

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

IN THE MATTER OF:)

R. C. R.)

) OAH No. 08-0121-CSS

) CSSD No. 001145647

DECISION AND ORDER

I. Introduction

The Obligor, R. C. R., disputes an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 11, 2008. This order set Mr. R.'s ongoing child support obligation at \$642 per month effective January 1, 2008, and arrears from December 1, 2007 through January 31, 2008, in the amount of \$1,284. The Obligee child is J. R., born 00/00/98.

The hearing was held April 2, 2008. Mr. R. and the Custodian of record, A. R., participated in the hearing.¹ Andrew Rawls, Child Support Specialist, appeared for CSSD. The record closed on April 2, 2008. Because this case presents unusual circumstances of the type contemplated by Civil Rule 90.3(c), Mr. R.'s child support obligation should be varied from the amount calculated by CSSD.

II. Procedural Background and Facts

CSSD issued an Administrative Child Support and Medical Support Order on November 13, 2007, setting Mr. R.'s ongoing child support in the amount of \$513 per month effective January 1, 2007, and arrears in the amount of \$513 for December 2007.² CSSD calculated child support obligation using a combination of actual and extrapolated income.³

Upon receipt of the Administrative Child Support and Medical Support Order, Mr. R. timely requested an administrative review seeking a reduction in his child support obligation

¹ CSSD provided interpreter services for the Obligor and the Custodian.

² Exhibit 1. Prior to the Administrative Child Support and Medical Support Order, the court issued a Temporary Child Support Order (Domestic Violence) setting child support at \$160 per month effective November 6, 2006 through November 6, 2007. Exhibit 13. This is an establishment case and not a modification of the temporary support order because the temporary support order expired.

³ CSSD obtained income information from the Alaska Department of Labor for the first and third quarters of 2007. No income was reported for the second quarter 2007. CSSD totaled the wages reported for the first three quarters in 2007, divided the total by three and multiplied that number by four to calculate Mr. R.'s total anticipated annual income for 2007, \$37,651. Exhibit 1, p. 4; Exhibit 2, p. 2.

because he was sick, could not work and was collecting unemployment.⁴ In support of his request, Mr. R. provided current income information and a letter dated December 11, 2007, from his health care provider confirming that Mr. R. suffers from a chronic, incurable condition, sarcoidosis, which has affected his lungs.⁵ He has received medical treatment for this condition since April 2006.⁶ Symptoms exhibited by Mr. R. include “severe fatigue, cough and shortness of breath.”⁷ Regarding employment prospects it was noted that the medical condition was “interfering with his ability to work at this time. He is now on medication and hopefully in the future he will be able to resume full time labor. Currently, Mr. R. could work a desk job or light duty. However, he is not able to work in a labor position at this time.”⁸

On January 11, 2008, CSSD issued an Amended Administrative Child Support and Medical Support Order increasing Mr. R.’s monthly child support obligation to \$642 effective February 1, 2008, and establishing arrears in the amount of \$1,284 for the period from December 1, 2007, through January 31, 2008.⁹ CSSD determined Mr. R.’s total gross income for 2007 to be \$48,605.25.¹⁰ CSSD computed his total gross income by combining actual year-to-date earnings reported on Mr. R.’s November 23, 2007, pay check, unemployment, and the 2007 PFD.¹¹ Allowing for the standard monthly deductions, CSSD calculated Mr. R.’s 2007 Adjusted Annual Income to be \$38,499.93.¹²

By February 5, 2008, Mr. R.’s health care provider wrote that he was “recovering nicely and should be able to resume work over the next month.”¹³ Mr. R. testified that he understands the doctor said he has throat cancer.

Mr. R. is a laborer. He was laid off work in November 2007 because his employer had no more work available. Mr. R. believes that his employer will have more work starting in May 2008. In the meanwhile he has attempted, unsuccessfully, to find employment. Other than

⁴ Exhibit 4.

⁵ Exhibit 6, p. 1; Exhibit 9, p. 2.

⁶ Exhibit 9, p. 2.

⁷ Exhibit 6, p. 1; Exhibit 9, p. 2.

⁸ Exhibit 6, p. 1.

⁹ Exhibit 7.

¹⁰ Exhibit 8, p. 2.

¹¹ Exhibit 7 pp. 4, 5; Exhibit 8, p. 2.

¹² \$842.11 Total Monthly Allowable Deduction = \$532.30 Federal Income Tax + \$297.27 FICA (Social Security) + \$12.54 SUI (Unemployment Insurance). Exhibit 8, p. 2.

¹³ Exhibit 9, p. 2.

unemployment, he has no income. He is making ends meet by borrowing from his adult daughter and from his credit cards. His monthly expenses run between \$2,300 and \$2,400. Mr. R. estimates he owes \$7,000 to his daughter and over \$3,000 to credit agencies. He is purchasing his mobile home and the monthly payment, including space rental, is \$1,033. Food and utilities cost \$600 to \$650 per month. Mr. R. drives a 2002 Suburban, which he purchased in 2005. He owes \$11,000 and pays \$361 per month on the loan. Other monthly expenses (insurance, gas, personal items) total \$335 per month. Mr. R. also has \$6,000 in medical debt, which he pays at \$10 - \$20 per month.

