

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

IN THE MATTER OF:)

K. M. M.)

) OAH No. 08-0207-CSS
) CSSD No. 001-46508
)

DECISION AND ORDER

I. Introduction

The Obligor, K. M. M., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on February 9, 2007. The Obligee child is K., DOB 00/00/93.

The hearing was held on May 15, 2008. Both Mr. M. and the custodian, T. L. G., appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearings were recorded and the record closed on April 23, 2008.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings (“OAH”), conducted the hearing. Based on the record and after due deliberation, CSSD’s Modified Administrative Child Support and Medical Support Order is affirmed and Mr. M.’s modified child support is correctly calculated at \$997 per month for one child, effective January 1, 2007.

II. Facts

Mr. M.’s child support obligation for K. was set at \$249 per month in July 1995.¹ Ms. G. requested a modification on December 14, 2006.² On December 22, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. M. did not provide financial information.⁴ On February 9, 2007, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. M.’s modified ongoing child support at \$997 per month, effective January 1, 2007.⁵ Mr. M. appealed on March 6, 2007, asserting he has an

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Pre-hearing brief at pg. 1.

⁵ Exh. 4.

additional child and he cannot afford to pay the amount calculated.⁶ Mr. M.'s appeal was not referred to the OAH until April 29, 2008. CSSD's representative apologized to Mr. M. at the hearing and explained that his original appeal was misrouted and subsequently lost. When the problem was discovered, CSSD referred it to the OAH immediately.

At the formal hearing, Mr. M. testified that he pays support for another child, G., DOB 00/00/95, so between the two cases, he cannot afford all of his child support obligations and his arrears continue to increase. Compounding that problem is the fact that for a large period of time his employer garnished child support from his earnings but did not pass those funds on to CSSD for disbursement to the custodial parents, and now the employer company has been dissolved and is facing bankruptcy. As a result, Mr. M. has an even larger debt that is not his responsibility and he does not know when those funds will be paid. CSSD indicated that the Obligor's employer will be responsible for all of the child support funds collected from Mr. M. but not turned over to the agency, in addition to interest and penalty charges. Unfortunately, neither CSSD nor Mr. M. knows when his former employer will retire that debt.

Mr. M. indicated his 2008 income will be much lower than in prior years. This is because he is no longer receiving a significant amount of overtime, as he was in his prior job. He began working for Peak Oilfield Services at the end of March 2008 and earns \$32.50 per hour for a straight 40 hour workweek. He does not get overtime. A typical employee earning \$32.50 per hour would earn approximately \$67,600 in one year, but the obligor was laid off work for the first part of 2008 and may earn as much as \$10,000 less than that figure this year.

Mr. M. testified that his health insurance coverage at Peak Oilfield Services will become effective on July 1, 2008, after he has worked 90 days. He said that not having health insurance has been difficult for him because he is an insulin-dependent Type I diabetic and has had to pay for his insulin and diabetic supplies on his own.

After the hearing, both parties submitted financial information. Mr. M. has a mortgage payment of \$775.50 per month; plus he pays \$800 for food in addition to other unremarkable household expenses. His 2001 Dodge pickup is paid for and he has a \$325 per month payment on a 2004 Harley Davidson motorcycle that he purchased in August 2004. He spends

⁶ Exh. 5.

approximately \$320 per month on gasoline and \$225 per month for medications and diabetic supplies. His credit card debt totals only \$350.⁷

Ms. G. is the single mother of three children and the only adult working in her home. She works full-time and earns \$12.98 per hour, bringing home roughly \$1550 per month. In addition, she receives \$729 per month in two combined child support amounts for K.'s two siblings. Ms. G. is stretched thin on a month-to-month basis and recently has been receiving shut off notices for her utilities and phone. She lives in a mobile home and pays a total of \$1,150 per month, which includes lot rent and her house payment. Her other expenses appear to be within a normal range, except for a car payment of \$478 per month. She estimated her total living expenses, without groceries, are \$2,568 per month, which is less than her combined income and child support, especially when her food bill is taken into consideration.⁸ Ms. G. wants K. to be active in extracurricular school activities, but the costs are over \$1,000 per year for sports and cheerleading. Finally, Ms. G. claims the obligor has another adult in his home, a girlfriend named R., who also works and helps with household expenses.

