025, and July 8, 2025. Ms. B. did not participate in either hearing. Mr. L. represented himself and CSED was represented by Child Support Specialist Mark Phang. As discussed above, the record was left open for additional income information to be submitted and to allow the parties to submit any objections or argument to the revised calculation. Ms. B. submitted an email noting she was in agreement with the recalculated amount.[16]

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[12] Ex. 9. (whole paragraph).
[13] Testimony of Mr. L..
[14] Testimony of Mr. L..
[15] Testimony of Mr. L..
[16] *See* August 11, 2025 email from Ms. B.. Ms. B. also requested that Mr. L. update CSED within 14 days of any change in income. That request is outside the scope of this decision.

Mr. L. submitted a document detailing his objection to the recalculated support amount. Mr. L. agreed with CSED that his gross wage income was roughly $4,800.[17] However, Mr. L. argued that with the $809 support amount and his $2,087 in monthly expenses, he would be left with only $700 and $800 a month. He argued that this amount was insufficient to allow him to secure a two-bedroom apartment for himself and his subsequent child. Mr. L. estimated the cost of a two-bedroom apartment to be between $1,500 and $1,800. He argued further, that:

> I believe a fair child support amount would be in the range of $200 to $250 per month. This would still allow me to provide financial support for my daughter while also giving me the ability to maintain stable housing and meet the needs of both of my children. It would also allow me to save a small amount for emergencies, such as car repairs or unexpected expenses, which is necessary for maintaining employment and caring for my kids.
>
> Thank you for considering my request. My goal is to continue supporting my daughter in a way that is fair, sustainable, and balanced with my responsibilities as the primary parent of my son.[18]

The record closed on August 29, 2025.

III. Discussion

As the person who filed the appeal, Mr. L. has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support Order requires adjustment.[19] For the purposes of this decision, given the clear evidence of Mr. L.'s reduced earning capacity while he attempts to gain the necessary hours to become a journeyman plumber, only the recalculated support obligation submitted by CSED on August 11, 2025 will be analyzed.

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[17] Mr. L.'s calculation of his income failed to include his PFD or ANCSA dividends.

[18] Mr. L.'s August 28, 2025 statement.

[19] 15 AAC 05.030(h).

A. *Child support calculation under Civil Rule 90.3(a)*

A parent is obligated both by statute and at common law to support his or her children.[20] Under Civil Rule 90.3, a parent's child support obligation is calculated based on his or her total income from all sources during the period for which the support is being paid.[21] Income includes any benefits that would have been available to the family unit should it have remained intact.[22]

Once a parent's total income from all sources is determined, Civil Rule 90.3 calculates the parent's adjusted annual income by subtracting specified deductions, such as for federal income taxes, Social Security, and Medicare withholding.[23] Alaska Civil Rule 90.3(a) provides the formula used to calculate child support awards in cases where one parent has primary physical custody. This formula applies in the situation at hand, as Ms. B. exercises primary physical custody of N..

Child support orders may be modified upon a showing of "good cause and material change in circumstances."[24] 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. L.'s former obligation was $541 per month, so a change of $81.15 per month satisfies this standard.[25] In the present case, as the modified child support obligation of $809 represents an increase of $268, a modification is justified.

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.[26] Here, CSED provided notice on April 7, 2025.[27] Therefore, the modification is effective as of May 1, 2025.

Regarding Mr. L.'s "income from all sources," his income was calculated by combining actual income information retrieved directly from Mr. L.'s paystubs, with his estimated earnings for remainder of the year based on an hourly wage of $30 and 80 hours of work per pay period.[28] With the addition of a $1,702 PFD and $316 in ANCSA dividends, Mr. L. gross income totaled

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20 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.
21 15 AAC 125.020, *See also* 15 AAC 125.030.
22 *See* Civil Rule 90.3 Commentary, III. Defining Income.
23 *See* Civil Rule 90.3(a)(1). Other deductions include, for example, work-related childcare expenses, retirement plan contributions, and health insurance premiums for the paying parent.
24 AS 25.27.190(e).
25 $541 x 15% = $81.15.
26 15 AAC 125.321(d).
27 Ex. 2.
28 Ex. 9.

$59,841.51.[29] Requisite deductions were subtracted for federal income tax, FICA, SBS, retirement contributions, and unemployment insurance, setting his adjusted annual income at $48,543.27, resulting in an annual support obligation for N. of $9,708.65, and a monthly support obligation of $809.[30] In his post-hearing briefing Mr. L. conceded that the calculation of his gross income was accurate.

Therefore, CSED's August 11, 2025 recalculation of Mr. L.'s income, and the resulting support obligation of $809, is accurate.

B. Variance under Civil Rule 90.3(c)

Through his submissions and testimony Mr. L. requested a variance of his ongoing obligations. Mr. L. proposed $200 to $250 per month as a more appropriate amount.

An obligor-parent may obtain a reduction in the ongoing support amount, but only if they show that "good cause" exists for the reduction.[31] To establish good cause, the parent must show clear and convincing evidence that manifest injustice would result if the support award were not varied.[32] Manifest injustice, in turn, requires a finding that a reasonable person would be convinced that the award is either unjustly large or unjustly small.[33] 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 all relevant evidence, including the circumstances of the custodial parent and the child.[34] Unfortunately, there is no information in the record about Ms. B.'s financial situation.

