

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

IN THE MATTER OF: )

M. A. O. )

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) OAH No. 08-0086-CSS

) CSSD No. 001146632

**DECISION AND ORDER**

**I. Introduction**

This matter involves the Obligor, M. A. O. A/K/A J. W.'s, appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on February 1, 2008.<sup>1</sup> The Obligee child is M. G., DOB 00/00/06.

The hearing commenced on March 17, 2008, and was continued on April 9, 2008. The record remained open until May 1, 2008, to provide Mr. O. with an opportunity to provide additional evidence. Mr. O. appeared in person; the Custodian, C. G., participated by telephone. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded.

Rebecca L. Pauli, Administrative Law Judge in the Alaska Office of Administrative Hearings, conducted the hearing. Mr. O. has submitted additional evidence which established that his appeal should be granted in part and denied in part. The child support calculations for 2006 and 2007 should not be adjusted; the child support calculation for 2008 should be adjusted under Civil Rule 90.3(c) to take into consideration support paid for prior children; and Mr. O. should receive a credit for in-kind payments in the amount of \$502.13.

**II. Facts**

**A. History**

On November 14, 2007, CSSD served an Administrative Child and Medical Support Order on Mr. O.<sup>2</sup> He requested an administrative review.<sup>3</sup> Using income information supplied by Mr. O.'s employers and the Department of Labor, CSSD issued an Amended Administrative Child Support and Medical Support Order on February 1, 2008, that set Mr. O.'s ongoing child support at \$712 per month, with arrears of \$11,312 for the period from September 2006 through

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<sup>1</sup> Exh. 9, 11.

<sup>2</sup> Exh. 3, 5.

<sup>3</sup> Exh. 6.

February 29, 2008.<sup>4</sup> CSSD determined that in 2006, Mr. O.'s total gross income was \$23,974, and based on this figure calculated a monthly child support payment of \$336. For 2007, CSSD determined that his 2007 total gross income was \$54,926.47, and based on this figure calculated a child support payment of \$712 per month. Mr. O. timely filed an appeal and requested a formal hearing.<sup>5</sup>

## **B. Material Facts**

Mr. O. is originally from Nigeria. He has two prior children, ages 6 and 3, who live in Nigeria with their mother. He testified that he pays \$500 per month in child support for his prior children. Mr. O. provided two Western Union receipts showing that on February 28, 2008, and March 31, 2008, he wired \$350 to S. O. in Nigeria.<sup>6</sup>

Mr. O. is a personal care attendant working for two different employers. At the hearing Mr. O. provided current pay stubs, his 2006 and 2007 tax returns and W-2 forms.<sup>7</sup> In 2006, Mr. O.'s taxable gross income was \$43,566.96 and using that amount, CSSD calculated a monthly child support payment of \$585 effective September 1, 2006.<sup>8</sup> In 2007, he earned \$54,926 and CSSD calculated a child support amount of \$712 per month effective January 2007.<sup>9</sup> Earning records for 2008 reveal that Mr. O. is anticipated to have taxable gross income in the amount \$47,011, which results in a child support payment of \$625 per month effective January 2008.<sup>10</sup> CSSD calculated Mr. O.'s 2008 taxable gross income by estimating 2008 wages to be earned plus his PFD.<sup>11</sup>

Mr. O. believes CSSD has overestimated his 2008 wages because he injured his back in 2007. He testified that working as a personal care attendant is physically taxing and if he listens to his body, he knows he cannot continue working as he did in the past.

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<sup>4</sup> Exh. 9, 10.

<sup>5</sup> Exh. 11.

<sup>6</sup> Exh. 12.

<sup>7</sup> Exh. 14.

<sup>8</sup> Exh. 15 at 1. All CSSD calculations were performed using the State of Alaska CSSD Guideline Calculator found at <https://webapp.state.ak.us/cssd/guidelinecalc.jsp>.

<sup>9</sup> Exh. 15 at 2.

<sup>10</sup> Exh. 16.  $\$45,357 + \$1,654 = \$47,011$ .

