

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

IN THE MATTER OF: )

A. A. B. )

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) OAH No. 08-0590-CSS

) CSSD No. 001150997

**DECISION AND ORDER**

**I. Introduction**

This matter involves the Obligor A. A. B.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 20, 2008. The Obligee child is C., DOB 00/00/06.

The formal hearing was held on November 18, 2008. Mr. B. appeared by telephone through his wife and power of attorney, K. B. The custodian, F. L. H., also appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on November 18, 2008.

Based on the record as a whole and after careful consideration, CSSD's Amended Administrative Child Support and Medical Support Order is adjusted as discussed below.

**II. Facts**

**A. History**

This is a Uniform Interstate Family Support Act (UIFSA) case. Ms. H. applied for and began receiving public assistance benefits on C.'s behalf in Missouri in February 2006.<sup>1</sup> CSSD received the UIFSA petition on November 30, 2007.<sup>2</sup> CSSD issued an Administrative Child Support and Medical Support Order and served it on Mr. B. on June 28, 2008.<sup>3</sup> He requested an administrative review and provided income information.<sup>4</sup> On August 20, 2008, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. B.'s ongoing child support at \$853 per month, with arrears of \$22,579.38 for the period from February 2006 through August 2008.<sup>5</sup> Mr. B. appealed on October 28, 2008.<sup>6</sup>

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<sup>1</sup> Exh. 1 at pg. 16.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exhs. 2-4.

<sup>4</sup> Exhs. 5-7.

<sup>5</sup> Exh. 8.

## **B. Material Facts**

Mr. B. and Ms. H. are the parents of C., born on 00/00/06. The parties separated prior to C.'s birth and were divorced in July 2006.<sup>7</sup> Their divorce did not address property division, child support or custody.<sup>8</sup> C. lives full-time with Ms. H.<sup>9</sup>

Mr. B. subsequently remarried; he and his wife, K., have four children in the home, all of whom are her children from a prior relationship. They range from six to eleven years of age and K. has been pursuing child support – unsuccessfully – from her ex-husband since 2006. K. is currently pregnant with her and Mr. B.'s first child. It is a high-risk pregnancy so she is limited to working only a few hours per week as a reading tutor at the children's school, for which she earns about \$360 per month.<sup>10</sup>

Mr. B. is in the military; he and the family live in government housing. His June 30, 2008, Leave and Earnings Statement (LES) indicates that Mr. B. received base pay of \$2,405.10; Basic Allowance for Subsistence (BAS) of \$294.43; and Cost of Living Allowance (COLA) of \$632, for total monthly income of \$3,331.53.<sup>11</sup> After taxes and allotments, including his \$400 per month allotment for child support paid directly to Ms. H., Mr. B.'s net pay was \$1,532.37.<sup>12</sup> Mr. B.'s allotment to Ms. H. for child support was terminated as of July 2008, so Mr. B.'s net pay then became \$1,932.37. It is not known when CSSD's child support collections began, but Ms. B. testified at the hearing that the agency was collecting \$1,228 per month for Mr. B.'s ongoing child support amount plus arrears, which would reduce his net pay to \$704.37. Ms. B. stated that is hardly enough to buy food, let alone pay their other bills.

The B.s' expenses total approximately \$1,902.82, which includes \$700 per month for food, including lunches for work; \$344.93 for internet, telephone, cable and cell phone services; \$251.23 for the payment on a 2003 Dodge Stratus; \$66.66 for vehicle maintenance; \$200 for gasoline; \$140 for vehicle insurance; \$100 for entertainment; and \$100 for personal care items.<sup>13</sup> In addition to these expenses, Mr. B. is currently paying \$673 per month for some of the bills

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<sup>6</sup> Exh. 10.

<sup>7</sup> Exh. 15 at pgs. 5-6.

<sup>8</sup> *Id.*

<sup>9</sup> Unless otherwise noted, the facts are taken from the hearing testimony of K. B. and F. H.

<sup>10</sup> Testimony of K. B.; *see also* Exh. 13.

<sup>11</sup> Exh. 7 at pg. 5.

