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

In the Matter of	)	
	)	
N.T.	)	OAH No. 24-0422-CSS
	)	

DECISION AND ORDER

I. Introduction

This case involves the modification of N.T.'s child support obligation for M.P., the daughter he shares with the custodial parent L. P.. On August 11, 2023, the Child Support Enforcement Division (Division) issued a Modified Administrative Child Support and Medical Support Order setting his monthly support obligation for M at $101, effective September 1, 2023, and ongoing. In March 2024 a modification request in a different child support case involving Mr. T. triggered a review of this matter, as well. Accordingly, the Division reevaluated Mr. T.'s income and corresponding support obligation, and on May 23, 2024, issued a Decision on Request for Modification Review finding that the monthly amount of $101 as previously calculated should remain unchanged, as there had not been a sufficient change in his wages since the original calculation.[1] On June 24, 2024, Mr. T. appealed, asserting that the Division incorrectly calculated his income and requesting a variance due to financial hardship and unusual circumstances under Civil Rule 90.3(c).[2]

A telephonic hearing was held in this matter over several dates in July, August, and September 2024. Mr. T. did not show that the Division incorrectly calculated his monthly child support obligation under Civil Rule 90.3(a). Nor did Mr. T. did not show by clear and convincing evidence that manifest injustice would result if his monthly support obligation for M. was not reduced by way of a hardship variance. Based on the evidence in the record, Mr. T.'s ongoing monthly obligation for one child should remain as set at $101.

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1 Ex. 3.
2 Ex. 4.

II. Facts

A. Material Facts

L.P., the custodial parent, lives with 13-year-old M.P..[3] Ms. P. did not participate in the hearing.

Mr. T. has a high school diploma. He also has a variety of marketable skills including experience in sheet rock installation, welding, and forklift operation.[4]

Mr. T. last full-time job was with Employer A in Anchorage, Alaska, selling lumber and sheetrock supplies. Employer A was willing to pay for Mr. T.'s training to get his commercial drivers license so he could drive for the company. When it came time to take a fitness for duty test, Mr. T. failed because his heartrate exceeded 200 bpm. Mr. T. attributed his high heartrate to his caffeine consumption, which exceeded 8 cups a day. Mr. T. admitted he did not read the instructions for that test, which prohibited consuming caffeine. Mr. T. was given the opportunity to retake the test but failed for a second time. Mr. T. attributed this failure to his continued caffeine consumption. After his second failure, he was let go from Employer A.[5]

Mr. T. testified that he has had difficulty finding permanent employment ever since. This is in part due to a prior felony conviction, as Mr. T. cannot work jobs which require going onto a military base.[6] However, after he lost his job at Employer A, Mr. T. was offered several other permanent positions with other employers, which he chose to reject as he did not believe they paid enough. Records from the Department of Labor indicate that Mr. T. has had 29 employers since 2021.[7] Mr. T. now works temporary jobs through Employer B, an online staffing agency.

At the hearing Mr. T. testified that he does not have permanent housing but rather "couch surfs." He rarely is without a place to stay, as he is allowed to overnight with his siblings, mother, or significant other. Within the last four months the only periods when Mr. T. was without housing were after late night arguments, when he chose to sleep in his inoperative vehicle rather than stay with his mother. These periods of sleeping in his vehicle only lasted for the night. Mr. T. is still seeking permanent housing. He acknowledged that when working full-time he was able to afford an apartment without subsidies, and he is eligible for a subsidized

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3 Ex. 2, p.1.
4 Testimony of Mr. T.. (whole paragraph).
5 Testimony of Mr. T.. (whole paragraph).
6 *See* 3AN-02-00000CR.
7 Ex. 5.

apartment, but he failed to complete the requisite anger management program.[8]

Mr. T. has a relatively low cost of living as he does not pay any rent or contribute to utilities while he is couch surfing. Mr. T. asserted in his appeal that he sometimes loses his SNAP benefits when he fails to submit the necessary documents, at which point he presumably has additional food costs. Mr. T.'s only other monthly costs established in the record are a cell phone and a bus pass. Mr. T. has a cell phone through the lifeline program, which costs him $6 to $7 a month. Mr. T. testified that his bus pass currently costs $60 a month, but he expects this to soon be reduced to $30.[9]

B. Procedural History

On August 11, 2023 the Division issued a Modified Administrative Child Support and Medical Support Order setting his monthly support obligation for M. at $101.[10] In March 2024 the Division received a request for a modification review in a separate child support matter involving Mr. T..[11] On March 26, 2024, the Division sent the parties notice that a Petition for Modification had been requested.[12] That notice ordered both parents to provide their income information, and it identified the required documents with specificity. It also advised, "[i]f you are the requesting party and you do not provide supporting documentation, we may cease your modification review."[13] Mr. T. did not provide any of the required documentation or other income information.

