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

In the Matter of	)	
	)	
E. E.	)	OAH No. 25-1322-CSS
	)	

AMENDED DECISION AND ORDER[1]

I. Introduction

E. E. appeals an Administrative Support Order with Preexisting Arrears issued by the Child Support Enforcement Division (Division) on March 21, 2025, objecting to the accuracy of the support calculation and requesting a variance due to financial hardship. The order established Ms. E.'s monthly support obligation at $1,132 for one child, based on third-party custody, effective April 1, 2025, and ongoing and arrears of $3,396 for January 1, 2025, through March 31, 2025. The obligee child is seven-month-old M. J..

A formal hearing was held over two dates, June 30, 2025, and July 23, 2025. Ms. E. appeared by telephone and represented herself. The Division was represented by Child Support Specialist Mark Phang.

Based on the record and after careful consideration, Ms. E. has presented clear and convincing evidence that manifest injustice would result if the support award were not varied. Ms. E.'s child support is set at $100 per month, effective April 1, 2025, and ongoing, and arrears for January 1, 2025, through March 31, 2025, are set at $100 per month for a total of $300.

II. Facts

A. Procedural Facts

Ms. E.'s son, M. J., was removed from her custody one month after his birth on January 5, 2025, and placed into state foster care by the Office of Children's Services (OCS).[2] The Division initiated child support establishment actions after receiving a referral from OCS, based upon that foster care placement.[3] Upon request, Ms. E. provided her

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[1] This decision was amended to correct a typographical error in Section V, 3., correcting the title of the Division's March 21, 2025, order from Modified Administrative Child Support and Medical Support Order to the proper title of Administrative Support Order with Preexisting Arrears.

[2] Testimony of E. E..

[3] Div. Ex. 1.

financial information to the Division including a Child Support Guidelines Affidavit; military Leave and Earnings Statements (LES); her 2024 W-2; and her 2024 federal income tax return.[4]

Based upon the income information she provided, the Division issued an Administrative Support Order with Preexisting Arrears on March 21, 2025, establishing a monthly support obligation of $1,132 for one child, based on third-party custody.[5] Ms. E. requested an Administrative Review Hearing, asserting that the support amount was calculated incorrectly. She attached additional financial information to her request.[6] Subsequent to the hearing, which Ms. E. attended, the Division issued an Administrative Review Hearing Decision affirming the March 21, 2025, Administrative Support Order with Preexisting Arrears.[7] Ms. E. appealed, asserting that multiple expenses related to M.'s state custody were not considered, her military housing allowance and the Permanent Fund Dividend (PFD) should not have been included in her wage calculation, and the child support should be combined as one case for both Ms. E. and the child's father.[8]

A formal hearing was held before the Office of Administrative Hearings (OAH), Ms. E. further clarified that she was requesting a hardship variance.[9] The Division provided information that OCS had placed M. with Ms. E.'s mother, T. G., on June 1, 2025, and that child support was not being sought after May 31, 2025, since this was now a familial placement.[10] Division exhibits 1-12 were admitted into evidence and the record closed on July 23, 2025.

B. Material Facts[11]

E. E. is an Air Force E-4 Senior Airman currently stationed in Alaska. She has been in the Air Force for almost seven years. Ms. E. gave birth to her son in December 2024. Based upon allegations made by the doctors on Military Base A regarding alleged child abuse, OCS placed M. into foster care one month after he was born.[12]

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4 Div. Ex. 2.
5 Div. Ex. 3.
6 Div. Ex. 4.
7 Div. Ex. 5.
8 Div. Ex. 6.
9 Testimony of E. E..
10 Testimony of Mark Phang.
11 Material facts are based on the testimony presented at the hearing by Ms. E. E. and Mr. Phang, as well as the submitted written record.
12 Div. Ex. 1; *see also* testimony of E. E..

A Child in Need of Aid (CINA) case was opened in the Alaska Superior Court in January 2025 alleging that M. had been the victim of shaken baby syndrome.[13] Although Ms. E. is a service member, a CINA case is a civilian matter therefore, the Air Force does not provide her with an attorney. Ms. E. testified credibly during the hearing that she made multiple requests to the Superior Court for appointed counsel which were denied.[14] She was told that she did not qualify for public defender representation despite her minimal monthly income as an enlisted service-member, having no money in savings, and having no assets besides her Chevrolet, for which she still owes over $9,800.[15]

