

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

IN THE MATTER OF: )  
 ) OAH No. 08-0224-CSS  
C. A. C. ) CSSD No. 001148889  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This matter involves the Obligor, C. A. C.'s, appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 16, 2008. This order sets Mr. C.'s child support payment at \$381 per month effective May 1, 2008, and arrears from June 1, 2007 to April 30, 2008 in the amount of \$3,137.<sup>1</sup> The Obligee children are Y. C., born 00/00/01; Z. C., born 00/00/03; and N. C., born 00/00/05.

The formal hearing was held on May 29, 2008. Mr. C. was present and represented himself; the Custodian, A. C., was present and represented herself. David Peltier, Child Support Specialist, represented CSSD. Rebecca L. Pauli, Administrative Law Judge, Alaska Office of Administrative Hearings, presided over the hearing. The record closed on May 29, 2008.

**II. Facts**

This matter was initiated when the Custodian applied for Medicaid services in July 2007. On November 1, 2007, CSSD issued an Administrative Child and Medical Support Order setting child support at \$406 per month effective July 1, 2007, and arrears in the amount of \$2,030 from July 1, 2007, through November 30, 2007.<sup>2</sup> This order was served on February 1, 2008.<sup>3</sup> Mr. C. requested an administrative review arguing that: for some of the time he was in the home and supporting his children, CSSD overstated his income, he was injured at work, he should receive a credit for child support paid directly to the Custodian, and his child support obligation should be varied to the minimum amount of \$50 per month.<sup>4</sup>

In support of his request for a review Mr. C. provided copies of four checks totaling \$723 for "child support." Three of the checks totaling \$673 were endorsed by the Custodian and

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<sup>1</sup> Exhibits 7, 8.

<sup>2</sup> Exhibits 1, 2.

<sup>3</sup> Exhibit 3.

<sup>4</sup> Exhibit 4.

cancelled.<sup>5</sup> The fourth check was dated February 4, 2008 and was not cancelled. Mr. C. provided a list of dates on which he alleges he was “in the home and supporting [his] children,” but he was never in the home for an entire, uninterrupted month.<sup>6</sup> He also provided 2007 W-2 forms from three different employers totaling \$11,736.39.<sup>7</sup>

CSSD used the income information provided by Mr. C. and calculated his child support obligation for 2007 and imputed income for 2008. Based on its calculations, CSSD determined Mr. C.’s child support obligation to be \$381 per month for both years, with arrears in the amount of \$3,810 from June 1, 2007 through April 30, 2008.<sup>8</sup>

Regarding the time periods Mr. C. claimed he was in the home, none of the dates provided on his request for administrative review established Mr. C. had been in the home for an entire month. Thus they had no effect on CSSD’s calculation because CSSD does not usually prorate child support for the time periods less than one month.<sup>9</sup> CSSD accepted the three cancelled checks as proof of direct payments and credited Mr. C. with \$673.<sup>10</sup> The fourth check in the amount of \$50 was not credited because there was no proof that the Custodian cashed the check.

CSSD denied Mr. C.’s request for an economic hardship variance under civil rule 90.3(c) for the reason that unemployment is a temporary situation unless an Obligor can provide documentation that he or she physically cannot work and maintain full time employment.<sup>11</sup> Mr. C. provided no such documentation. Having determined that there was no evidence in the record that would preclude Mr. C. from working, CSSD imputed income to Mr. C. for 2008 based on the minimum wage of \$7.15 per hour multiplied by 2080 hours. This resulted in a child support obligation of \$400 per month. CSSD concluded that the increase in child support from \$381 to \$400 was not a material change in circumstance under civil Rule 90.3 and his child support obligation should remain at \$381 per month.<sup>12</sup> Using this child support amount, CSSD calculated Mr. C.’s arrears to be \$3,810 from June 1, 2007 through April 30, 2008, and credited

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<sup>5</sup> Exhibit 6

<sup>6</sup> Exhibit 4.

<sup>7</sup> Exhibit 6

<sup>8</sup> Exhibit 7 at 2; Exhibit 8.

<sup>9</sup> Exhibit 7 at 6.

<sup>10</sup> Exhibit 8.

<sup>11</sup> Exhibit 7 at 6.

<sup>12</sup> Exhibit 7 at 6.