Rather than deny the request for review based on the lack of supporting documentation, the Division accessed information about Mr. T.'s income from the Department of Labor database. As the Division only had information for 2023 and the first quarter of 2024, the Division calculated Mr. T.'s expected income for 2024 based on part time employment earning minimum wage, augmented by the Permanent Fund Dividend.[14] Based on its calculations and deductions, on May 23, 2024 the Division issued a Decision on the Request for Modification

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8 Testimony of Mr. T.. (whole paragraph).

9 Mr. T. was previously on Medicaid, which would entitle him to a half-priced bus pass. Mr. T. expects he will be able to get back on Medicaid after he completes the appropriate eligibility paperwork.

10 Ex. 1, p. 10.

11 Ex. 2.

12 Ex. 3.

13 Ex. 2.

14 Testimony of Mr. Pattison. (whole paragraph).

Review finding that a modification of Mr. T.'s support obligation was not warranted, as there had not been a material change in circumstances.[15]

On June 24, 2024, the Division received an appeal request from Mr. T.. In that request, Mr. T. asserted that he cannot afford to pay the ongoing support amount, that the cost of ongoing support makes it impossible for him to afford housing, and that his income is incorrectly calculated by the Division as he is only able to get temporary jobs. [16]

The formal telephonic hearing in this matter began on July 22, 2024. At the start of the hearing Mr. T. was granted a continuance to submit documentation of his income and expenses. A scheduling order issued after that hearing, requiring those documents to be submitted by August 16, 2024. When the second session commenced on August 22, 2024, Mr. T. indicated that he had been unable to provide the documentation due to various hurdles and personal issues in his life. Mr. T. asked for one more extension and the hearing was continued to September 20, 2024. Mr. T. was cautioned that absent a true emergency, a subsequent continuance would not be granted. The scheduling order set a deadline for filing additional evidence of September 13, 2024. Again, Mr. T. failed to submit any documentation.

A formal telephonic hearing was held on September 20, 2024. At the start of the hearing Mr. T. stated that he had just gotten out of the shower and had not had time to submit the documents. No further extensions were granted. The Division was represented by Child Support Specialist II, Shawn Pattison. Mr. T. represented himself and testified on his own behalf. The custodial parent, L.P. did not participate. All submitted documents were admitted into the record. The hearing completed and the record closed on September 20, 2024.

[15] Ex. 3. Mr. T.'s income varied by -1% from the previous support order.

[16] Ex. 4. (whole paragraph).

III. Discussion

A. Child Support Calculation

Mr. T. is obligated both by statute and at common law to support his child.[17] The rules for calculating child support are set by Civil Rule 90.3. Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on their "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.[18]

In cases involving primary physical custody, Civil Rule 90.3(a) bases the non-custodial parent's ongoing child support obligation on the amount the parent can be expected to earn during the period for which the support is being paid.[19] This determination is necessarily somewhat speculative because the relevant income figure is expected future income.[20]

Mr. T.'s 2023 income was calculated based on wages of $5,870.02 as reported by his employer, and augmented by a PFD of $2,622, resulting in a total gross income of $8,492.02.[21] Monthly allowable deductions for Social Security, Medicare, unemployment insurance and a child support obligation for an older child totaled $202.33. Subtracting these deductions resulted in an adjusted annual income of $6,064.06 and a monthly support obligation for M. of $101.[22]

In response to the March 26, 2024 request for modification in a separate child support case, the Division revisited Mr. T.'s income calculation in this matter. Mr. T. did not provide any paystubs or other information regarding his 2024 wages, nor any information that he has a medical disability or condition that prevents him from maintaining employment. Therefore, the Division based his income on projected earnings from a part-time, minimum wage job and included the PFD, resulting in a gross annual income of $13,511.20. As this projected income falls below $30,000, the Division appropriately applied a low-income adjustment by subtracting a standard monthly deduction of $625 from his gross income.[23] This resulted in an adjusted annual income of $6,011.20, and a monthly child support obligation for M. of $100.[24]

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17 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.
18 *See* Civil Rule 90.3 Commentary, III. Defining Income.
19 Civil Rule 90.3, Commentary, Section III.E.
20 *Id.*
21 Ex. 1, pp. 9-10.
22 Ex. 3, pp. 3-4.
23 Civil Rule 90.3(a)(5). This is also referred to as the Self Sufficiency Reserve Credit and exists to ensure that the non-custodial parent retains enough income to meet his/her own basic needs after paying child support.
24 Ex. 3, pp. 2-3.

