

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

IN THE MATTER OF:)
) OAH No. 09-0112-CSS
K. L. H.) CSSD No. 001049028
_____)

DECISION AND ORDER

I. Introduction

The Obligor, K. L. H., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued on February 9, 2009. The Obligee children in this case are K. Jr., DOB 00/00/92, and E., DOB 00/00/01. After Mr. H. filed the appeal, CSSD submitted a Motion for Remand, asking that this case be remanded to the agency for a modification review. At the hearing, CSSD abandoned the request for a remand and agreed a modification order should be issued by the undersigned administrative law judge based on the evidence in the record.

The hearing was held on March 16, 2009. Both Mr. H. and the custodian, L. G., appeared in person. Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD. The hearing was recorded and the record closed on April 7, 2009.

Based on the record and after careful consideration, Mr. H.’s child support is modified to \$673 per month for two children, effective October 1, 2008. The obligor’s claim of financial hardship is denied.

II. Facts

A. Procedural Background

Mr. H.’s child support obligation for K. Jr. and E. was set at \$907 per month in June 2007.¹ Mr. H. requested a modification on September 4, 2008.² On that same day, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. H. provided financial information,⁴ but CSSD apparently was unaware of the information and on

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 5.

February 9, 2009, CSSD issued a Notice of Denial of Modification Review for the reason that supporting documentation was not received.⁵ Mr. H. appealed on February 17, 2009, claiming he did submit income information but it might have been used in his other case.⁶ CSSD located Mr. H.'s information and prepared child support calculations from the data on file at the Alaska Department of Labor and Workforce Development.⁷

B. Material Facts

Mr. H. is employed and works full-time. In 2008 he had four employers, S. C., Inc., N. M. Services, U. J., Inc. and The A. C.⁸ His total income for the year was \$37,605.16.⁹

Mr. H. has seven biological children: K. Jr. and E. live with Ms. G. in Alaska; Q., L., A. and K. II live in Mr. H.'s home; and D. lives with his mother out of state.¹⁰ The calculation of Mr. H.'s support amount for K. Jr. and E. by necessity must take into consideration Q. and D., which will be addressed in the discussion section, below. This graph shows the birth order of all the children:

Children of this CSSD case, 001049028		Children in obligor's home		Children in obligor's other case, 001108929	
Child	Date of birth	Child	Date of birth	Child	Date of birth
1) K. Jr.	00/00/92				
		2) Q.	00/00/93		
				3) D.	00/00/01
4) E.	00/00/01				
		5) L.	00/00/04		
		6) A.	00/00/05		
		7) K. II	00/00/06		

⁵ Exh. 4.

⁶ Exh. 6.

⁷ Exh. 7.

⁸ Exh. 11.

⁹ *Id.* CSSD's Post-Hearing Brief notes that Mr. H.'s 2008 tax return reported income of \$35,779 for the year, a difference of \$1,826.16. Exh. 8 at pg. 2. Mr. H.'s income printout shows that the obligor received \$1,827.33 from S. C.s, Inc., so it appears likely that either he did not receive his W-2 from the employer or he forgot to include it in his income calculations. The higher figure should be used in his child support calculations.

¹⁰ Mr. H.'s support obligation for D. is discussed in OAH No. 09-0113-CSS.

Mr. H. and his partner, C., have lived together for seven years. They have five children in the home – Mr. H.’s older son, Q.; C.’s older son, R., and the three younger children that they have together. C. is unemployed; before having the children, she worked at a hotel.

Mr. H. has a significant amount of financial obligations. He reported regular monthly expenses of \$4,747,¹¹ which includes \$2,200 for the mortgage payment; \$400 for food; \$220 for natural gas; \$66 for water; \$99 for Internet; \$250 for electricity; \$120 for cable service; \$74 for a cellular phone; \$728 for the payment on a 2004 Cadillac (with a balance of \$3,300); \$250 for gasoline and vehicle maintenance; \$250 for vehicle insurance; and \$90 for alcohol and or tobacco. Denali Kid Care provides medical coverage for the children.

Ms. G. is married and lives with her husband and the obligees K. Jr. and E. Her husband provides medical and dental coverage for the children through his employer; E. has asthma. Ms. G. did not return the expense checklist.

III. Discussion

A. Child support calculation

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”¹² 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.¹³

Mr. H.’s child support obligation for K. Jr. and E. was set at \$907 per month in June 2007.¹⁴ After Mr. H. requested this modification, CSSD directed him to provide income information, which he did.¹⁵ However, CSSD was not aware he had done so and as a result, denied his petition for modification. After he appealed, the agency located the 2008 information and used it to prepare draft child support calculations for K. Jr. and E. The result is a child support amount of \$676 per month for two children¹⁶ and \$541 per month for one child.¹⁷ However, these numbers were not obtained from a simple two-child support calculation. Instead,

¹¹ Exh. 8 at pg. 1.

¹² AS 25.27.190(e).

¹³ Civil Rule 90.3(h).

¹⁴ Exh. 1.

¹⁵ Exh. 5.

¹⁶ Rounded up from \$675.74. *See* Exh. 7 at pg. 7.

¹⁷ *Id.*

they were calculated using a multi-step process because, as can be seen from the graph on page 2, above, there are two other children between K. Jr. and E. that affect the calculation.