Mr. C. with direct payments totaling \$673, which resulted in total arrears owing in the amount of \$3,137.<sup>13</sup>

At the hearing Mr. C. was not forthcoming regarding his efforts to obtain employment; and his demeanor portrayed a lack of commitment to support his children. He testified that he has been actively looking for work since the first of the year. He has a high school education, some computer and mechanics training and holds a Class B commercial driver's license. His earnings history has ranged from \$14 per hour to minimum wage.<sup>14</sup> Mr. C.'s expenses are minimal. He eats at his mother's house and lives by himself in a trailer he is purchasing for \$207 per month. He also pays \$310 per month for space rental for the trailer, which includes water, trash, and wastewater. His remaining utilities total less than \$150 per month. He owns a 1995 Mitsubishi and spends \$221 per month for gas and insurance. Mr. C. owes \$6,000 in consumer debt and \$200 in medical expenses.

### **III. Discussion**

Mr. C.'s request for a formal hearing did not identify a specific issue on appeal. He raised several issues in his request for administrative review; however, at the hearing he asserted that he was entitled to an economic hardship variance and that he "was advised by his attorney that due to [his] limited earnings [he] needed to pay [his] wife \$50 per month."<sup>15</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>16</sup> This obligation takes precedence over other financial obligations. Child support determinations calculated under Civil Rule 90.3 from an Obligor's actual income are presumed to be correct. An Obligor 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 Obligor parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>17</sup> If the parent proves that "unusual circumstances" exist in his or her case, this may be sufficient to establish "good cause" for a reduction in the support award. Therefore, to address Mr. C.'s appeal it is necessary to first determine what the correct support award is under Civil Rule 90.3

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<sup>13</sup> \$3,810 - \$673 = \$3,137, Exhibit 8.

<sup>14</sup> C. Testimony.

<sup>15</sup> Exhibit 4 at 1.

<sup>16</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>17</sup> Civil Rule 90.3(c).

and then whether the award should be varied. Once a support amount is determined, arrears can be calculated.

1. *Child Support Obligation For 2007 and 2008.*

CSSD calculated Mr. C.'s 2007 support obligation to be \$381 per month using actual income amounts provided by Mr. C. plus his 2007 PFD and unemployment received. This is presumed to be correct.<sup>18</sup>

Alaska law allows CSSD to use an Obligor's "potential income" if a finding is made that the Obligor is voluntarily and unreasonably unemployed or underemployed.<sup>19</sup> Mr. C. is presently unemployed. He has failed to present persuasive evidence that he is physically unable to work. Mr. C. testified that he had one position but that when the employer discovered he owed child support, the employer fired Mr. C. If this is true the employer's acts may have been illegal.<sup>20</sup> Regardless, Mr. C.'s testimony regarding his efforts to obtain employment was unconvincing and lackadaisical. His answers were evasive and his demeanor was less than forthright. Mr. C. testified that his job search has been unsuccessful, yet he offers no corroborating evidence. His testimony and observed demeanor, without more, is insufficient to establish that his lack of employment is the result of economic factors and is not merely voluntary.

When, as here, an Obligor is found to be voluntarily unemployed or underemployed, the child support is calculated using his or her "potential income," which is based on the Obligor's "work history, qualifications and job opportunities."<sup>21</sup> The use of "potential income" in a child support obligation is not to punish the Obligor parent.<sup>22</sup> The commentary states the court should consider "the totality of the circumstances" when deciding whether to impute income to the obligor parent.<sup>23</sup> A primary goal of imputing income, according to the Alaska Supreme Court, is to compel the parent to find full-time employment:

An important reason -- if not the chief reason -- for imputing income to a voluntarily underemployed parent is to goad the parent into full employment by attaching an unpleasant consequence (a mounting child support debt or, in certain cases of shared custody, a reduced child support payment) to

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<sup>18</sup> Civil Rule 90.3(a).

<sup>19</sup> Civil Rule 90.3(a)(4).

<sup>20</sup> AS 25.27.062(f); AS 25.27.070(d).

<sup>21</sup> Civil Rule 90.3, Commentary III.C.

<sup>22</sup> *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

<sup>23</sup> Civil Rule 90.3, Commentary III.C.

continued inaction. Indeed, in primary and shared custody situations alike, an order imputing income often yields no tangible benefits to the children unless and until it impels the underemployed parent to find a job.<sup>[24]</sup>

Mr. C. has a high school education and a history of employment and training. His work history establishes that he has been able to find employment paying from \$7.15 per hour to \$14 per hour. He has not presented persuasive evidence that he is unable to obtain employment that pays him at least a minimum wage. There is no persuasive explanation in the record for why Mr. C. is not working full-time other than he has voluntarily and unreasonably removed himself from the workforce. Under these circumstances, the best evidence of what Mr. C.'s income could reasonably be in 2007 are the wages earned in 2007. Therefore, Mr. C.'s child support obligation under Civil Rule 90.3 is \$381 per month for both 2007 and 2008.