In general, Civil Rule 90.3 provides that a parent's support obligation to his older children should not be reduced because of the parent's support obligation for *younger* or "subsequent" children.[35] The older children are given priority. There is an exception to this general rule for cases in which failure to reduce the support obligation would cause "substantial hardship" to the subsequent children.[36] In determining substantial hardship, the Alaska Supreme

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29 Ex. 9.
30 Ex. 9.
31 *See Willis v. State, Dep't of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).
32 Civil Rule 90.3(c).
33 15 AAC 125.080.
34 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."
35 Civil Rule 90.3, Commentary VI.B.2.
36 *Id.*

Court has repeatedly stated that a parent should not be relieved of the obligation to support his or her prior children except under the most extreme or unusual circumstances.[37]

Mr. L. made no argument that a support amount of $809 would result in a manifest injustice or cause substantial hardship to the subsequent child. In fact, Mr. L.'s net monthly income after standard deductions is approximately $4,045. His claimed living expenses are $2,087, and the modified child support is $809. As Mr. L. failed to account for his PFD or ANCSA dividends, this actually leaves him with a monthly surplus of roughly $1,100. This evidence does not show that his modified obligation will result in substantial hardship to the subsequent child or that manifest injustice will result if the modified amount is not reduced.

Rather than arguing that the support amount would not allow him to meet his current financial needs, Mr. L. argued that a variance is appropriate because of his future needs. Chiefly, his desire to move out of the home he shares with his family and find a two-bedroom apartment for him and his subsequent child. Mr. L. is correct that with his current finances he would not be able to afford a two-bedroom apartment on his own. However, standing alone, this is not sufficient to grant a variance.

Mr. L. has been living with his family for three years. He has provided no evidence of why he needs to move into a separate residence now, particularly as that move would likely result in the loss of some of his available childcare. While Mr. L.'s financial goal of improving the quality of his housing is certainly reasonable, that future goal is not sufficient to meet his high burden to justify a variance. A variance cannot be granted here based on a desire for future housing that is not a current necessity, particularly when his present housing is stable.

Additionally, Mr. L. has the ability to modify his expenses or increase his income. Personal loans are among Mr. L.'s larger expenses. As with any loan, interest accrues substantially increasing the amount owed over the course of the loan. If Mr. L. directed the 1100 dollars of surplus income towards paying off those loans, rather than to secure a different residence, he could eliminate that monthly expense entirely. Without that debt, he would be significantly better positioned to rent his own apartment in the future. Next, Mr. L. has substantial prospects for an increase in his earning potential in the future. Currently Mr. L.'s income is calculated without the benefit of overtime hours.

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[37] *Reilly v. Northrup*, 314 P.3d 1206, 1215 (Alaska 2013); *Kestner v. Clark*, 182 P.3d 1117, 1123 (Alaska 2008).

While there is no evidence in the record of Mr. L.'s total potential for overtime income, it is more likely than not that a plumber would be eligible for at least *some* overtime.[38] Although not a part of the actual rule, the Commentary to Civil Rule 90.3 indicates that it may be possible for an obligor parent to successfully defend against an upward modification upon proving he or she has taken on additional income for the purpose of providing for a subsequent family:

> [T]he interests of [a] subsequent family may be taken into account as a defense to a modification action where an obligor proves he or she has taken a second job or otherwise increased his or her income specifically to better provide for a subsequent family. This defense to an upward modification action should not be allowed to the extent that . . . the obligor's increase in income is limited to ordinary salary increases. In considering whether substantial hardship to "subsequent" children exists, or whether the existence of a subsequent family should defeat a motion to increase child support, the court should consider the income, including the potential income, of both parents of the 'subsequent' children.[39]

At his current overtime wage of $45 an hour, Mr. L. would only need 9 overtime hours a pay period to meet his financial goal of securing a two-bedroom apartment. Coincidentally, this is the exact amount of overtime Mr. L. worked during his first two weeks at his current job.

While it is beyond the scope of this decision, were Mr. L. able to gain additional income from overtime hours <u>and</u> able prove he accepted this overtime with the specific purpose of better providing from his subsequent child, it is *possible* that additional overtime hours could be excused from a future modification calculation of his income.[40]

While paying $809 per month in ongoing child support for N. may require Mr. L. continue to live with family in the short term, his duty to pay the correct percentage of his income toward N.'s support takes precedence. Mr. L. has not established that his modified obligation will result in manifest injustice, a substantial hardship to his son, or that there is other good cause to reduce his ongoing support obligation to N., his oldest child.

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[38] In fact, Mr. L. managed to work 9 hours of overtime in his first two weeks.

[39] Civil Rule 90.3, Commentary VI.B.2

[40] *See In re U.H.,* OAH No. 18-0004-CSS. (Comm'r of Revenue 2018)(Available at https://aws.state.ak.us/OAH/Decision/Display?rec=1946).

IV. Conclusion

Mr. L. has not shown clear and convincing evidence that manifest injustice would result if the support award calculated under the primary custody formula is not reduced. However, based on necessary reduction in his income, the Modified Administrative Child Support Order that CSED issued on May 21, 2025 is adjusted to reflect CSED's August 11, 2025 recalculation. Accordingly, Mr. L.'s support obligation is set at $809 per month for N. L. effective May 1, 2025, and ongoing.

V. Child Support Order

1. C. L. is liable for child support in the amount of $809 per month for one child effective May 1, 2025 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated May 21, 2025 remain in full force and effect.

Dated: September 16, 2025

SIGNED
Eric M. Salinger
Administrative Law Judge

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 20th day of October, 2025.

By: SIGNED
Signature
Eric M. Salinger
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.]