

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

IN THE MATTER OF)	
)	
B. P., Sr.)	Case No. OAH-08-0211-CSS
<hr/>)	CSSD Case No. 001150306

DECISION & ORDER

I. Introduction

The obligor, B. P., Sr., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on April 2, 2008. The child is P. G. (DOB 00/00/94). Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on June 10, 2008. Mr. P. appeared by telephone. The custodian of record, R. G., did not appear.¹ David Peltier represented CSSD. Support is set at \$1,220 per month for one child.

II. Facts

This case arises from a request for services by the custodian. In the amended order, CSSD set Mr. P.'s support obligation at \$1,131 per month. This figure was calculated using actual income amounts reported to the Department of Labor and Permanent Fund dividend income. This calculation gives a credit for older children of a different relationship living with Mr. P., but not for younger children of a subsequent relationship.

Mr. P. lives in Kotzebue with his wife and three children, one of whom is older than P. and two of whom are younger. In 2007 Mr. P. earned gross income of \$115,480.57. He and his wife together earned gross income of \$160,372.00. Mr. P. owns a 1998 Ford F150 pickup, two nearly new snowmachines, a four-wheeler, and a boat. He estimates that his family's entertainment expenses, in the form of hunting, fishing and camping, costs about \$1,500 per month, and he also pays for maintenance on the family's cabin. The P. family pays about \$560 per month for gasoline for the pickup, and about \$900 per month for gasoline for the other vehicles. Mr. P. and his wife spend about \$200 per month for alcohol and tobacco. The family spends about \$3,000 per month on food, \$1,400 for their mortgage, and a total of \$1370 for utilities and general expenses. Together, all of these expenditures come to \$89,160 per year.

¹ Ms. G. had appeared at a hearing held on May 20, 2008, at which Mr. P. did not appear. Mr. P. contacted the OAH to reschedule the hearing, as he had not received notice of the original hearing date. Ms. G. was notified by telephone and mail of the June 10, 2008, hearing date. At the time of the hearing, the ALJ attempted to call Ms. G.,

Mr. P. also owes about \$10,000 on a loan for the snowmachines, and he has credit card debt of \$21,000, with payments of about \$400 per month.

After the hearing, Mr. P. submitted a copy of his tax return. Using Mr. P.'s actual tax payment information instead of the defaults from its calculator, CSSD has calculated that Mr. P.'s support obligation should be set at \$1,220 per month for one child.

There is very little evidence in the record regarding Ms. G.'s income or earning potential. Mr. P. testified that Ms. G. "has done all kinds of work" in the past and that he thought she had managed a hotel in Kotzebue for two or three years, but may have been working at some kind of senior citizen's home in Arizona more recently. CSSD stated that Ms. G. has in the past had earnings reported by N. M. S. and the Kotzebue C., but in the last quarter of 2007 and the first two quarters of 2008 she has been collecting unemployment insurance benefits.

III. Discussion

Mr. P.'s appeal reads, in its entirety: "I have two subsequent children and request that my support be reduced because of the financial hardship to those children." According to Civil Rule 90.3(a)(1)(D), when calculating child support a credit is allowed for older children of a previous relationship, but not for younger children of a subsequent relationship. Mr. P. receives a credit for his older child. Support may be varied from the standard formula when there is "good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."²

After the hearing, Mr. P. submitted written argument, which reads in part:

UNUSUAL CIRCUMSTANCE

The cost of living in Kotzebue is very high and rising. Gas is currently \$5.70 per gallon and expected to rise somewhere around \$1.50 to \$2.00 per gallon on July 1. Stove oil also will rise the same amount. Typically when gas prices rise in the bush so does everything else, groceries, air fares, electricity etc... ..My family and I enjoy the bush lifestyle but it is extremely expensive. This extreme cost of living difference between Kotzebue, Alaska and Arizona or even the National average outside of Alaska should be taken into consideration as an unusual factual circumstance when determining the amount for adequate support.

MANIFEST INJUSTICE

We have no movie theaters, shopping malls or amusement parks and such here in Kotzebue so our form of entertainment is hunting, fishing and camping. This cost a lot of money to get out into the country by boat or snowmachine. I view this as a necessity

but her telephone was busy. After about fifteen minutes of attempting to contact Ms. G., the hearing proceeded in her absence.

² Civil Rule 90.2(c)(1).
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rather than entertainment. Due to suddenly not having funds to allow my wife and kids out into the country then I am afraid they will be like so many of the friends we live with who sit around and play video games and watch TV all day. This is a terrible lifestyle to us and the sudden change to live as we are accustomed will be an extreme hardship to my family. The thought to seek employment outside of the bush for their sake weighs heavy on my mind. My family does not want to relocate and have no reason to have what they love and I feel need taken away from them. My grocery bill averages \$100 per day, gas will be above \$7.00 per gallon. Add into these expenses the amount of the order for support is clear that I cannot afford the cost of living in Kotzebue and provide my family a lifestyle we love. To me this is manifest injustice.

Mr. P. incorrectly cites the custodian's residence in another state as an "unusual circumstance" and a basis for adjustment under Civil Rule 90.3(c). According to the Civil Rule 90.3 Commentary,

The relocation of the custodial parent to a state with a lower cost of living normally will not justify a reduction in support. The level of Alaska's guidelines is comparable to the national average. The fact that the obligor parent's income has in effect marginally increased relative to the children's living expenses simply enables the children to be supported at a slightly higher level.³

Mr. P. has correctly identified the issue as being about lifestyle. The children in Mr. P.'s household do not appear to be in danger of malnourishment or lacking adequate clothing. According to the Civil Rule 90.3 Commentary, "the court should reduce child support if the failure to do so would cause substantial hardship to the 'subsequent' children."⁴ In order to comply with his support obligation, Mr. P. might have to modify his recreational expenses, moderate his alcohol and tobacco consumption, and make other adjustments to his budget. It is also possible that he will be able to provide his other children with less of the expensive recreation they enjoy, or that, like many other rural families, the increasing costs of energy may make living in the bush no longer feasible. While it is unsurprising that the children living with Mr. P. would not wish to make any changes to their lifestyle, Mr. P. has not produced clear and convincing evidence that the children in his household will suffer "substantial hardship" if Mr. P. is required to meet his obligation to provide P. with her fair share of her father's substantial income.

IV. Conclusion

³ CIVIL RULE 90.3 COMMENTARY, §VI.B.3.

⁴ CIVIL RULE 90.3 COMMENTARY, §VI.B.2.

Mr. P. has not met his burden of proving by clear and convincing evidence that manifest injustice will result if the support amount is not varied from the standard amount. CSSD's calculation in Exhibit 14, page 1 correctly calculates support to be \$1,220 per month for one child, based on Mr. P.'s actual income and taxes paid. Support should be set accordingly.

V. Order

IT IS HEREBY ORDERED that Mr. P.'s support obligation be set at \$1,220 per month for one child effective July 1, 2008. Arrears shall be set at the amount of \$1,220 per month for one child for the period from August 1, 2007, through June, 2008. All other terms of the Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division on April 2, 2008, shall remain in effect.

DATED this 26th day of June, 2008.

By: *Signed* _____
DALE WHITNEY
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 25th day of July, 2008.

By: Signed
Jerry Burnett
Director, Administrative Services

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