Because Ms. E. was denied appointed counsel and had no assets to draw from, she had no choice but to obtain a $15,000 loan from her parents to hire a private attorney to represent her in the CINA matter.[16] She makes payments of $500 per month to her parents on the loan.[17] In or about June 2025, when the $15,000 retainer had been depleted, Ms. E. notified her attorney she could no longer afford her services and requested that she withdraw from representation and again requested appointed counsel from the Superior Court. Prior to the Superior Court granting her attorney's withdrawal and finally appointing a public defender, Ms. E. incurred additional attorney's fees of $2,256.50, above the $15,000 retainer she had already paid.[18]

The denial of an appointed attorney also placed other defense litigation costs on Ms. E.. The initial monetary costs for the experts and doctors hired to conduct assessments and to review M.'s medical records for her defense in the CINA matter had to be paid by Ms. E.. The expert costs she incurred include $468 for genetic testing,[19] $500 for a neurologist and $1,500 for child abuse expert Dr. Thurston, engaged by her retained attorney.[20]

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13 Testimony of E. E..

14 *Id.*

15 Div. Ex. 2, p. 3; Div. Ex. 4, p. 10; Div. Ex. 8; *see also*, testimony of E. E..

16 Div. Ex. 4, pp. 5- 9; Div. Ex. 9; *see also* testimony of E. E..

17 Div. Ex. 11; *see also* testimony of E. E..

18 Div. Ex. 10; *see also* testimony of E. E..

19 Ms. E. testified that she asked OCS to pay for this testing due to her existing financial hardship and OCS denied that request requiring her to pay for this testing out of pocket; *see also* Div. Ex. 10.

20 Testimony of E. E.. Dr. Thurston cost $3,000 of which Ms. E. paid $1,500 and M.'s father paid $1,500.

Ms. E. earns $3,341.40 in gross monthly wages. Additionally, she receives $2,848.59 per month in military non-income pay, for such things as a housing allowance (BAH), a subsistence allowance and a COLA[21]

Ms. E. provided a completed hearing expense worksheet and at the hearing she identified her normal monthly household expenses totaling $1,861.47. She normally spends $300 per month on food, $443.75 for her auto payment, $89.99 for her cell phone, $80 for gasoline, $109.73 for car insurance and $230 per month for personal hygiene. She owes $1,679.80 in credit card debt, much of which was accumulated related to her CINA case and needs for her son. She pays what she has available each month towards that debt.[22]

Because Ms. E. is in the military, her housing costs are somewhat convoluted. Ms. E.'s rental costs per month are $2,279. She receives a housing allowance of $1,671 per month from the military. However, the military directly withdraws rent in the amount of $2,229 per month from her paycheck. This converts her monthly rental costs to $608 per month above her housing allowance.[23] The additional $500 loan repayment for the $15,000 loan for her attorney's fees drives her monthly expenses up to $2,361.47.[24] Ms. E.'s net take-home pay is $1,449.91 twice per month or $2,899.82 per month.[25]

In addition to the costs related to the CINA matter, Ms. E. credibly testified that she has been supplying whatever financial support she could for M. while he is in foster care by providing clothes, formula and other infant needs to the foster family for him. She submitted receipts confirming she spent between $200 and $250 each month between March and May on baby items and at least $100 in late January for diapers and formula. On June 1, 2025, M.'s placement was transferred from the foster care family in Alaska to Ms. E.'s mother in Bakersfield, California. In order for Ms. E. to visit her son during the family placement, she had to purchase an airline ticket for roundtrip airfare from Alaska to California in the amount of $622.90.[26]

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21 Div. Ex. 5, p. 5; *see also* testimony of Mark Phang. These are referred to by the following abbreviations: BAQ, VHA, COLA, and BAS.

22 Div. Ex. 7; *see also* testimony of E. E..

23 Div. Ex. 4, p. 4; *see also* testimony of E. E.. $2,279 monthly rent - $1,671 BAH = $608 per month.

24 $1,861.47 + $500 - $2361.47.

25 Div. Ex. 4, p. 4.

26 Div. Ex. 10.

Ms. E. testified that the financial strain on her household since January 2025 has been immense. During the hearing, her voice cracked with emotion as she explained how she has resorted to eating one meal a day of rice and beans in order to financially provide for M. outside of the household and to afford everything necessary to defend against the allegations so that he will be returned to her home. M. is currently scheduled to be returned by OCS to Ms. E.'s care on or about the first week of August.[27] She is currently searching for childcare options but has not yet secured them.[28]

III. Discussion

Ms. E. asserts that the child support calculation was in error as it should not include her military housing allowance or a Permanent Fund Dividend (PFD). Additionally, she requested a variance asserting financial hardship due to her monthly child support obligation of $1,132, payments towards the accumulated arrears of $3,396 from January 2025 through May 31, 2025, the debt she incurred hiring an attorney to represent her in the CINA matter and covering her own household expenses.