<sup>12</sup> *Id.*

from his marriage to Ms. H.<sup>14</sup> These bills are paid by way of allotments from his military paycheck, which was set up after his creditors notified his commanding officer of the bills and he was required to begin paying them.<sup>15</sup>

Mr. B. has made direct child support payments to Ms. H. in the past, mostly by way of voluntary allotments from his military paycheck. He terminated that allotment after CSSD began garnishing his paychecks. The payments he made to Ms. H. are as follows:

<u>YEAR</u>	<u>MONTH or date</u>	<u>AMOUNT</u>	<u>METHOD</u>	<u>TOTALS</u>
<b>2006</b>	March – June	\$574.20	Allotment	\$2296.80
“	July – September	\$275.00	“	\$825.00
“	Oct – Dec	\$400.00	“	\$1200.00
<b>2007</b>	January – July	\$400.00	“	\$2800.00
“	Aug – Dec	0	n/a	0
<b>2008</b>	January 17 <sup>th</sup>	\$200.00	Money order	\$200.00
“	February 12 <sup>th</sup>	\$188.54	Wire	\$188.54
“	February 17 <sup>th</sup>	\$188.54	“	\$188.54
“	March 14 <sup>th</sup>	\$188.54	“	\$188.54
“	March – June	\$400.00	Allotment	\$1600.00
			<b>GRAND TOTAL</b>	<b>\$9,487.42</b>

Ms. H. is a 50% disabled veteran and receives \$885 per month on disability in addition to food stamps valued at \$353 per month. Ms. H. has been diagnosed with uterine cancer and is currently undergoing treatment for it. Her insurance covers the cost of her medical care. Ms. H. has applied for Social Security disability benefits, but her initial application was denied and she is appealing the denial.

C. also has special medical needs. Ms. H. has to take him on numerous trips out of town to see a specialist regarding digestive problems and leg issues that require regular bone density

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<sup>13</sup> *Id.*

<sup>14</sup> Exh. 13.

scans. His medical care is covered by Mr. B.'s insurance, but Ms. H. has to pay the transportation expenses out of pocket.

Ms. H.'s expenses total about \$1,098 per month, which includes \$500 for rent; \$100-\$150 cash for food in addition to the food stamps; \$153 for electricity and telephone; \$100 for gasoline; \$75-\$80 for vehicle maintenance; \$100 for personal care items; and \$15 for tobacco. Ms. H. owns her vehicle outright, although she still owes \$50 to the friends from whom she purchased it and she needs to purchase tires that will cost \$600. She does not have auto insurance yet, but her premiums used to be approximately \$213 per month. At the time of the hearing, Ms. H. had unpaid medical bills of approximately \$1,400, which were generated about 8 months prior to her testimony, and an outstanding personal loan of \$3,000. In addition to these bills, Ms. H. is also paying some of the financial obligations that remained after her divorce from Mr. B.

### **III. Discussion**

Mr. B. filed an appeal to request that he be granted a financial hardship variance from the child support determination based on the “unusual circumstances” provisions of Civil Rule 90.3(c).<sup>16</sup> He did not contest CSSD’s calculation of his monthly child support amount for each year at issue.<sup>17</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>18</sup> This obligation begins when the child is born.<sup>19</sup> By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren), up to six years prior to service on the obligor of notice of his or her support obligation.<sup>20</sup> The person who filed the appeal, in this case, Mr. B.,

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<sup>15</sup> Testimony of K. B. These payments were included in Mr. B.’s allotment totals, so they need not be counted again.

<sup>16</sup> When he requested an administrative review, Mr. B. claimed he had made direct child support payments to Ms. H. After reviewing his evidence, CSSD credited him with most of those payments in its amended order. *See* Exh. 12. Upon appeal, Mr. B.’s primary issue concerned a hardship variance, but testimony was also taken about the direct payments.

<sup>17</sup> *See* Exhs. 11-12.

<sup>18</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>19</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

<sup>20</sup> 15 AAC 125.105(a)(1)-(2).

has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.<sup>21</sup>

**A. Credit for direct payments**

Mr. B.'s first issue concerns credit for direct payments he asserts he made to Ms. H. by way of allotments from his military pay (and money order or wire transfers) before this obligation was established. In response, Ms. H. claims Mr. B. should not be allowed all of the direct payments credited to him by CSSD.