## 2. *Financial Hardship*

To obtain a reduction in a child support amount calculated under Civil Rule 90.3 using actual income figures, Mr. C. must show that "good cause" exists for the reduction. He does this by either pointing to evidence in the record or placing evidence in the record that is sufficient to prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>25</sup> If Mr. C. proves that "unusual circumstances" exist in his or her case, this may be sufficient to establish "good cause" for a reduction 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 . . . .<sup>26</sup>

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. C.'s financial situation is strained because, as set forth above, he is voluntarily and unreasonably unemployed or underemployed. Mr. C. may need to be proactive in seeking employment, but his situation does not constitute "unusual circumstances."

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<sup>24</sup> *Beaudoin v. Beaudoin*, 24 P.3d 523 (Alaska 2001).

<sup>25</sup> Civil Rule 90.3(c).

<sup>26</sup> Civil Rule 90.3(c)(1)(A).

3. *Credit for Direct Payments*

Mr. C. is entitled to credit for direct payments made by him to the custodial parent if there is evidence that the payment was actually made to the Custodian.<sup>27</sup> Evidence of direct payment includes copies of the front and back of cancelled checks.<sup>28</sup> Mr. C. provided copies of the front and back of three canceled checks totaling \$673. He is entitled to a credit in that amount. As to the remaining \$50 check, if Mr. C. can provide evidence that the money was received by the Custodian he would be entitled to a credit in the amount of \$50 for the month of February, 2008.

4. *Clerical Correction to Amended Administrative Child Support and Medical Support Order and Administrative Review Decision*

The Amended Administrative Child Support and Medical Support Order and the Administrative Review Decision identify the correct amount of accrued debt but they do not identify the correct time frame during which the arrears accrued. Both orders reference arrears owing for the period from June 1, 2007 through April 30, 2008.<sup>29</sup> The Custodian applied for public services in July 2007 and that is the month in which arrears start to accrue, not June 2007. The Amended Administrative Child Support and Medical Support Order and the Administrative Review Decision should be amended to reflect the correct date from which arrears are owed, July 1, 2007.

**IV. Conclusion**

Mr. C. did not meet his burden of proving by a preponderance of the evidence that the amount of child support calculated in CSSD's Amended Administrative Child Support and Medical Support Order is incorrect. CSSD has based Mr. C.'s child support obligation on actual income data. Mr. C. is voluntarily unemployed.

Mr. C. did not establish by clear and convincing evidence that there is good cause to vary his monthly child support obligation. His child support obligation for all the time period at issue, including the ongoing amount, was correctly calculated to be \$381 per month.<sup>30</sup> The Amended Administrative Child Support and Medical Support Order and the Amended Administrative

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<sup>27</sup> 15 AAC 125.105(b).

<sup>28</sup> 15 AAC 125.465(a)(1).

<sup>29</sup> Exhibit 7 at 2, 6.

<sup>30</sup> Exhibit 8.

Review Decision should be amended to reflect the correct date from which Mr. C. owes a duty of child support, July 1, 2007.

**V. Child Support Order**

- Mr. C. is liable for child support in the amount of \$381 per month for the period from July 1, 2008, and ongoing.
- The Amended Administrative Child Support and Medical Support Order and the Amended Administrative Review Decision issued April 16, 2008, are amended to reflect that Mr. C. owes a duty of support from July 1, 2007, not June 1, 2007.
- Mr. C. is entitled to a direct payment credit of \$573 for the month of November, 2007; a direct payment credit of \$50 for the month of December, 2007; and a direct payment credit of \$50 for the month of January, 2008.
- Mr. C. may be entitled to a direct payment credit of \$50 for the month of February, 2008, if he can provide clear and convincing evidence that the payment was made to the custodial parent.
- All other provisions of the Amended Administrative Child Support and Medical, Support Order issued April 16, 2008, remain in full force and effect.

DATED this 6<sup>th</sup> day of June, 2008.

By: Signed  
Rebecca L. Pauli  
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 23<sup>rd</sup> day of June, 2008.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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