The Division is required to establish a child support obligation beginning the month public assistance was first provided for the child.[29] As the person who filed the appeal in this case, Ms. E. bears the burden of proof. As to the support amount calculated under the third-party custody formula and applied in the modified child support order, her burden is to show by a preponderance of the evidence that the calculation is incorrect.[30] In order to receive a variance based on financial hardship, Ms. E. must show clear and convincing evidence that manifest injustice would result if the support award were not varied.[31]

A. Rule 90.3 Calculation

Under Civil Rule 90.3, when a child enters foster care, each parent has a separate support case established and both parents are ordered to pay support individually[32]. Each parent's child support obligation is calculated based on his or her total income from all

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27 Testimony of E. E.; *see also* testimony of Mark Phang.
28 Testimony of E. E..
29 Alaska Statute 25.27.120 (b) & 15 AAC 125.105(a)(1).
30 15 AAC 05.030(h).
31 Civil Rule 90.3(c).
32 AS 47.10.120(a); Alaska Civil Rule 90.3(i)(1).

sources during the period for which the support is being paid.[33] Therefore, calculating Ms. E.'s obligation separately from M.'s father's obligation is correct.

The Division calculated Ms. E.'s support obligation using her total wages of $40,096.80 plus her military non-income pay of $34,183.08.[34] The term "total income from all sources" is interpreted broadly to include benefits which are available for support and includes veterans' benefits that are not means based and military housing.[35] A portion of her military non-income pay is her housing allowance, and while she may not receive those funds directly as a deposit into her bank account, they are considered income for purposes of determining a child support obligation. Therefore, the Division was also correct to include all of her military non-income pay as income for purposes of calculating her support obligation.

The Division augmented Ms. E.'s income by a PFD of $1,702. In her appeal, Ms. E. asserted that the PFD should not have been included in her income since she does not receive a PFD. Typically, PFD income is included in a parent's estimated total income.[36] Ms. E., however, is a military member stationed in Alaska, not simply someone who moved to Alaska. A military member stationed in Alaska is not considered eligible for a PFD simply by virtue of being stationed in the state, the individual must meet the following eligibility requirements:

- Claim Alaska as their state of legal residence with the military by December 31 of the year before the qualifying year by submitting a request to their military finance office changing their state of legal residence to Alaska in time to be processed before January 1 of the qualifying year; AND
- Take at least one step, prior to July 1, 2024, beyond just being physically present in Alaska. For example, obtain an Alaska driver's license, register to vote, register a vehicle, sign a lease for non-governmental housing or purchase a home; AND
- Maintain Alaska residency at all times during the qualifying year and intend to remain an Alaska resident indefinitely.[37]

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33 *See also* 15 AAC 125.020, 15 AAC 125.030.
34 Div. Ex. 5, pp. 3-4.
35 Civil Rule 90.3 Commentary III. A(3) and (19).
36 15 AAC 125.50(e)(1).
37 https://pfd.alaska.gov/eligibility/military-eligibility.

Nothing presented in the record suggests that Ms. E. has taken any of the necessary steps to obtain formal eligibility for a PFD. For this reason, she credibly asserted that she has never applied for the dividend. Therefore, Ms. E. has met her burden of proving that her support calculation should not include PFD income.

Ms. E.'s income based on her wages and military non-income pay without the inclusion of the PFD is the best available evidence of her actual income and what her income is likely to be when the support is to be paid.[38] Therefore, Ms. E.'s gross income should be calculated at the amount of $74,279.88.[39]

Ms. E.'s monthly support obligation is calculated by taking her gross income of $74,279.88 and subtracting total allowable monthly deductions in the amount of $653.78 as follows: $231.09 for federal income tax; $255.62 for social security and Medicare; and $167.07 for retirement contributions.[40] This results in an adjusted annual income of $66,434.52.[41] From this amount, 20% is marked as available for child support per Civil Rule 90.3, which is $13,286.90 annually or $1,107 monthly.

The Division's calculation of her obligation being $13,581.54 annually or $1,132 monthly, was not accurate as it included the PFD. Therefore, the arrears calculation of $3,396 for January 1, 2025, through March 31, 2025, based upon this monthly amount was also not accurate. The monthly support obligation should have been calculated at $1,107 monthly, effective April 1, 2025, and ongoing, and the arrears calculation from January 1, 2025, through March 31, 2025, should have been calculated at $3,321.

B. Financial Hardship

A primary issue in this appeal is whether Ms. E. is entitled to a reduction in her child support obligation based upon financial hardship, pursuant to Civil Rule 90.3(c). A parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. To establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not

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38 *Coghill v. Coghill*, 836 P.2d 921, 926 (Alaska 1992) (child support determinations must be made on the obligor's current income or the best available evidence of what that income is likely to be).

