

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

IN THE MATTER OF:	)	
	)	OAH No. 09-0156-CSS
K. E. V.	)	CSSD No. 001153767
<hr style="width:50%; margin-left:0;"/>		

**DECISION AND ORDER**

**I. Introduction**

The obligor, K. E. V., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 24, 2009. The obligee children are R., DOB 00/00/94, and Z., DOB 00/00/01.

The formal hearing was held on April 23, 2009. Mr. V. participated in person; the custodian of record, A. A. V., appeared by telephone. Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD. The hearing was recorded. The record closed on May 18, 2009.

Based on the record and after careful consideration, Mr. V.'s child support is set at \$534 per month for May 2008 through December 2008, and \$355 per month for January 2009 through June 2009 and ongoing.

**II. Facts**

**A. Procedural Background**

Ms. V. applied for child support services on May 29, 2008.<sup>1</sup> On November 12, 2008, CSSD served an Administrative Child Support and Medical Support Order on Mr. V.<sup>2</sup> He requested an administrative review and provided additional information.<sup>3</sup> On February 24, 2009, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. V.'s ongoing child support at \$593 per month, with arrears of \$5,110 for the period from May 2008 through February 2009.<sup>4</sup> Mr. V. filed an appeal on March 9, 2009, asserting primarily that CSSD used incorrect income figures, he pays support for a prior child, he was not given credit

---

<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 4.  
<sup>3</sup> Exhs. 5-7.  
<sup>4</sup> Exh. 12.

for providing insurance and he cannot afford the child support amount calculated by CSSD in this case.<sup>5</sup>

**B. Material Facts**

Mr. V. and Ms. V. are currently in the process of obtaining a divorce. Ms. V. has primary custody of R. and the parties have shared custody of Z. on a 50/50 basis since before this action arose. Mr. V. pays support for a prior child named X., DOB 00/00/93. The amount was previously \$256 per month but was recently modified by the court to \$673.15 per month.<sup>6</sup>

Mr. V.'s primary employment is with the P.-C. Company: he earns \$24.63 per hour as a salesperson for 16 hours per week and \$22.20 per hour as a driver for 24 hours per week. He has also had part-time positions in the past at the A. C. and at NNB as a disc jockey. He has the option to work full-time for NNB, so he said he will make the decision whether to work there or at P. after this decision is issued. Mr. V.'s earnings at the Alaska Club were minimal and have ended because his job was eliminated and he was laid off.

Mr. V.'s 2008 income totaled \$53,267.37, which includes earnings from all of his jobs, \$49,998.37, plus the PFD and energy rebate.<sup>7</sup> His total 2009 income is estimated to be \$50,642.58, which includes just his P. earnings and the PFD.<sup>8</sup> Both the 2008 and 2009 earnings figures include deductions for supporting a prior child and paying retirement.

Ms. V. began working for FedEx as a courier in late 2008; she earns \$16.94 per hour for 35 hours per week. Her total 2008 income was \$9,836.23, which includes earnings plus the PFD and energy rebate.<sup>9</sup> Her 2009 income is estimated to be \$32,899.80, which includes her FedEx earnings and the PFD.<sup>10</sup>

Both parties submitted expense checklists. Mr. V. reported monthly expenses of \$700 for rent; \$300 for food; \$200 for heating oil; \$100 for electricity; \$109 for telephone, cable and Internet services; \$375 for vehicle gasoline, maintenance and insurance; \$100 for entertainment;

---

<sup>5</sup> Exh. 13.

<sup>6</sup> Exh. 17 at pg. 9.

<sup>7</sup> Exh. 18 at pg. 1.

<sup>8</sup> Exh. 18 at pg. 2

<sup>9</sup> Exh. 19 at pg. 1.

<sup>10</sup> Exh. 19 at pg. 2.

\$30 for a gym membership; \$50 for a health care reserve account; \$200 for a dental bill; \$1,050 for the payments on seven credit card or loan accounts; and \$500 per month for attorney fees.<sup>11</sup>

Ms. V. submitted monthly expenses of \$1,291.73 for a mortgage payment; \$500 per month for food; \$500 for heating oil, water and electricity; \$68 for cable; \$42 for Internet; \$140 for a cell phone; \$225 for vehicle gasoline, maintenance and insurance; \$138.27 for health insurance; \$150 for entertainment, personal care and alcohol or tobacco; \$30 for prescription medication; and \$601 for the payments on six credit card or loan accounts.<sup>12</sup>

### **III. Discussion**

Mr. V. is challenging CSSD's calculation of his child support amount. As the person requesting the hearing, Mr. V., has the burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.<sup>13</sup>

#### **A. Mr. V.'s Income**

Civil Rule 90.3(a)(1) provides that a noncustodial parent's child support obligation is to be calculated from his or her "total income from all sources." 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).<sup>14</sup> In this case, Ms. V. requested child support services in May 2008, so this is the first month in which Mr. V. is obligated to pay support for R. and Z.

CSSD calculated Mr. V.'s 2008 child support at \$543.49 (rounded down to \$534) per month, and his 2009 support at \$355.22 (rounded down to \$355) per month. These amounts are correct because they are based on the parties' actual income figures for 2008 and their estimated incomes for 2009, plus the calculations include deductions for Mr. V.'s prior child support payment and his retirement deduction.

#### **B. Financial Hardship**

The second issue in this appeal is whether Mr. V. is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). CSSD correctly

---

<sup>11</sup> Exh. 15 at pg. 2.

<sup>12</sup> Exh. 16 at pg. 1.

<sup>13</sup> 15 AAC 05.030(h).

<sup>14</sup> 15 AAC 125.105(a)(1)-(2).

calculated Mr. V.'s child support as discussed above and it is from these calculations that Mr. V.'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 . . . .<sup>[15]</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 set at a different level than provided for under the schedule in Civil Rule 90.3(a).<sup>16</sup>

Based on the evidence presented, Mr. V.'s situation does not present "unusual circumstances" of the type contemplated by Civil Rule 90.3. Mr. V. 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.

Mr. V.'s financial situation is stressed at this time but the calculations in this case for 2008 and 2009 both include the appropriate deduction for paying support for a prior child. The calculations also include the parties' respective child care costs. Finally, CSSD has credited Mr. V. with payments of \$1,700 from May 2008 through December 2008, so they should be included in this decision.<sup>17</sup>

#### **IV. Conclusion**

Mr. V. met 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). His calculations for 2008 and 2009 have been corrected and should be

---

<sup>15</sup> Civil Rule 90.3(c)(1).

<sup>16</sup> See Civil Rule 90.3, Commentary VI.E.1.

<sup>17</sup> See Exh. 12 at pg. 11.

adopted. Mr. V. did not, however, prove by clear and convincing evidence that manifest injustice would result in the absence of a variation of the child support amount. CSSD's caseworker will make the appropriate adjustments in his support amount to reflect medical insurance premiums that Mr. V. pays.

**V. Child Support Order**

- Mr. V. is liable for child support of \$534 per month for May 2008 through December 2008, and \$355 per month for January 2009 through June 2009 and ongoing;
- Mr. V. is entitled to credit for direct payments made to Ms. V. in the total amount of \$1,700 for the period from May 2008 through December 2008;
- CSSD will be making any necessary adjustments based on the payment of medical insurance premiums;
- All other provisions of CSSD's February 24, 2009, Amended Administrative Child and Medical Support Order remain in full force and effect.

DATED this 26<sup>th</sup> day of June, 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 13<sup>th</sup> day of July, 2009.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Deputy Chief Administrative Law Judge  
Title

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