

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

IN THE MATTER OF:)

O. A. R.)

) OAH No. 08-0192-CSS

) CSSD No. 001137483

DECISION AND ORDER

I. Introduction

The Obligor, O. A. R., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in his case on March 21, 2008. The Obligee children are L., DOB 0/00/05, and La., DOB 0/00/06.

The hearing was held on May 2, 2008. Mr. R. appeared in person; the custodian, M. E. R., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on May 2, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record as a whole and after careful consideration, Mr. R.’s child support order should be modified to \$267 per month, effective February 1, 2008.

II. Facts

A. Procedural facts

Mr. R.’s child support for L. and La. previously was set at \$277 per month in June 2007.¹ On January 10, 2008, Mr. R. requested a modification and provided income information.² On January 10, 2008, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ On March 21, 2008, CSSD issued a Notice of Denial of Modification Review for the reason that a child support calculation prepared using Mr. R.’s current income did not result in a 15% change from the prior order.⁴ Mr. R. filed an appeal on April 15, 2008, asserting he has three child support cases and is experiencing a financial hardship because he is not working and is living in a treatment center for homeless disabled veterans.⁵

¹ Exh. 1.

² Exhs. 4 & 6.

³ Exh. 5.

⁴ Exh. 8.

⁵ Exh. 11. In addition to requesting the modification, Mr. R. petitioned for genetic testing regarding La.. Exh. 7. The test results show Mr. R. probability of paternity of the child is 99.99%. Exh. 9. He did not appeal those results.

B. Material facts

Mr. R. is a disabled veteran. He was in the military for 7 ½ years and separated in April 2003. He is currently unemployed and homeless and living in the Veterans Administration (“VA”) domiciliary located in Anchorage.⁶ Since December 2007, Mr. R. has been participating in a VA alcohol treatment program, which he believed he would complete this month (July 2008). When he is finished, he will be required to attend an aftercare program for six to nine months and work on relapse prevention.

Mr. R. requested a modification in order to lower his child support and get caught up on his arrears. He hopes he would then be able to get his driver’s license back and be better able to reenter the workforce after a several year absence.⁷ Mr. R. also receives employment counseling and is participating in a vocational rehabilitation program. For purposes of the military, Mr. R.’s disability involved his back and right leg and knee, but at this time Mr. R. indicated he is physically able to work.

Mr. R. is obligated to pay support for a total of six children in three cases administered by CSSD. In January 2004, the Superior Court issued an order for Mr. R. to pay support for his three oldest children in the amount of \$381 per month.⁸ In a separate order issued by the undersigned administrative law judge on this same date, Mr. R.’s child support for the fourth of his older children was affirmed at \$207 per month In the Matter of O. A. R., OAH No. 08-0193-CSS. L. and La., the children in this case, are Mr. R.’s youngest two children and CSSD set their child support amount at \$277 per month in June 2007.⁹

Mr. R. receives VA benefits of \$951 per month, which are nontaxable.¹⁰ He has regular expenses totaling \$587 per month for items such as debt repayment, personal care items, insurance, and a cell phone.¹¹ He also has some undocumented expenses; Mr. R. testified that when he has paid all of his obligations for the month, he usually has about \$150-\$175 left over and has on two occasions paid most of that money to CSSD. He said he had made two payments

⁶ Except where indicated, the facts are taken from Mr. R.’s testimony during the hearing in this case and in his other child support hearing, held on the same day, In the Matter of O. A. R., OAH No. 08-0193-CSS.

⁷ Mr. R. was briefly employed in 2007 but he said he had to stop working because of a “situation” that arose.

⁸ See In the Matter of O.A. R., OAH No. 08-0191-CSS, Exh. 1.

⁹ See Exh. 1.

¹⁰ It is not known whether the money Mr. R. receives from the VA is for his disabilities only, but for child support purposes any distinction is irrelevant, so long as the funds are designated as nontaxable in the child support calculations.

of about \$150 each (totaling \$300) toward all of his cases, or about \$50 for each case in two separate occasions. Mr. R. is required to address his child support obligation as part of his treatment plan.

III. Discussion

A. Income

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." According to Civil Rule 90.3, total income from all sources includes VA and disability benefits.¹² Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹³ If the newly calculated child support amount is more than 15% different than the previous order, the rule assumes a material change in circumstances has occurred and authorizes a modification of the obligor's child support order.¹⁴

Mr. R.'s child support for L. and La. was set at \$277 per month in 2007. That amount was based on his VA income at the time the case was established. CSSD denied Mr. R.'s petition for modification for the reason that "the child support obligation calculated is not 15 percent more or less than the amount of support obligation that is set out in the current support order."¹⁵ However, there is no calculation attached to the Notice of Denial of Modification Review, and no evidence CSSD actually calculated a support obligation for Mr. R., so the calculation will be done here.¹⁶ Utilizing his current VA benefits (\$951 per month x 12 months = \$11,412) and the 2007 PFD amount of \$1654, Mr. R.'s annual income from all sources totals \$13,066. Subject to whether Mr. R. is entitled to a deduction for paying support for prior children or whether he has a hardship, as discussed below, this is the correct income figure to be used.