III. Discussion

A. Income

The first issue in this appeal is whether CSSD used the correct income figure in Mr. M.'s child support calculation. 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." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."⁹ 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 the support amount may be modified.¹⁰

Mr. M.'s child support was set at \$249 per month in 1995. CSSD calculated his modified child support at \$997 per month.¹¹ The division used an annual income figure of \$79,584.51 in the calculation, which Mr. M. earned during the four quarters of 2006.¹²

⁷ Received from Mr. M. on May 22, 2008.

⁸ Received from Ms. G. on May 20, 2008.

⁹ AS 25.27.190(e).

¹⁰ Civil Rule 90.3(h).

¹¹ Exh. 4 at pg. 6.

¹² *Id.*

Based on the evidence as a whole, CSSD correctly calculated Mr. M.'s modified child support amount at \$997 per month. The calculation is based on his actual annual income at the time the modification was requested. At the hearing, CSSD indicated Mr. M. had requested another modification in April 2008, which will then be effective on May 1, 2008, and which should reflect his current annual income, which is quite a bit lower than in 2006 and 2007.

B. Subsequent child

One of the obligor's primary issues in this appeal is the fact that he pays support for two children in two separate cases, yet the support he pays for the younger child, G. DOB 00/00/95, is not reflected or taken into consideration in his child support calculation for K.

Civil Rule 90.3(a)(1) provides that a parent who pays support for a prior child pursuant to a court or administrative order is entitled to have the prior child support amount included as a deduction from the parent's income in the support calculation for the child at issue. If G. were the older child, the support that Mr. M. pays for him would provide an additional deduction in K.'s child support calculation. However, G. is younger than K., so he is considered a subsequent child, not a prior child. Subsequent children do not entitle a noncustodial parent to the deduction.¹³

It came to light at the hearing that Mr. M. has recently requested a modification of both child support cases, so when that is completed, the child support he pays for K. will provide him with an additional deduction for calculating his child support obligation for G..

C. Financial hardship

The last issue in this appeal is whether Mr. M. is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). He requested a reasonable child support calculation that would enable him to get caught up on bills.

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 there are

¹³ See Civil Rule 90.3, Commentary VI.B.2.

"unusual circumstances" in a particular case, this may 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^{14]}

It is appropriate to consider all relevant evidence, including the circumstances of the Custodian and obligee child to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).¹⁵ Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. M. 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. M.'s financial situation is strained at the time, but his bills and expenses are not out of the ordinary. When he becomes eligible for health insurance from his employer next month, he will have assistance in obtaining insulin and diabetic supplies. Finally, if the custodian's assertion that the obligor's girlfriend lives in his home and shares expenses, this would also ease the financial burden on him. Since his overall financial obligations are not excessive, his situation does not constitute "unusual circumstances."

One final item should be discussed. Mr. M. requested consideration for the health insurance coverage he has provided in the past, but the calculations discussed herein do not address whether Mr. M. is entitled to a medical credit because the status of his insurance coverage was not known at the time of the hearing. CSSD can make the necessary adjustments in his child support amount after he provides the required insurance information from his employer.

IV. Conclusion

Mr. M. did not meet his burden of proving by a preponderance of the evidence that CSSD's determination of his child support obligation was incorrect in the Modified Administrative Child Support and Medical Support Order. His modified child support, effective January 1, 2007, is correctly calculated at \$997 per month. CSSD may make whatever

¹⁴ Civil Rule 90.3(c)(1).

¹⁵ See Civil Rule 90.3, Commentary VI.E.1.

adjustments are necessary in the child support amount for the medical insurance credit. CSSD's modification order should be affirmed.

V. Child Support Order

- Mr. M. is liable for modified child support in the amount of \$997 per month, effective January 1, 2007, and ongoing;
- CSSD is directed to determine the appropriate health insurance credit in Mr. M.'s child support obligation and to adjust the credit as necessary in the future;
- All other provisions of CSSD's February 9, 2007, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 27th day of June, 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 6th day of August, 2008.

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

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