

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

IN THE MATTER OF:)

P. B. M.)

) OAH No. 09-0461-CSS

) CSSD No. 001156834

DECISION AND ORDER

I. Introduction

The obligor, P. B. M., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued on August 17, 2009. The Obligee child is D., who is 3 years old.

The formal hearing was held on September 17, 2009. Mr. M. appeared in person; the custodian, S. R. K., did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 5, 2009.

Based on the record as a whole and after careful consideration, Mr. M.’s child support is set at \$188 per month, effective January 1, 2009.

II. Facts

A. History

Ms. K. applied for child support services on D.’s behalf in January 2009.² On June 5, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. M.³ He requested an administrative review but did not provide income information.⁴ On August 17, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. M.’s ongoing child support at \$268 per month, with arrears of \$1,224 for the period from January 2009 through August 2009.⁵ Mr. M. appealed on August 24, 2009, asserting he does not work full-time, he supports a child in the home and he is behind on his bills.⁶

¹ A call placed just before the hearing to Ms. K. telephone number went unanswered.

² Exh. 5 at pg. 7.

³ Exh. 2.

⁴ Pre-hearing brief at pg. 1.

⁵ Exh. 5.

⁶ Exh. 16.

B. Material Facts

Since April 22, 2009, Mr. M. has been employed as a cook at the Burger King restaurant on Elmendorf Air Force Base, where he earns \$10.32 per hour. He is considered an “intermittent” employee and as a result is only able to work about 34 hours per week. Prior to this job he worked full-time earning \$14-\$15 per hour at another restaurant on base but it closed early this year when its contract expired.

Mr. M. lives with his older child, M., who is 12 years old and attends school in Anchorage. Mr. M. has had court-ordered custody of her for 3-4 years and he receives child support of \$50 per month for M.

Nothing is known of Ms. K.’s circumstances. She did not answer a call placed to her telephone number of record at the time of the hearing. She signed for her notice of the date and time for the hearing but did not provide an alternate telephone number to be called.

III. Discussion

A. Mr. M.’s income

A parent is obligated both by statute and at common law to support his or her children.⁷ Civil Rule 90.3(a)(1) provides that an Obligor’s child support amount is to be calculated based on his or her “total income from all sources,” minus mandatory deductions such as taxes and Social Security. A parent who supports an older child in the home is entitled to an additional deduction.⁸ The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.⁹

As the person who filed the appeal in this case, Mr. M. has the burden of proving by a preponderance of the evidence that the child support amount in CSSD’s Amended Administrative Child Support and Medical Support Order is incorrect.¹⁰

In its amended child support order, CSSD calculated Mr. M.’s child support at \$153 per month for the first half of 2009, based on his actual income information for the period.¹¹ For the period beginning in September 2009, CSSD calculated the child support at \$306 per month, based on an income figure determined from Mr. M.’s hourly wage multiplied times 80 hours per

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ Civil Rule 90.3(a)(1)(C).

⁹ *Id.*

¹⁰ 15 AAC 05.030(h).

¹¹ *See* Exh. 5 at pgs. 8 & 10.

pay period.¹² CSSD stated in its Administrative Review Decision that the reason for the second calculation was that it had reviewed a pay stub dated June 12, 2009, and even though Mr. M. had not worked 80 hours in that pay period, those hours were available to him.¹³

An examination of the pay stub CSSD referenced in its Administrative Review Decision shows that for the June 12, 2009, pay period, Mr. M. worked 55 hours and earned \$567.60.¹⁴ Also listed in the “Current Earnings” section were 25 hours of “LWOP” with zero earnings.¹⁵ Mr. M. did not explain the LWOP hours in his request for an administrative review, so it was not unreasonable for CSSD to interpret the information as meaning he had 25 hours of leave without pay so he could work a full 80 hours in each pay period. The obligor’s testimony established instead that he does not work full-time. Mr. M. is a part-time or “intermittent” employee at the restaurant and he averages significantly fewer hours per pay period than the 80 hours CSSD assumed. All of the pay stubs he provided have a line for LWOP that contains the difference between 80 hours and the actual number of hours he works.¹⁶ He explained in the hearing that AAFES, his employer on base, uses the LWOP hours as an accounting tool to balance its books. Mr. M.’s testimony was credible and it makes sense, considering that an employee who had that many LWOP hours would not remain an employee for very long.

At the close of the hearing, CSSD was directed to prepare one calculation for 2009 based on its best estimate of Mr. M.’s total actual income for the year. As directed, CSSD’s post-hearing submission shows the division used wages of \$4,878.62, which he earned prior to working at Burger King; unemployment benefits of \$1,142.76, which he received during the second quarter; year-to-date Burger King wages of \$4,859.48; and projected wages of \$5,142.76, to be earned at Burger King from September 4, 2009, through the end of the year. These figures yield total annual income of \$14,880.86 and a child support calculation of \$188 per month for one child.¹⁷ The calculation includes a deduction for supporting his prior child in the home of \$235 per month, which CSSD determined under Civil Rule 90.3 as though Mr. M. were paying support for his prior child.¹⁸

12 *See* Exh. 5 at pgs. 9 & 10.

13 *See* Exh. 5 at pg. 10.

14 Exh. 3 at pg. 11.

15 *Id.*

16 *See* Exh. 6 at pgs. 3-5.

17 Exh. 11 at pg. 1.

18 *See* Exh. 11 at pg. 2.

B. Financial hardship

Mr. M.'s child support calculation is now correct and the obligor testified that he cannot afford the modified child support amount and 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."¹⁹ 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^[20]

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).²¹

Based on the evidence presented, this case 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 varied. He has expenses just over \$900 per month and he and his older child M. both receive Medicaid benefits and food stamps. Mr. M. may have to get another part-time job to make ends meet, but there are no "unusual circumstances" present to warrant varying his child support calculated under Civil Rule 90.3 for D.

IV. Conclusion

Mr. M. met his burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). His total estimated income for 2009 yields a child support amount of \$188 per month. Mr. M. did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his child support amount calculated under Civil Rule 90.3 were not varied. CSSD correctly calculated his child support at \$188 per month, which should be adopted.

¹⁹ Civil Rule 90.3(c).

²⁰ Civil Rule 90.3(c)(1).

V. Child Support Order

- Mr. M. is liable for child support for D. in the amount of \$188 per month for the period from January 2009 through October 2009 and ongoing;
- All other provisions of the August 17, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 13th day of October, 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 30th day of October, 2009.

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

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

²¹ See Civil Rule 90.3, Commentary VI.E.1.