

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

In the Matter of	)	
	)	
K. M.	)	OAH No. 24-0395-CSS
_____	)	

DECISION AND ORDER

I. Introduction

This case involves the modification of K.M.’s child support obligation for N., the daughter he shares with custodial parent W.O.. On May 24, 2024, the Child Support Enforcement Division (Division) issued a Modified Administrative Child Support Order raising Mr. M.’s monthly support obligation for N. from \$50 to \$389 effective March 1, 2024. On appeal, Mr. M. does not dispute the accuracy of the calculation of the support obligation under Civil Rule 90.3(a), but rather requests a variance due to financial hardship under Civil Rule 90.3(c).

A hearing was held in this matter over several dates in July and August 2024. Mr. M. showed by clear and convincing evidence that manifest injustice would result if his obligation was not reduced by way of a hardship variance. Based on the evidence and after careful consideration, Mr. M.’s ongoing obligation for N. should be set at \$50 per month, beginning March 1, 2024, and ongoing.

II. Facts

A. Material Facts¹

The Division is currently enforcing three active child support orders for children ranging in age from 5-12 years old, that list Mr. M. as the obligor. Including the child that is currently living with him, he is responsible for supporting seven children. In 2018 he began selling drugs as a side job to earn extra money to cover expenses. After he sold to an undercover agent he was arrested, charged federally, and received an 85-month sentence. Last year he was released to a halfway house, then graduated to ankle monitoring. In July 2024 his level of supervision was reduced to regular, mandated visits to the probation

¹ The material facts are taken from the hearing testimony and the documentary evidence.

office. He will soon be assigned a specific probation officer, so hopefully Mr. M. will have additional help and support with his job hunt.

Mr. M. is currently employed at Employer A in Anchorage, and while hired as a part time employee, has been given additional hours during the summer busy season. His diligent search for a second job is frustrated by the fact he's a felon, but he testified about other marketable skills. He has experience power washing, taping, prepping, and painting houses. Additionally, while incarcerated he completed 1.5-year apprenticeships in both carpentry and dental assistance. He explained that he has multiple applications pending with various potential employers through Job Website A, including with Employer B.

Mr. M. shares a home with his girlfriend and their five-year-old son. His Employer A paystubs show that Mr. M. earns an average net monthly income of \$2,760, while his partner's gross monthly income is approximately \$2,200, resulting in average combined monthly wages of \$4,960. Neither he nor his girlfriend qualify for assistance programs, including food stamps. Their monthly expenses include \$1,000 for rent, \$1,200 for food, \$350 in utilities, \$640 for gasoline, \$250 for car maintenance and repair, \$530 for car and health insurance. Monthly he pays \$500 towards a car payment, his girlfriend, \$600.² He budgets \$200 for family haircuts and other personal expenses but spends nothing on alcohol or tobacco. He testified that is reestablishing bonds with the children who do not live with him (including K.) by spending time with them on the weekends, averaging \$160 per month for movies, McDonalds, or the trampoline park. Subtracting average expenses of \$5,430 from his household income of \$4,960 results in a monthly deficit of about \$470.

Custodial parent W.O.'s household is also limited to a very restricted budget. She rents a home for herself and her two children, ages 4 and 12. Her gross monthly income averages \$6,833, and she monthly spends \$1,250 on rent, and approximately \$900 on food, \$318 on utilities (including a cell phone), \$470 on a car payment, \$450 on gasoline, \$18 on vehicle maintenance, \$475 on entertainment and personal care, and \$185 on house/car/health insurance, totaling an average of \$4,066. After subtracting her monthly expenses, she is left with an average of \$2,767, before including monthly payments of \$150 she makes towards approximately \$4,500 for consumer debt, and \$75 for cheer camp.

² Prior to his release from jail his girlfriend independently purchased a 2022 Jeep Compass and took on the associated monthly car payments. His vehicle is a 2006 Honda Pilot.

B. Procedural History

On March 24, 2016, the Division issued a Modified Administrative Support Order in this case, setting Mr. M.'s monthly support obligation for N. at \$50, based on primary custody. In February 2024, a custodial parent in another child support case involving Mr. M. requested a modification review in light of his release from custody. This triggered a review of all of Mr. M.'s support orders being enforced by the Division, including this one.

Relying on paystubs reflecting Mr. M.'s wages and hours provided by Employer A, Mr. M.'s employer, the Division projected an estimated gross annual income (augmented by the Permanent Fund Dividend) of \$32,958.³ After subtracting standard monthly deductions for taxes, social security, Medicare, unemployment insurance and support paid for prior children, his 2024 adjusted annual income totaled \$23,336, with 20%, or \$4,667 annually/\$389 monthly, available for child support.⁴ On May 24, 2024, the Division issued a Modified Administrative Child Support Order increasing his monthly obligation for N. to \$389 based on primary custody, beginning March 1, 2024 and ongoing.⁵

Mr. M. requested a formal hearing to contest the modified order.⁶ A telephonic hearing was held in this matter over several dates, August 14 and November 6, 2024. Mr. M. and Ms. O. both participated and represented themselves at the August hearing; Mr. M. was absent for the November date. The Division was represented by Child Support Specialist Shawn Pattison. The hearing was recorded. All offered exhibits were admitted to the record, which closed at the end of the final hearing date.