<sup>11</sup> CSSD estimated the wages based on Mr. O.'s two most recent pay stubs and determined that he earned \$1,744.5 per pay period. Exh. 14 at 1, 2.  $\$1,744.5 \times 26 = \$45,357$ .

Mr. O. is married and lives with his wife who is completing her degree while she works part time. She earns \$650 per month. Mr. O. has regular household and living expenses of: \$1,350 for rent (payment includes natural gas and water); \$450 for food; \$80 for electricity; \$110 for internet, phone and cable; \$13.33 for trash pickup; \$60 for a cell phone; \$66.67 for vehicle maintenance; \$83.33 for vehicle insurance; \$140 for entertainment and personal care items; and \$2,000 per year (\$166.67 per month) in medical expenses.<sup>12</sup> Mr. O. also owes the IRS \$4,000 and makes payments of \$300 per month. Mr. O. has no consumer debt.

The parties are in agreement that Mr. O. has provided in-kind support to M. in the amount of \$502.13.<sup>13</sup> Most of the receipts are dated in the summer and fall of 2007. He also submitted a receipt totaling \$41.34 for clothing items which Ms. G. could not confirm were received.<sup>14</sup>

### **III. Discussion**

Mr. O. agrees that without a deduction for support paid to prior children CSSD has correctly calculated his child support for 2006 and 2007. However he disagrees with CSSD's 2008 calculations for three reasons: 1) the income is over-stated; 2) he should receive a hardship variance; 3) he should receive a deduction for support paid to his children in Nigeria and 4) he should receive a credit for in-kind support.

#### **A. Mr. O.'s Income**

A parent is obligated both by statute and at common law to support his or her children.<sup>15</sup> Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated from his or her "total income from all sources."

CSSD initially calculated Mr. O.'s 2006 child support at \$336 per month, and his 2007 child support at \$712 per month.<sup>16</sup> These calculations were based on the information available to CSSD at the time. Since issuing its Amended Administrative Child Support and Medical Support Order, CSSD has received current income information. During the hearing, these figures were adjusted based on Mr. O.'s evidence, and the calculations were corrected to \$585,

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<sup>12</sup> Mr. O. does not have medical coverage at work and estimates he spends \$2,000 per year on medical expenses for himself.  $\$2,000 / 12 = \$166.66$  per month.

<sup>13</sup> Exh. 13.

<sup>14</sup> Exh. 13 at 4, 5.

<sup>15</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

\$712, and \$625 per month for 2006, 2007 and 2008. The calculations for 2006 and 2007 are based on his actual income figures and are undisputed by Mr. O.; the calculation for 2008 is based upon the most current income information available.<sup>17</sup> These calculations are correct, pursuant to Civil Rule 90.3.

**B. Reduction in Child Support Based on Hardship**

Mr. O.'s child support is now correctly calculated at \$585, \$712, and \$625 per month for 2006, 2007 and 2008, respectively. It is from these calculations that Mr. O.'s request for a variance based on financial hardship should be considered.

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order 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." Civil Rule 90.3(c). If the parent can prove that "unusual circumstances" exist in his or her case, this may also 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 . . . .<sup>[18]</sup>

It is appropriate to consider all relevant evidence to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).<sup>19</sup>

Mr. O. did not prove by clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3 is not varied. Mr. O. has regular household expenses of about \$2,820 per month excluding child support, and his adjusted annual income is \$37,525.72 per year, which equals \$3,127.14 per month.<sup>20</sup> Mr. O.'s expenses are less than his net income. Therefore, he has not met his burden.

Mr. O. also argued that he anticipates his earnings will be reduced because he believes he will not physically be able to work as he has in the past. A parent who claims he or she cannot

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<sup>16</sup> Exh. 9, 10.

<sup>17</sup> 15 AAC 125.050(c).

<sup>18</sup> Civil Rule 90.3(c)(1).

<sup>19</sup> See Civil Rule 90.3, Commentary VI.E.1.

work or pay child support because of a disability or similar impairment, must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.<sup>21</sup> Mr. O.'s testimony, without more, is insufficient proof to support a medical variance in the amount of child support owing. However, should Mr. O.'s circumstances change he may petition for modification of his child support obligation.