CSSD may give the obligor credit for direct payments made "before the time the obligor is ordered to make payments through the agency," so long as the direct payment was not made before the first date support is due in the administrative child support action.<sup>22</sup> An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments.<sup>23</sup> In its initial administrative order, CSSD did not credit Mr. B. with any payments made directly to Ms. H.<sup>24</sup> After reviewing the allotments reflected on Mr. B.'s military pay stubs and the money order or wire receipts he provided,<sup>25</sup> CSSD credited him with payments made directly to the custodian in the total amount of \$9,287.42.<sup>26</sup>

Ms. H. objects to Mr. B. receiving credit for payments made directly to her prior to July 2006.<sup>27</sup> In reference to the table on page 3 of this decision, Ms. H. objects to Mr. B. being credited with the payments of \$574.20 per month for support for C. for the months of March 2006 through June 2006. She asserts those payments constituted the spousal support he was ordered to provide for her prior to their divorce. After the hearing, Ms. H. submitted a copy of Army Regulation 608-99, entitled "Family Support, Child Custody, and Paternity," which she claims required Mr. B. to pay support to her. Ms. H. did not address whether C. received support other than the \$574.20 per month reflected on Mr. B.'s LES.

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<sup>21</sup> 15 AAC 05.030(h).

<sup>22</sup> AS 25.27.020(b).

<sup>23</sup> *Id.*

<sup>24</sup> Exh. 3 at pg. 1.

<sup>25</sup> Exh. 10.

<sup>26</sup> Exh. 12. That total was increased slightly to reflect additional wired payments. *See* Table at pg. 3.

<sup>27</sup> These are the only direct child support payments credited to Mr. B. that Ms. H. opposed. Her recitation of the remaining child support payments she received from Mr. B. is essentially consistent with the documents he provided and with K. B.'s testimony.

Mr. B. established that the allotments appearing on his pay stubs constituted child support. He may have been required to provide spousal support to Ms. H., but there was no apparent connection between the Army regulations Ms. H. submitted and the allotments that appeared on Mr. B.'s leave and earnings statements. Whether those regulations applied to their situation would have been determined by their respective living arrangements and Ms. H.'s situation with the military at the time. It seems highly unlikely that Mr. B. would have been ordered to pay both spousal support and child support prior to the parties' divorce, if only the spousal support was deducted from his paycheck. CSSD's determination that those payments constituted child support that should be credited to Mr. B. will be affirmed.

**B. Financial hardship variance**

The second issue in this appeal is whether Mr. B. is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). K. B. testified Mr. B. cannot afford to pay the child support amount CSSD calculated.

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). The presence of "unusual circumstances" in a particular case 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 . . . .<sup>[28]</sup>

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 lowered from the amount calculated pursuant to Civil Rule 90.3(a).<sup>29</sup> In a situation where CSSD is collecting arrears for a time period prior to the establishment of the child support order, "unfairness may result from rigid application . . ." of the Civil Rule 90.3 calculations.<sup>30</sup>

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<sup>28</sup> Civil Rule 90.3(c)(1).

<sup>29</sup> Civil Rule 90.3, Commentary VI.B.

<sup>30</sup> Civil Rule 90.3, Commentary VI.E.1.

Technically, there is no official recognition of Mr. B.'s stepchildren that would result in the reduction of his child support obligation. In general, Civil Rule 90.3 states that a parent's child support obligation should not be reduced because that parent has younger children.<sup>31</sup> Stepchildren are even less likely to justify a reduction in the parent's support obligation for an older child. This is because a parent has the choice not to start a second family if he or she cannot support the children from his or her first family. However, the commentary to the rule also states that the court or administrative tribunal "should reduce child support if the failure to do so would cause substantial hardship to the 'subsequent' children."<sup>32</sup> Even though it is not known when the B.s' child is due, there should be some consideration given to Mr. B.'s new subsequent child for the purposes of calculating his child support obligation.

Mr. B. does not have sufficient income with which to pay all of his bills and his child support obligation as calculated. He hardly has enough cash left over after his allotments, taxes and other deductions to purchase food for the household. Mrs. B. can contribute only about \$200-\$300 per month at this time, given her high-risk pregnancy, and there is no way of knowing how long it will be before she is able to return to work after the baby is born. Most of the expenses Mr. B. listed on the hardship form appear to be reasonable. This places him in a very stressful situation financially, especially since Mrs. B. is not receiving child support for her prior children. Although he has no legal obligation to support his stepchildren, Mr. B. undoubtedly feels a moral obligation to do so.