Mr. M. requested a hardship variance. He explained that since his release last year following an extended period of incarceration, he has been struggling to care for his family, hold a job, spend time with his children, and seek supplemental employment to cover his living expenses and child support arrears.⁷ As his household ends each month falling consistently deeper in debt, he risks losing his housing and thus jeopardizing his employment.

III. Discussion

³ Ex. 4.

⁴ Ex. 4, pp. 7-8.

⁵ Ex. 4.

⁶ Exhibit 7.

⁷ Mr. M. testified that while he was on ankle monitoring up until July 2024 the conditions of his release prevented him from holding a second job.

A parent is obligated both by statute and at common law to support his or her children.⁸ 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" minus applicable deductions. Income includes any benefits that would have been available to the family unit should it have remained intact.⁹ Mr. M. does not contest the calculations under the primary custody formula. He requests a reduction pursuant to Civil Rule 90.3(c) because of financial hardship or unusual circumstances. As the person who filed the appeal, he bears the burden of proof.

Child support determinations calculated under Civil Rule 90.3(a) are presumed to be correct. An obligor may obtain a variance of the ongoing or pre-order arrears amount, but only if he or she shows "good cause" for the reduction.¹⁰ To establish good cause, the parent must show clear and convincing evidence that manifest injustice would result if the support award were not varied.¹¹ Good cause also may include a finding that unusual circumstances require an adjustment to an amount that is "just and proper."¹² In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.¹³

Ms. O. credibly testified that she generally ends every month in the black, as indicated by her monthly household budget.

Mr. M.'s household, however, is clearly in difficult financial straits. He and his partner end every month with a negative balance of \$470 even before considering any ongoing support obligations for any of his other children, or the average of \$500 per month currently withheld from his paychecks for child support arrears involving other support orders. A review of his household expenses indicates few costs that could be eliminated, and while he credibly testified about his diligence in searching for a second job, as a felon this search may be more protracted. Meanwhile, as the busy summer season wanes, he expects that his hours at Employer A to soon be reduced. If his support obligation of \$389 for N. remains as set, Mr. M. will continue to end each month in an ever-deeper deficit, and risk falling behind on rent. Losing his home will

⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987), AS 25.20.030.

⁹ See Civil Rule 90.3 Commentary, III. Defining Income.

¹⁰ Civil Rule 90.3(c); *Willis v. State, Dep't of Revenue, CSED*, 992 P.2d 581 (Alaska 1999).

¹¹ Civil Rule 90.3(c).

¹² *Id.*

¹³ *Id.*; Civil Rule 90.3 Commentary, VI.B.

almost certainly jeopardize his employment and thus, his ability to support N. - and his other children - with any amount of support.

The evidence in this case supports Mr. M.'s request for a variance since the expenses of his household exceed the wages earned by him and his girlfriend. It is in all parties' interests that he be granted relief under Civil Rule 90.3(c) by lowering his monthly support obligation to \$50. While this represents a significant reduction, it provides Mr. M. a chance to maintain his home while he looks for additional work, and Ms. O. a small amount of financial assistance.

Mr. M. will have to secure supplemental employment to pay his household's monthly \$470 deficit, his monthly \$500 in support arrears, and the ongoing support obligations for his six children who live outside his home. It will be a challenge for him to earn this additional income while also providing for his family and allotting time to reconnect with his kids after being absent for so many months. However, he owes a \$2,000 balance on his vehicle, so with continued car payments of \$500 this debt will be paid off in a few months. Additionally, Mr. M. acknowledged that he has been working to find free or low-cost activities for him and his kids, including going to the park. He expressed his sincere commitment to ultimately meeting his financial obligations as well as being an involved father.

IV. Conclusion

Through evidence presented at the hearing Mr. M. met his high burden of proving that his monthly support obligation as calculated under Civil Rule 90.3(a) exceeds his ability to pay and would be manifestly unjust. His request for a variance of that obligation is granted under Civil Rule 90.3(c). Beginning March 1, 2024, and ongoing, Mr. M.'s monthly support obligation is set at \$50 for one child based on primary custody.

X

X

X

V. Child Support Order

1. K.M.'s monthly support obligation is set at \$50 for one child based on primary custody, beginning March 1, 2024, and ongoing.
2. All other terms of the Modified Administrative Child Support Order dated May

24, 2024, remain in full force and effect.

Dated: November 12, 2024

SIGNED

Danika B. Swanson
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 26th day of November, 2024.

By: SIGNED
Signature
Danika Swanson
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standard for publication. Names may have been changed to protect privacy.]