### **C. Deduction for Support Paid to Prior Children**

Child support actually paid to another person for children from a prior relationship is deductible from an Obligor's gross income if it is paid under a court or administrative order.<sup>22</sup> When child support for prior children is paid voluntarily, it may be deductible under Civil Rule 90.3(c) if, as discussed above, the Obligor can prove by clear and convincing evidence that manifest injustice would result if the deduction were not allowed.<sup>23</sup>

Mr. O. testified that he sent \$500 per month to his children in Nigeria. The record remained open to provide him with an opportunity to gather and submit evidence that would establish that he has been paying child support for children from a prior relationship. There is no court or administrative order ordering he make these payments. Mr. O. has provided evidence that he sent \$350 in February 2008 and again in March 2008 to Nigeria. Prior to that date there is no evidence to corroborate Mr. O.'s testimony. Therefore he is not entitled to a deduction for support paid to prior children before February 2008.

Neither CSSD nor Ms. G. object to Mr. O. receiving a deduction for these payments in 2008 and going forward. CSSD has calculated Mr. O.'s 2008 monthly child support payment with a deduction to be \$555 per month. The circumstances of voluntary payment constitutes unusual circumstances under Civil Rule 90.3(c) and Mr. O. has met his burden of proving by clear and convincing evidence that, as of February 2008, his child support should be varied based on the deduction found in Civil Rule 90.3(a)(1)(C).

### **D. Credit for In-Kind Payments**

An obligor will receive credit for in-kind contributions against his or her child support obligation if:

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<sup>20</sup> Exhibit 16.

<sup>21</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1371 (Alaska 1991).

<sup>22</sup> Civil Rule 90.3(a)(1)(C);

<sup>23</sup> Civil Rule 90.3(c); Civil Rule 90.3, Commentary III D.

1. the child support obligation is established by a support order;
2. the parties agree in writing to allow credit for the in kind contribution;
3. the parties agree in writing to the dollar value of the in-kind contribution; and
4. the Obligor provides clear and convincing evidence of the in-kind contribution and its dollar value.<sup>24</sup>

The agency may give credit for an in-kind contribution only once.<sup>25</sup>

Mr. O. provided receipts of his purchases. Here there is a valid support order and the parties consented on the record to allow credit for the in-kind contribution as well as the dollar amount, \$502.13.<sup>26</sup> He has not met his burden of proof as to the receipt totaling \$41.34. Mr. O. has met his burden of proof and he should receive a credit for in-kind contributions in the amount of \$502.13 for the month of November 2007.

#### **IV. Conclusion**

Mr. O. met his burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect. His child support should be \$585 per month from September 1, 2006, to December 31, 2006; \$712 per month for 2007, \$625 for January 2008, and \$555 per month for February 2008 and ongoing. Mr. O. has met his burden of proving by clear and convincing evidence that he should receive a credit for in-kind contributions in the amount of \$505.13. Mr. O. has also met his burden of proving by clear and convincing evidence that beginning February 2008, his child support should be varied and he should receive a deduction for child support actually paid to children from a prior relationship in the amount of \$350 per month.

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

- Mr. O. is liable for child support in the amount of \$585 per month for September 2006 through December 2006; \$712 per month for 2007; \$625 for January 2008; and \$555 per month for February 2008 and ongoing.
- Mr. O. is entitled to a direct payment credit of \$502.13 for the month of November 2007.

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<sup>24</sup> 15 AAC 125.470(a)(2), (c).

<sup>25</sup> 15 AAC 125.470(b).

<sup>26</sup> The parties' agreement on the record is substituted for a written agreement.

- All other provisions of the Amended Administrative Child Support and Medical Support Order issued February 1, 2008, remain in effect.

DATED this 20<sup>th</sup> day of May, 2008.

By: Signed  
Rebecca L. Pauli  
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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 11<sup>th</sup> day of June, 2008.

By: Signed  
Signature  
Jerry Burnett  
Name  
Director, Admin Services  
Title

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