

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

|                  |   |                     |
|------------------|---|---------------------|
| In the Matter of | ) |                     |
|                  | ) |                     |
| N H.M            | ) | OAH No. 21-2160-CSS |
| _____            | ) |                     |

**DECISION AND ORDER**

**I. Introduction**

N H.M appealed a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD/Division) on August 27, 2021. The order increased his monthly support obligation for his daughter, O, from \$487.00 to \$770.00 per month. The formal hearing took place on January 7, 2022. Mr. M did not appear. The custodial parent, K.N, appeared by telephone. The Division was represented by Child Support Specialist Brandi Estes.

This decision concludes that the recalculated child support amount of \$770.00 per month is correct under Rule 90.3 which governs child support awards. Mr. M’s appeal indicated he desired a waiver, citing financial hardship. Because he did not appear at the hearing, this Tribunal independently considered the information presented regarding the parents’ respective finances and did not find good cause to grant his request for a hardship variance.

Mr. M’s child support obligation is adjusted to \$770.00 per month, effective July 1, 2021 and thereafter.

**II. Facts**

N H.M and K.N have a seventeen-year-old daughter, O. O lives full time with her mother. O attends High School A where she is a senior planning to become a professional artist. O is Mr. M’s first child for purposes of calculating child support under Rule 90.3. She has priority among Mr. M’s dependents.<sup>1</sup>

Mr. M’s child support for O was set at \$487.00 a month in 2015.<sup>2</sup> CSSD conducted a review and re-calculation per request by the non-custodial parent in 2021.<sup>3</sup> CSSD received income verification from Mr. M’s employer that demonstrated there had been an

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<sup>1</sup> *In the Matter of D.D.*, OAH 19-0323-CSS (Commissioner of Revenue 2019).

<sup>2</sup> Ex. 1.

<sup>3</sup> 15 AAC 125.321(b)(1)

increase in Mr. M's income since the support award was set in 2015.<sup>4</sup> Based on that information, CSSD calculated an adjusted base income of \$46,228.28.<sup>5</sup> CSSD applied the primary custody, single child calculation from Rule 90.3, resulting in a \$770.00 monthly support amount for O. CSSD issued a Modified Administrative Child Support and Medical Support Order incorporating that calculation on August 27, 2021.<sup>6</sup>

Mr. M appealed the modified order on September 24, 2021.<sup>7</sup>

Because in his appeal Mr. M asserted it would be an undue hardship for him to pay the upwardly modified support amount, CSSD sent Mr. M a hearing expense worksheet to list his household income and expenses.<sup>8</sup> Mr. M also has children from a subsequent relationship. As part of his hardship claim, Mr. M pointed to the need to support those children.<sup>9</sup> He claimed he was paying approximately \$1,531.22 in total monthly support for O and his other children—or more than 40% of his income.<sup>10</sup> However, because the support award for his subsequent children was set by superior court order, CSSD does not have the authority to address or reduce it.<sup>11</sup>

The telephonic hearing took place January 7, 2021. Mr. M did not appear. A telephone call to his number of record was answered by his employer but he was unavailable. K.N, the non-custodial parent, appeared by telephone. The CSSD representative, Brandi Estes, explained CSSD's calculation of the updated modified award. This Tribunal found the \$770.00 monthly support sum was an accurate Rule 90.3 calculation.

Analysis of the existence of an undue hardship justifying departure from Rule 90.3 calculations requires examination of the totality of circumstances. Thus, after determining the accurate Rule 90.3 calculation, the Tribunal reviewed the financial situation of both

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<sup>4</sup> Ex. 5.

<sup>5</sup> His adjusted income was based on a 2020 gross wage income of \$48,420.00, a \$992.00 Permanent Fund Dividend, and \$5,499.00 Alaska Native Corporation dividend for a total gross income of \$55,313.00. Deductions were applied and adjusted annual income of \$46,228.28 calculated. Ex. 6. In comparison, Mr. M's adjusted annual income in 2015 was \$29,235.34. Ex. 1, p. 6.

<sup>6</sup> Ex. 6.

<sup>7</sup> Ex. 7.

<sup>8</sup> Ex. 9.

<sup>9</sup> The child support amount for those children was not set administratively by Child Support Services Enforcement. It was set by court order in Alaska superior court. Estes Testimony; *see, also U L. M v. N H.M*, 3AN-17-0000CI.

