

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

IN THE MATTER OF:)	
)	OAH No. 09-0134-CSS
A. M. M., JR.)	CSSD No. 001154178
_____)	

DECISION AND ORDER

I. Introduction

This case involves the Obligor A. M. M., Jr.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 9, 2009. The Obligee child in this case is B., DOB 00/00/97.

The formal hearing was held on March 25, 2009. Mr. M. appeared by telephone; the custodian, E. M. U., was reached by telephone but did not wish to participate in the hearing. Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD. The hearing was tape-recorded. The record closed on March 25, 2009.

Based on the record and after careful consideration, CSSD's February 9, 2009, Amended Administrative Child Support and Medical Support Order is affirmed.

II. Facts

A. Procedural Background

Ms. U. filed an application for child support services on July 9, 2008.¹ On July 25, 2008, CSSD sent Mr. M. an Administrative Order to Provide Financial and Medical Insurance Information.² He provided income information.³ On November 21, 2008, CSSD served an Administrative Child Support and Medical Support Order on Mr. M.⁴ He requested an administrative review and provided additional information.⁵ On February 9, 2009, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. M.'s ongoing child support at \$753 per month, with arrears of \$3,224 for the period from July 2008 through

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exhs. 5-7.

February 2009.⁶ Mr. M. filed an appeal on March 3, 2009, asserting his younger children will suffer if he has to pay \$753 per month.⁷

B. Material Facts

Mr. M. is in the military in Florida – he is an E-5 with 13 years of service. His job title is Kennel Master. He trains and handles dogs, work similar to that of K-9 units in civilian law enforcement. Mr. M. lives in government housing with his wife, I., and their two children, both of whom are younger than B.

Mr. M.'s December 3, 2008, Leave and Earnings Statement (LES) indicates that he receives base pay of \$2,722.20; Basic Allowance for Subsistence (BAS) of \$294.43; and Basic Allowance for Housing (BAH) of \$1,221, for total monthly income of \$4,237.64.⁸ After taxes and other deductions, including their housing payment of \$1,221, Mr. M.'s total take-home pay was \$2283.11.⁹ I. is employed as a Youth Counselor; her gross income averages \$1,100 to \$1,200 per month. She should be making about \$1,400 per month but has to stay home frequently with their son J., who has health problems due to environmental and food allergies. The M.s' combined take-home pay is about \$3,483 per month.

Mr. M.'s regular expenses total approximately \$3,290 per month, which includes \$500 per month for food, including eating out; \$368.87 for internet, telephone, cable and cell phone services; \$588 for the payment on a Dodge 1500 truck; \$387.43 for the payment on a Dodge Durango; \$225 for vehicle maintenance; \$200 for gasoline for both vehicles; \$170 for vehicle insurance; \$32 for entertainment (children's dance lessons); \$90 for personal care items, in particular diapers and hair cuts; \$289.02 for the payments on two credit cards with balances totaling about \$16,709; and \$440 for day care.¹⁰

Mr. M. paid child support of \$400 per month directly to Ms. U. from July 2008 through February 2009.¹¹ He cancelled the payment when CSSD began garnishing his check.

Ms. U. has custody of the child B. and they live in rural Alaska with her two other children, both of whom are older than B. Ms. U. is employed and brings home about \$1,383 per

⁶ Exh. 9.

⁷ Exh. 10.

⁸ Exh. 3 at pg. 8.

⁹ *Id.*

¹⁰ Exh. 13 at pg. 1; testimony of A. M.

¹¹ Exh. 13 at pg. 6; *see also* Exh. 9 at pg. 7.

pay period.¹² Her regular monthly expenses total about \$3,014, which includes \$1,315 for rent; \$600-\$700 for food; \$371 for internet, telephone, cable and cell phone services; \$200 for cab fare to and from work; \$23.08 for health care; and \$100 for personal care items.¹³ In addition, Ms. U. has unpaid medical expenses, but she was still waiting for the bill when she filled out her expense checklist.¹⁴

III. Discussion

A. Mr. M.'s Income

Mr. M. is challenging the calculation of his child support amount, specifically, CSSD's inclusion of his non-pay benefits in his total income. In addition he is requesting a variance in the child support award due to financial hardship.¹⁵ He claims the amount calculated will cause manifest injustice to his subsequent children. The person who filed the appeal, in this case, Mr. M., has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.¹⁶

A parent is obligated both by statute and at common law to support his or her children.¹⁷ 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).¹⁸ In this case, Ms. U. requested child support services in July 2008, so that is the first month Mr. M. is obligated to pay support in this administrative child support action.

Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions. Civil Rule 90.3 states specifically that a military parent's total income from all sources includes "Armed Service Members base pay plus the obligor's allowances for quarters, rations, COLA and specialty pay."¹⁹ The reason for including the non-pay benefits, especially the BAH, in the child support

¹² Exh. 12 at pg. 4.

¹³ Exh. 12 at pg. 1.

¹⁴ *Id.*

¹⁵ Mr. M. also appealed because CSSD did not credit him initially with the credit for making direct payments to Ms. U. But there is currently no dispute on this issue – Mr. M. proved he made the payments and CSSD credited him through January 2009, making his arrears \$3,224. *See* Exh. 9 at pgs. 2, 7. He testified he made one more payment in February 2009, which will be added to the total credits given to him in the order section of this decision.

¹⁶ 15 AAC 05.030(h).

¹⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁸ 15 AAC 125.105(a)(1)-(2).

¹⁹ Civil Rule 90.3, Commentary III.A.29.

calculation is because they reduce the parent's living expenses and allow a military member to use the remainder of his or her cash pay to cover other expenses.

CSSD determined Mr. M.'s income consists of wages of \$32,666.40, plus non-income benefits of \$18,185.16, for total income for child support purposes of \$50,851.56.²⁰ This annual income figure results in a child support amount of \$753 per month.²¹ This amount is correct because it is based on Mr. M.'s actual income figures and it was calculated pursuant to Civil Rule 90.3, Alaska's rule regarding child support calculations.

B. Financial Hardship

The second 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 Civil Rule 90.3(c). CSSD correctly calculated Mr. M.'s child support at \$753 per month, based on his total income for 2008. It is from this calculation that Mr. M.'s request for a variance based on financial hardship should be considered.

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^[22]

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).²³

Mr. M. submitted a list of his current monthly expenses, which were discussed above.²⁴ Other than his vehicle payments that total \$975 for a Dodge truck and a Dodge Durango, Mr.

²⁰ Exh. 9 at pgs. 6, 8.

²¹ Exh. 9 at pg. 6.

²² Civil Rule 90.3(c)(1).

M.'s expenses appear to be relatively standard. Also, the family does not have significant debt for such things as medical care that remains unpaid.

Therefore, based on the evidence presented, Mr. M.'s situation 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 would result if the child support amount calculated under Civil Rule 90.3 were not reduced.

IV. Conclusion

Mr. M. did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Nor did he prove by clear and convincing evidence that manifest injustice would result in the absence of a variation of the child support amount. Based on the income documents he provided, CSSD's child support calculation of \$753 per month is correct and should be adopted.

V. Child Support Order

- CSSD's February 9, 2009, Amended Administrative Child and Medical Support Order is affirmed, with one addition – Mr. M. is entitled to a credit for direct payments he made to Ms. U. in the amount of \$400 per month from July 2008 through February 2009;
- All other provisions of the order remain in full force and effect.

DATED this 20th day of May, 2009.

By: Signed _____
Kay L. Howard
Administrative Law Judge

²³ See Civil Rule 90.3, Commentary VI.E.1.
²⁴ Exh. 13.

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.]