39 Wages of $40,096.80 + $34,183.08 Military Non-income Pay = $74,279.88

40 *See* webapp.state.ak.us/cssd/guidelinecalc.com calculated for one child on non-Alaskan wages.

41 $74,279.88 -$7,845.36 ($653.78 x 12 months) = $66,434.52.

varied."[42] The presence of "unusual circumstances" 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…[43]

The Alaska Supreme Court holds that factors such as the wellbeing of an obligee, are especially important in determining whether there is good cause to vary the child support amount. The court has stated:

> The meaning of the term "good cause," however, is to "be determined by the context in which it is used."[44] That context, for Civil Rule 90.3 purposes, must focus first and foremost on the needs of the children.[45]

Based on all the evidence, this case presents unusual circumstance of the type contemplated by Civil Rule 90.3. Ms. E. provided clear and convincing evidence that manifest injustice would result if her child support were not varied from the amounts calculated under Civil Rule 90.3. It is highly irregular for an individual in Ms. E.'s financial situation not to have been provided with appointed counsel in a CINA matter such as hers. This irregularity caused Ms. E. to incur debt and costs in the amount of $19,724.50 to retain counsel and pay for experts in the CINA matter. Additionally, she has provided between $700 and $900 worth of financial support for M. while he was placed in non-family foster care and spent $622.90 on plane fare to visit M. once he was placed in her mother's custody. All in all, over the five months M. was in non-family foster care, Ms. E. incurred approximately $21,000 in additional costs, equating to approximately $4,200 more per month than her normal household expenses.[46]

Viewing her normal monthly expenditures, including the $500 per month loan repayment for the attorney loan, Ms. E. has at best $538 left at the end of each month.[47]

42 Civil Rule 90.3(c).
43 Civil Rule 90.3(c)(1).
44 Citing Coats v. Finn, 779 P.2d 775, 777 (Alaska 1989).
45 Doyle v. Doyle, 815 P.2d 366 (Alaska 1991).
46 $21,000/5 months in nonfamilial foster care $4,200 per month.
47 Net pay of $2,889.82 per month – monthly expenses of $2,361.47 = $538.35.

She therefore does not have sufficient income with which to pay her bills and to pay the child support obligations calculated at $1,107 monthly, effective April 1, 2025, and ongoing, and the arrears from January 1, 2025, through March 31, 2025, calculated at $3,321.

Additionally, reintegrating M. into her home will result in higher monthly household costs even for just the basics, such as diapers, baby food, and baby supplies for a growing infant. Ms. E. is still trying to obtain childcare and has no current estimates for that monthly cost but currently anticipates a significant childcare cost.

It makes little sense, and it would be unjust to burden Ms. E.'s household even more by adding additional child support debt and reducing her income through wage garnishments. Ultimately, it simply reduces the amount of money available to support M. in the home. Setting Ms. E.'s child support at $100 per month constitutes a reasonable measure of her ability to pay support under Civil Rule 90.3(c). This should reduce her total arrears to $300. The Division testified that currently $2,400 had been paid for Ms. E.'s arrears through wage garnishments and therefore, she may be entitled to reimbursement for any overage collected.[48]

An ongoing child support amount will be included in this order but based upon M. being placed with family on June 1, 2025, and soon being placed back in Ms. E.'s care, the Division has confirmed that the ongoing amount has been suspended. In the event that M. does not remain in Ms. E.'s home during the ongoing CINA matter and is once again placed in non-family foster care, now that Ms. E. has been appointed counsel in the CINA matter, her support obligation should be reviewed for a possible modification.

IV. Conclusion

Ms. E. has met her burden of proving by a preponderance of the evidence that her support calculation should not include income from a PFD. She has also met her burden to show by clear and convincing evidence that manifest injustice would result in the absence of a variation of the child support amount calculated under Civil Rule 90.3. Based on the evidence as a whole, her child support should be set at $100 per month, effective April 1,

[48] Testimony of Mark Phang.

2025, and ongoing and her arrears shall be calculated at $100 per month from January 1, 2025, though March 31, 2025, resulting in arrears of $300.

V. Child Support Order

1. E. E. is liable for child support in the amount of $100 per month for one child effective April 1, 2025, and ongoing.
2. E. E. is liable for arrears in the amount of $100 per month from January 1, 2025, to March 31, 2025, for a total of $300.
3. All other terms of the Administrative Support Order with Preexisting Arrears dated March 21, 2025, remain in full force and effect.

Dated: August 4, 2025

SIGNED
Beth Goldstein
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 25th day of August, 2025.

By: SIGNED
Signature
Beth Goldstein
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.]