<sup>10</sup> *Id.*

<sup>11</sup> Estes testimony

households. Mr. M's adjusted income is \$46,228.00. His monthly take home pay is approximately \$3,852.22. The worksheet indicates that he lives alone paying \$1,150.00 in rent, with non-included utilities costing an additional \$200.00 a month. His expenses for food, vehicle maintenance, entertainment, and miscellaneous expenses add another approximate \$500.00 a month to his standard expense. He did not list loans, credit cards, or other debt financing.<sup>12</sup> Before paying child support, he ends each month with a surplus of approximately \$2,000.00.<sup>13</sup>

Ms. N testified her bimonthly take home pay is approximately \$1,500.00. She and her daughter live alone together. Her rent is \$1,049.00. Her non-included utilities are an additional \$280.00 a month. She has a \$655.00 monthly car payment plus gas (\$80.00/mo.) and insurance (\$215.00/mo.). Ms. N's largest monthly expenses are typically items to support O: her clothing, hair, make-up, art supplies, school, and computer expenses easily cost \$300.00-400.00 a month.<sup>14</sup> Her housing and documented expenses total \$2,279.00. Subtracting that amount from her \$3,000.00 monthly take-home pay leaves a surplus of only \$621.00.

Ms. Estes testified that Mr. M is current with his support payments and has reliably paid the modified \$770.00 monthly support for O since August 2021.

### **III. Discussion**

#### *a. Controlling Legal Standards.*

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) provides the formula for calculating child support awards where one parent has primary physical custody. That calculation is based on the noncustodial parent's "total income from all sources," minus specified deductions. Child support determinations calculated under Civil Rule 90.3 from a non-custodial parent's actual income figures are presumed to be correct.<sup>16</sup>

The parent may obtain a reduction in the amount calculated, but only if he or she shows "good cause" exists for the reduction. To establish good cause, the parent must prove by clear

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<sup>12</sup> Ex. 9.

<sup>13</sup>  $\$3,852.22 - \$1,850.00 = \$2,005.22$ .

<sup>14</sup> N testimony. The amounts provided were consistent with descriptions for teenage girl needs regularly relayed to the ALJ.

<sup>15</sup> *Williams, supra*.

<sup>16</sup> *D. v. D.*, 426 P.2d 1118, 1121 (Alaska 2018).

and convincing evidence that “manifest injustice would result if the support award were not varied.” This is a high standard, and reductions based on hardship are reserved for cases involving unusual circumstances.<sup>17</sup> In making that determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.<sup>18</sup>

*b. The Balancing of Households*

Mr. M did not dispute the accuracy of CSSD’s support calculation under Rule 90.3. It is presumed correct and appropriate.

Mr. M’s primary argument on appeal is that it is a financial hardship to pay the CSSD ordered support amount for \$770 for O while also paying an additional approximate \$812.00 monthly support as court ordered for his subsequent children. This is a request for a hardship variance under Rule 90.3(c). It is important to note that while Mr. M claims that 40% of his income goes to support his children, Rule 90.3 establishes 20% as an appropriate amount for one child under the primary custody formula. The amount calculated for O does not exceed that amount. Because she has priority among his children, evaluation of Mr. M’s financial capacity to meet the needs of his subsequent children may require petitioning for review with the superior court.

In determining whether variance is appropriate, consideration must also be given to the other parent and the child’s financial circumstances. Ms. N’s expenses indicate she lives within her means to provide a stable household and ensure her daughter’s basic needs are being met with occasional, reasonable “treats” to care for her hair and nails. She works 35 to 40 hours a week with a monthly take home pay of approximately \$3,000.00. Her qualifying monthly expenses are roughly \$2,279.00 without including expenses directly attributable to O’s self-care, art supplies, and school/computer needs. This leaves a monthly surplus of approximately \$621.00. It would be difficult to impossible for Ms. N to meet her total monthly expenses without child support.

Based on the totality of circumstances, Mr. M did not show by clear and convincing evidence that manifest injustice would result if he is required to pay the calculated child support as correctly calculated and set by the Division.

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<sup>17</sup> Rule 90.3(c)(1)(A).

<sup>18</sup> *D. v. D.*, *supra*; *See also Willis v. State, Dep’t of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).

#### **IV. Conclusion**

The CSSD 2021 modified child support calculation was based on a correct income figure. Based on his expected income, Mr. M's support obligation under the primary custody formula in Civil Rule 90.3(a) is \$770.00 a month effective July 1, 2021 and ongoing. Mr. M's request for a variance under Civil Rule 90.3(c) is denied.

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

1. N H.M is liable for child support for O in the amount of \$770.00 per month effective July 1, 2021 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated August 27, 2021 remain in full force and effect.

Dated: January 24, 2022

*Signed*

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Carmen E. Clark  
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 9<sup>th</sup> day of February, 2022.

By: Signed  
For: Carmen E. Clark  
Administrative Law Judge

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