Under Civil Rule 90.3, an existing child support order may be modified upon a showing of "good cause and material change in circumstances."[25] If the newly calculated child support amount is more than a 15% change from the previous order, a "material change in circumstances" is established, and the order may be modified. Mr. T.'s child support was previously set at $101 per month, so a revised calculation must reflect a change of at least $15.15 to warrant modification in this case.[26] However, Mr. T.'s 2024 child support obligation was calculated as $100, which reflects a change of -1%. As this did not meet the required amount of change to represent a "material change in circumstances," the Division correctly maintained Mr. T.'s monthly support obligation as originally set at $101.

In child support matters, the person who files an appeal bears the burden of proof.[27] As the person who filed this appeal, Mr. T. has the burden of proving by a preponderance of the evidence that the Division erred when it denied his modification request. He did not meet this burden, as there is no indication that the Division committed any errors in calculating Mr. T.'s 2024 support obligation under Civil Rule 90.3.

B. Hardship variance under Civil Rule 90.3(c)

Mr. T.'s key argument on appeal is that he is unable to pay the $101 ongoing support obligation for M. and he requests a variance. The obligor may obtain a reduction in the amount of ongoing calculated, but only if the parent 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 varied."[28] Manifest injustice, requires a finding that a reasonable person would be convinced that the award is either unjustly large or unjustly small.[29] This is a high standard, and reductions based on hardship are reserved for cases involving unusual circumstances.[30] In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child. Unfortunately, Ms. P. did not participate in any of the hearing dates in this matter and did not provide any information about her financial circumstances.

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[25] AS 25.27.190(e).
[26] $101 x 15% = $15.15
[27] 15 AAC 05.030(h).
[28] Civil Rule 90.3(c); *see also* 15 AAC 12.075.
[29] 15 AAC 125.080.
[30] *See In Re L.M.* OAH no. 12-0064-CSS (Commissioner of Revenue 2012) (available at https://aws.state.ak.us/OAH/Decision/Display?rec=1417).

To support his request for a variance, Mr. T. argued that he cannot secure housing with the current child support amount. Mr. T.'s did not complete a hearing expense worksheet, but testified to current monthly obligations of $67, which he expects to reduce to $37. Including his monthly support obligation for M., his monthly expenses will total roughly $168. While Mr. T.'s financial circumstances are likely more strained than the information in the record, he holds the burden of proof in this case and did not submit additional exhibits or testimony. Mr. T.'s request falls short of meeting the clear and convincing evidence standard as he was unwilling to provide complete and reliable evidence of his income and expenses, which is the starting point in assessing any claim of hardship.

While his financial situation is certainly difficult it is a situation, at least partially, of his own making. Mr. T. testified that he was able to afford unsubsidized housing when he had full-time employment, but he has not had full-time employment in at least three years. Mr. T.'s lack of consistent employment is due, at least in part, to his refusal of offers of full-time employment. Additionally, while Mr. T.'s criminal history limits his employment options, he has had a felony conviction on his record since 2002. Even with that conviction, Mr. T. was previously able to secure full-time employment and offers of full-time employment.

Even without full-time employment Mr. T. testified that he would be eligible for, and able to afford, a subsidized apartment. The barrier to securing that subsidized housing is not the child support amount, but Mr. T.'s failure to complete an anger management class. While Mr. T. is certainly in a difficult financial situation, Mr. T. holds the power to improve his situation by working more hours with Employer B, or securing full-time employment in one of the trades he has experience in. Given these facts, Mr. T. has not met his burden to clearly and convincingly show that manifest injustice would result if his support for M. is not reduced.

IV. Conclusion

Mr. T. did not meet his burden of proof to show a substantial change in circumstances to warrant a modification of the 2023 order. Additionally, Mr. T. did not meet his high burden of proving that his monthly support amount under the regular formula would be manifestly unjust. His request for a modification or variance of that obligation is denied. This decision does not affect Mr. T.'s ability to request a modification in the future.

V. Child Support Order

1. The Division's May 23, 2024 Decision on Request for Modification Review denying a modification is affirmed.

2. The Administrative Child Support and Medical Support Order dated August 11, 2023 remains in full force and effect.

3. As set in the August 11, 2023 order, Mr. T. is liable for child support in the amount of $101 per month for one child based on primary custody beginning September 1, 2023, and ongoing.

Dated: September 30, 2024

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 16th day of October, 2024.

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.]