B. Deductions for prior children

Civil Rule 90.3(a)(1)(B) provides that a parent who pays support for a prior child is entitled to a deduction in that amount from the parent's income, so long as the payment has been

¹¹ See Exh. 13 (this exhibit is the completed form that CSSD sent to Mr. R. as Exh. 12).

¹² Civil Rule 90.3, Commentary III.A.25-26.

¹³ AS 25.27.190(e).

¹⁴ Civil Rule 90.3(h).

¹⁵ Exh. 8.

¹⁶ It may be that the caseworker could tell from experience that Mr. R.'s small increase in income from 2007 would not result in a 15% change in his support amount, but a calculation should have been provided, nonetheless.

ordered by a court or administrative agency such as CSSD, and the amount is being paid. CSSD indicated at the hearing that when this case was being set up the agency did not deduct any amounts from Mr. R.'s income for support paid for prior children because there was no support being paid at the time on his prior cases.

Mr. R. is now required to pay his child support as part of his treatment plan, and he has begun making payments of about \$50 per month on each of his three cases. Mr. R. is motivated to continue to pay this amount on his cases so he can successfully finish his treatment program and continue to receive employment and other services from the VA.

Therefore, in his support obligation for L. and La., Mr. R. is entitled to a deduction of \$100 per month from his income for the support he has paid on the two other cases involving his four older children. This is a reasonable outcome and it is based on the specific facts of Mr. R.'s situation. Inserting Mr. R.'s annual income from all sources into CSSD's child support calculator,¹⁷ and including the deduction for paying support for prior children of \$100 per month, results in a child support amount of \$267 per month for two children.¹⁸ This calculation of Mr. R.'s child support obligation is correct because it is based on his total income from all sources, as required by Civil Rule 90.3, and it includes the deduction for paying support for prior children.

C. Financial hardship

The next issue in this appeal is whether Mr. R. is entitled to a reduction of the child support amount calculated, pursuant to Civil Rule 90.3(c). This is referred to informally as a hardship request and it is evaluated based on Mr. R.' testimony that he cannot afford the child support amount calculated.

Child support amounts 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 there are "unusual circumstances" in a particular case, this may be sufficient to establish "good cause" for a variation in the support award:

¹⁷ CSSD's website is located at <http://www.childsupport.alaska.gov/> and a link to the child support calculator is on the top of the page and also on the right-hand side of the page.

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^[19]

It is necessary to consider all the relevant evidence in order to determine whether the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).²⁰

Mr. R. did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. His financial situation is definitely strained, but Mr. R.'s bills and expenses are also very low at this time. The primary reason Mr. R.'s child support situation is difficult is because he has three separate cases and his support obligation for the oldest children was set by the court in an amount much higher than the other two cases. Given the evidence as a whole, the fact that he has three child support matters does not constitute "unusual circumstances." Mr. R.'s child support obligation has been calculated according to his actual income and he is taking part in a vocational rehabilitation program that should help him find gainful employment in the near future and allow him to begin paying his monthly child support obligation in full, as well as gradually take care of his arrears. The sooner he returns to work, the sooner Mr. R. will begin to see real progress on his child support payments.

IV. Conclusion

Mr. R.'s child support is now correctly calculated at \$267 per month, based on his current income and also including a \$100 per month deduction for paying support for his four prior children. This \$10 per month reduction in his child support obligation does not constitute a 15% change from the prior order, but however small, Mr. R.'s child support should be adjusted to reflect the deduction for paying support for prior children. Mr. R. did not prove by clear and convincing evidence that manifest injustice would result if the child support calculated pursuant to Civil Rule 90.3 were not varied. His modified child support has been correctly calculated at \$267 per month, and it should be adopted.

V. Child Support Order

- CSSD's March 21, 2008, Notice of Denial of Modification Review is
VACATED;

¹⁸ See Attachment A.

¹⁹ Civil Rule 90.3(c)(1).

- Mr. R.'s child support amount is modified to \$267 per month, effective February 1, 2008;²¹
- Because a modification order has not been issued in this case, all other provisions of CSSD's June 8, 2007, Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 30th day of July, 2008.

By: Signed
Kay L. Howard
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 15th day of August, 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

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

²⁰ See Civil Rule 90.3, Commentary VI.E.1.

²¹ The effective date of a modification is the first month after CSSD issues a notice that a petition for modification has been filed. 15 AAC 125.321(d). Here, CSSD issued the notice on January 10, 2008. See Exh. 5.