Ms. H.'s situation is similarly distressing. As a 50% disabled veteran, her only income at this time consists of disability benefits of \$885 per month in addition to food stamps valued at \$353 per month. Her monthly expenses, at \$1,098, are about 42% less than Mr. B.'s expenses. Ms. H. is undergoing treatment for uterine cancer, the cost of which is covered by her insurance, but having cancer undoubtedly creates a substantial amount of uncertainty and stress in one's life. The obligee, C., also has ongoing medical issues which require the services of a specialist and which are also covered by insurance.

Based on the evidence, Mr. B. has proven by clear and convincing evidence that manifest injustice would result if his child support were not varied from the amounts calculated pursuant to Civil Rule 90.3. Mr. B.'s child support obligation should be reduced, but in a manner that

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<sup>31</sup> Civil Rule 90.3, Commentary VI.B.2.

leaves the ongoing child support amount as intact as possible, with the primary reduction coming from the arrears. CSSD set Mr. B.'s ongoing support amount at \$853 per month in its amended order. Since that order was issued in August 2008, the agency has been collecting \$1,228 per month, which means \$375 of the total has been dedicated to the arrears each month. Moreover, prior to the commencement of wage garnishment, Mr. B. was making a sincere and responsible effort to keep up with his child support obligation through a voluntary allotment deducted from his military paycheck. Unfortunately, Mr. B. underestimated the monthly child support amount that would be calculated from his total annual income, so he was paying from between \$150 and \$400 per month less than CSSD eventually calculated.<sup>33</sup> As a result, even though Mr. B. consistently paid child support – up to \$400 per month for many of the months at issue, he still owed nearly \$17,000 after CSSD applied his direct payment credits.<sup>34</sup>

Therefore, in the presence of unusual circumstances, clear and convincing evidence of manifest injustice, and careful consideration, Mr. B.'s child support is set at \$350 per month for the period from February 2006 through December 2008, which totals roughly \$12,250. Mr. B. is entitled to the credit for direct payments totaling \$9,473 for that same period of time.<sup>35</sup> Finally, Mr. B.'s ongoing child support is set at \$800 per month, effective January 1, 2009.

The above child support amounts take into consideration the need for Mr. B. to provide a meaningful level of child support for C. in the present. The ongoing child support amount of \$800 per month substantially meets that goal. In addition, setting the arrears at \$350 per month acknowledges Mr. B.'s past efforts to meet his support obligation in great measure through a monthly allotment from his pay. Of course, reducing the arrears has lowered the back support due to Ms. H., an amount she probably has been counting on. But given the nature of her situation, it is more important to keep the ongoing monthly child support amount intact to the extent possible. This will allow Ms. H. to remain in her apartment, keep her vehicle and provide the transportation for C.'s visits to the specialist and for her treatment, as well.

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<sup>32</sup> *Id.*

<sup>33</sup> *See* Exh. 12.

<sup>34</sup> *Id.*

<sup>35</sup> Subtracting \$9,473 from \$12,250 leaves a balance of roughly \$2,763, plus interest. It is expected that CSSD's collections have roughly equaled that amount, but without access to CSSD's accounting files, it is a rough estimate, at best.



Finally, it should be noted that it is not the intent of this decision that Mr. B.'s child support obligation remain at \$800 per month indefinitely. This is at best a stop-gap measure that anticipates the parties' financial situations will be better in the future. Both Mr. B. and Ms. H. are making payments toward the joint financial obligations that remained at the end of their marriage. It appears, based on his financial statement, that Mr. B. may be finished with his portion of those payments within 1½ to 2 years.<sup>36</sup> Similarly, more should be known at that time about Ms. H.'s cancer treatment and whether her Social Security disability appeal was successful. Thus, it may be advisable to consider a modification action at that time.

#### **IV. Conclusion**

Mr. B. met his burden of proving by clear and convincing evidence that unusual circumstances exist in this case and that manifest injustice would result if his child support obligation were not varied from the amounts calculated by CSSD. The arrears figure of \$350 per month and the ongoing child support amount of \$800 per month represent a balance of the totality of the circumstances of both parties. These amounts should be adopted.

#### **V. Child Support Order**

- Mr. B. is liable for child support for C. in the amount of \$350 per month for the period from February 2006 through December 2008; and \$800 per month for January 2009 and ongoing;
- Mr. B. is entitled to a credit for direct child support paid to the custodian in the total amount of \$9,487.42 for the period from February 2006 through December 2008;
- All other provisions of the August 20, 2008, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 12th day of March, 2009.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>36</sup> See Exh. 14.

**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 31st day of March, 2009.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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