

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

In the Matter of	)	
	)	
U. H.	)	OAH No. 22-0569-CSS
_____	)	

DECISION AND ORDER

I. Introduction

This case involves the modification of U. H.'s child support obligation for L., the daughter he shares with custodial parent M. N.. Mr. H. appeals a Modified Administrative Child Support and Medical Support Order calculated under Civil Rule 90.3(a) and issued by the Child Support Services Division (Division) on April 30, 2022. The order increased his monthly support obligation for L. from \$100 to \$321 effective April 1, 2022.¹ On appeal, Mr. H. requests a variance due to financial hardship and unusual circumstances under Civil Rule 90.3(c).

Mr. H. 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. H.'s ongoing obligation for one child should be set at \$100 per month effective April 1, 2022, and ongoing.

II. Procedural History

A telephonic hearing was held in this matter on July 7, 2022. Mr. H. participated and represented himself. The Division was represented by Child Support Specialist M. Sledgister. As the contact information provided for Ms. N. was that of the State A Child Support Agency, the State A child support case worker assigned to this matter was called and advised that the hearing was starting, should Ms. N. want to join. The case worker did not remain on the line and no one called in to join the hearing.

The record was held open until July 14, 2022, to ensure Ms. N. was informed of the proceeding and had an opportunity to contact the Office of Administrative Hearings if she later decided she desired a supplemental hearing date. On July 14, 2022, Ms. N. contacted OAH to ask for a copy of the record to be mailed to her. Tribunal staff fulfilled her request. The record closure date was extended to July 29, 2022, to allow Ms. N. additional time to review the record and decide if she wanted to participate in this administrative hearing

¹ Ex. 4.

involving Mr. H.'s appeal. No further communications were received from Ms. N. and the record closed on July 29, 2022.

III. Facts

A. Relevant factual background²

L. H.-N. is 11 years old. She lives with her mother outside the state of Alaska. As Ms. N. did not participate in the hearing and the parties are not in communication, little is known about L.'s household.

Mr. H. has six minor children. Two of them, ages 11 and 14, live with him full time, and a third, age 13, spends the summers with him in Alaska. He is a truck driver, has a CDL, and has spent the last three years living and working in a rural Alaskan community moving hazardous materials. Recently he relocated to Anchorage to raise his children in the city, and after a period of unemployment, secured a full-time job driving a truck for Bills Distributing. The Division calculated his income by multiplying his rate of pay (\$22/hour) by 1520 (40 hours a week x 38 remaining weeks in the year) resulting in estimated wages of \$33,440, augmented by \$4,070 in unemployment benefits received in 2021 and 2022. Adding in the recently approved 2022 Alaska Permanent Fund Dividend of \$3200 results in a gross annual income of \$40,710.³ After allowable monthly deductions including federal income tax, social security, medicare, unemployment insurance, and credit for prior children in his home and support orders for older children, his adjusted annual income totals \$21,042.24, and a monthly support obligation for L. of \$351.

Mr. H.'s household budget is exceedingly tight. His gross monthly income is \$3,392. Every month he spends \$1400 in rent, \$1100 for food, and utilities that include gas, trash, internet, and cable cost \$190, \$40, \$125, and \$60 respectively. The payments on his 2006 Vehicle A are often covered by his fiancée, who lives in rural Alaska, but he is responsible for the monthly expenses for gas, maintenance and insurance, which average \$250, \$25 and \$275 (vehicle and renter's insurance is bundled). Every month he spends approximately \$200 on entertainment and \$250 on clothing, haircuts, hygiene, and other expenses for the care of the children in his household. He carries no credit card balance or

² Facts are based Mr. H.'s testimony.

³ Ex. 4. At the time the Division calculated Mr. H.'s support obligation, Gov. Dunleavy had not yet signed the 2022 budget authorizing a \$3200 PFD. This amount will now be included in Mr. H.'s earnings.

other consumer debt. Subtracting the average monthly household expenses of \$3,915 from his monthly gross income of \$3,392 leaves him with a running deficit of approximately \$523 each month. This does not include monthly child support orders for two older children for which he pays a combined total of \$983.

IV. Discussion

A. Child support calculation under Civil Rule 90.3(a)

A parent is obligated both by statute and at common law to support his or her children.⁴ 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.⁵

A review of the Division's calculation of Mr. H.'s support obligation for L. following his testimony at the hearing does not suggest any errors were committed. The Division correctly applied his rate of pay multiplied through the remaining months of the year and included the unemployment benefits he has received to date. Following the hearing the correct 2022 PFD amount was added in, bringing his gross annual income \$40,710. After subtracting monthly allowable deductions his adjusted annual income totals \$21,042.24, with 20%, or \$4,208.45 available for child support.⁶ Divided equally over the year, this becomes a monthly obligation of \$351.⁷

B. Variance under Civil Rule 90.3(c)

Mr. H.'s argument on appeal is that he is unable to pay the \$351 ongoing support obligation for L. in addition to the current expenses of his other five children. He requests a variance of his ongoing obligation.

An obligor-parent may obtain a reduction in the ongoing support amount, but only if he or she shows that "good cause" exists for the reduction.⁸ To establish good cause, the parent must show clear and convincing evidence that manifest injustice would result if the support award were not varied.⁹ This is a high standard, and reductions based on hardship are reserved

⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987), AS 25.20.030.

⁵ *See* Civil Rule 90.3 Commentary, III. Defining Income.

⁶ *Id.*

⁷ *Id.*

⁸ *See Willis v. State, Dep't of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).

⁹ Civil Rule 90.3(c).

for cases involving unusual circumstances. In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.

Unfortunately, since custodial parent Ms. N. did not participate in the hearing, little is known about her financial situation in relation to L.'s wellbeing. The only information available for consideration is Mr. H.'s household budget, which shows a consistent monthly deficit. Although he is employed full time in an appropriately compensated position capitalizing on his skills and experience as a truckdriver, every month Mr. H. falls short of covering the household bills. A review of his household expenses indicates few costs that can be eliminated, and as the sole caregiver of the children in his home, he is not in a position to take on supplemental employment. If his support obligation for L. remains as set at \$351, Mr. H. risks falling behind on his rent, and potentially losing his home and employment. This would jeopardize his ability to support L. - and his other five children - with any amount of support.

V. Conclusion

Through evidence presented at the hearing Mr. H. met his high burden of proving that his monthly support amount 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 April 1, 2022, and ongoing, Mr. H.'s support amount for L. is set at \$100 per month.

VI. Child Support Order

1. U. H. is liable for child support in the amount of \$100 per month for one child effective April 1, 2022, and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated April 30, 2022, remain in full force and effect.

Dated: August 1, 2022

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 16th day of August, 2022.

By: SIGNED

Signature

Danika B. Swanson

Name

Administrative Law Judge

Title

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