Alaska Department of Labor records reveal that Mr. R.'s earnings are not stable and he has had extended periods of unemployment:¹⁴

2000	\$19,847.84
2001	\$4,370.46
2002	\$44,428.48
2003	\$20,755.24
2004	\$27,805.50
2005	\$53,189.77
2006	\$27,476.75
2007	\$46,847.25

His earnings for the first three quarters of 2007 averaged \$13,241 per quarter; in the fourth quarter of 2007, Mr. R. earned only 54% of his average, \$7,123.50. In the first quarter of 2008, Mr. R. received unemployment earnings totaling \$1,728. CSSD argues that Mr. R.'s reduction in income is temporary and thus does not support varying his child support obligation.¹⁵

Ms. R. testified that she no longer wished to have CSSD collect child support from Mr. R. She believes that when Mr. R. starts to work he will provide for his children as best he can. She is employed as housekeeper and estimates her gross income to be \$1,600 per month. Ms. R. hopes to move to Oregon with her son in the near future.

¹⁴ Exhibit 10.

¹⁵ Exhibit 7, p. 6.

III. Discussion

Mr. R. believes CSSD's child support calculation is incorrect because it fails to consider that he is unemployed and he is sick. He argues he cannot find work and that he does not know if he will be able to sustain regular employment because of his illness.

A parent is obligated both by statute and at common law to support his or her children.¹⁶ The Obligor has the burden of proving his or her earning capacity.¹⁷ By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).¹⁸ 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." In an establishment case, such as this, the relevant income figure is expected future income; all available evidence must be examined to make the best possible calculation.¹⁹

An Obligor 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 claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."²⁰ "Good cause" may also be established by the presence of "unusual circumstances" in a particular case.²¹ An Obligor who claims he or she cannot 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.²²

It is undisputed that Mr. R. suffers from a chronic medical condition, sarcoidosis; however, the record does not support a finding that he cannot work because of the disease. The more persuasive evidence is that the symptoms associated with the disease have interfered with his ability to work as a laborer.²³

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁷ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁸ 15 AAC 125.105(a)(1)-(2).

¹⁹ Commentary III. E.

²⁰ Civil Rule 90.3(c).

²¹ "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" Civil Rule 90.3(c)(1)(A).

²² *Id.* at 1371.

²³ Exhibit 6, p. 2; Exhibit 9, p. 2.

Whether the symptoms of his medical condition will continue to preclude employment as a laborer remains to be seen. Mr. R.'s healthcare provider opined that he could perform "a desk job or light duty" work. However, there is no indication that he is employable at a desk job. The record does not reflect whether Mr. R. has computer skills and English is not Mr. R.'s primary language. "Light duty" labor work is extremely difficult to find and should he find employment as a light duty laborer it is likely to pay less than heavy labor work. Moreover, even when he was working as a laborer, in five out of eight years he earned substantially less than \$30,000 per year. He never earned over \$40,000 in consecutive years

Based on Mr. R.'s 2007 earnings and applying Civil Rule 90.3(a)(2), CSSD calculates Mr. R.'s child support obligation for J. to be \$642 monthly. Mr. R. is unemployed and has been collecting unemployment since November 2007. Even if he were to obtain employment as a laborer, the record does not support a finding that Mr. R.'s 2008 income will be the same as or greater than 2007. Moreover, because of his medical condition it is questionable whether Mr. R. could maintain steady employment as a laborer when work becomes available.

Therefore, based on the totality of the circumstances, including Mr. R.'s work and earnings history, his unsuccessful attempts to obtain employment and his illness, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3(c). Mr. R. has established by clear and convincing evidence that manifest injustice will result if his child support amount is not varied from the amount calculated by CSSD. The child amount calculated from Mr. R.'s former income levels is unjustly large under the circumstances as they presently exist. Given that he is not employed and it is not known when he will return to work, Mr. R.'s child support should be set at \$50 per month.²⁴

Ms. R. indicated she may suspend CSSD's services. To do so she must not be receiving public assistance and she must complete any paperwork required by CSSD. If Ms. R. suspends CSSD services, Mr. R. must still provide child support for his son. The only difference is that payments will not be sent to CSSD. Should Ms. R. request services from CSSD in the future, unless Mr. R. can prove he has been paying monthly child support in the amount ordered, he may be liable for unpaid child support. Mr. R. is reminded that he should keep reliable records (copies of cancelled checks, money orders, etc.) of his monthly child support payments. Should

²⁴ The minimum child support amount that may be ordered is \$50 per month except in limited circumstances which are not present here. Civil Rule 90.3(c)(3).

Mr. R.'s employment status change it would be appropriate for either party to request modification of this child support order.

IV. THEREFORE IT IS ORDERED:

1. R. R. is liable for child support in the amount of \$50 per month for the period from December 1, 2007 through January 31, 2008;
2. R. R. is liable for child support in the amount of \$50 per month effective February 1, 2008 and ongoing; and
3. All other provisions of the Amended Administrative Child Support and Medical Support Order of dated January 11, 2008, remain in effect.

DATED this 16th day of April, 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 5th day of May, 2008.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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