Civil Rule 90.3(a)(1)(C) and (D) provide that a parent who pays support for a prior child or who supports a prior child in the home is entitled to a deduction from the parent's income in calculating the support obligation for a younger child. Q. and D. are both older than E. and Mr. H. has an obligation to support them – Q. lives in his home and D. receives support payments from Mr. H.. Thus, the obligor is entitled to a deduction from his income in E.'s child support calculation for supporting both of these older boys. The deduction for Q. is determined simply by calculating how much support Mr. H. would have to pay if Q. lived elsewhere; the deduction for D. is the amount of Mr. H.'s child support order for him. In essence, a calculation is done for each child in succession, starting with the oldest child, and each subsequent calculation includes all of the deductions from the obligor's income that represent the older children. CSSD described the process in its Post-Hearing Brief; the calculations are at Exhibit 7.

First, CSSD calculated the support amount for K. Jr., Mr. H.'s oldest child. At Exhibit 7, page 1, CSSD inserted Mr. H.'s 2008 income into the CSSD online child support calculator and after mandatory deductions for taxes and Social Security, calculated a child support amount of \$541 per month for one child, K. Jr.¹⁸ CSSD next determined Mr. H.'s deduction for Q., which was done by performing a calculation that itself included the deduction of \$541 per month support for K. Jr. This results in a deduction for Q. of \$432 per month.¹⁹

Mr. H.'s support obligation for E. is determined by performing a final child support calculation that includes Mr. H.'s deduction of \$432 per month for Q. and his deduction of \$381 for D.²⁰ The purpose of this step is to obtain Mr. H.'s adjusted annual income figure that includes all of the deductions from income for supporting his older children. That figure, \$22,677.60,²¹ is multiplied times 7% to ascertain his annual support obligation for one child, then divided by 12 to determine the monthly amount of support for E. that should be added on to Mr.

¹⁸ The amount for E. will be added to K. Jr.'s figure.

¹⁹ Exh. 7 at pg. 3.

²⁰ Mr. H. has an order to pay support of \$381 for D. – this is the correct deduction figure to use in E.'s support calculation. CSSD mistakenly *calculated* a deduction for D. but this was not necessary. The impact is a minor \$2 difference in E.'s eventual child support calculation. See Exh. 7 at 5.

²¹ See Attachment A.

H.'s child support amount for K. Jr. The resulting figure is \$132.29 and when added to the \$541 amount for K. Jr., yields a support amount of \$673 per month for both K. Jr. and E.²²

B. Financial hardship

The calculation of \$673 per month is correct on its face and Mr. H. stated that he cannot afford to pay the amount. He requested a variance due to financial hardship.

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."²³ 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^[24]

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).²⁵

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. H. 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 from \$673 per month. There are no "unusual circumstances" present to warrant varying his child support calculated under Civil Rule 90.3 for K. Jr. and E., especially given that the \$673 per month figure is a reduction from \$907 per month.

Mr. H. believes he is incapable of meeting the child support obligation because his income is not sufficient to meet all of his financial obligations. Mr. H.'s stated bills seem very high, considering his income. He has a large mortgage payment and one large car payment, but

²² Here's the math: $\$22,677.60 \times .07 = \$1,587.43 \div 12 = \$132.29 + \$541 = \$673.29$, rounded to \$673 per month.

²³ Civil Rule 90.3(c).

²⁴ Civil Rule 90.3(c)(1).

²⁵ See Civil Rule 90.3, Commentary VI.E.1.

the numbers he gave suggest that Mr. H. will pay off the car loan within a matter of months. This will free up \$728 per month for his other bills and it should make a significant difference for Mr. H.'s household.

Even without paying off the car, Mr. H. would not necessarily be entitled to a reduction in his child support. Higher monthly living expenses or debts do not automatically entitle a parent to a reduction in the child support calculation. To lower the child support amount would in essence mean that K. Jr. and E. are financing Mr. H.'s subsequent family. This is an unfair result for his older children. A person who has brought a child into the world may not have the freedom to make life choices later that deprive the child of support.²⁶ Mr. H. has a duty to support K. Jr. and E., and this duty takes priority over other debts and obligations. The children of this order are entitled to receive child support in an amount commensurate with Mr. H.'s ability to pay, as calculated pursuant to Civil Rule 90.3. Mr. H.'s financial situation does not constitute "unusual circumstances" pursuant to Civil Rule 90.3(c) such that his child support calculated under the Rule should be lowered.

IV. Conclusion

Mr. H. met his burden of proving that CSSD's denial of modification was incorrect, but he did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his modified child support amount calculated under Civil Rule 90.3 were not varied. His modified child support is correctly calculated at \$673 per month, which should be adopted.

V. Child Support Order

- Mr. H. is liable for modified ongoing child support in the amount of \$673 per month for K. Jr. and E., effective October 1, 2008;²⁷
- Because CSSD denied Mr. H.'s request for a modification review, the agency has not issued a current child support order. Accordingly, all other provisions of CSSD's

²⁶ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

²⁷ Exh. 5. The effective date of a modification is the first month after CSSD issues the notice that a petition for modification has been filed. 15 AAC 125.321(d). In this case, the notice was issued on September 5, 2008.

earlier Modified Administrative Child Support and Medical Support Order, issued on June 28, 2007, remain in full force and effect.

DATED this 22nd day of May, 2009.

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 8th day of June, 2009.

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

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