

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

IN THE MATTER OF:)

J. C. T.)

OAH No. 09-0471-CSS

CSSD No. 001142337

DECISION AND ORDER

I. Introduction

The Obligor, J. C. T., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued on August 12, 2009. The Obligee children are G. and S., 7 and 4 years old, respectively.

The hearing was held on September 23, 2009. Both Mr. T. and the custodian of the children, J. R. H. (formerly J. R. T.), appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD in person. The hearing was recorded and the record closed on September 23, 2009.

Based on the record and after due deliberation, Mr. T.’s child support is modified to \$292 per month for two children, effective October 1, 2008, and further modified to \$194 per month for two children, effective January 1, 2009, and ongoing. The obligor’s claim of financial hardship is denied.

II. Facts

A. Background

Mr. T.’s child support order for G. and S. was set at \$497 per month in December 2006.¹ Mr. T. requested a modification on September 22, 2008.² On September 29, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ After a delay due to Mr. T.’s financial information being misdirected within the agency, CSSD issued a Modified Administrative Child Support and Medical Support Order on August 12, 2009, that modified Mr. T.’s child support to \$109 per month, effective October 1, 2008, and that further

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.

modified the ongoing child support amount to \$318 per month, effective January 1, 2009.⁴ Mr. T. appealed on August 25, 2009. He asserts primarily that he is a disabled veteran living in the Veterans Administration domiciliary in Anchorage and that he cannot afford the child support amount.⁵

B. Material Facts

Mr. T. is a former veteran with a 40% service-connected disability.⁶ He is entitled to receive disability compensation of \$611 per month, but he is currently receiving only about \$350 per month because his benefits are being partially withheld in order to repay two debts owed to the Veterans Administration (“VA”).⁷ In addition to his disability benefit, Mr. T. is attending college in pursuit of an associate degree in Network Technology. While he is in school, Mr. T. is participating in a work therapy program that operates like work study. As a member of this program, he receives \$7.25 an hour for 30 hours of work per week. His total earnings from this activity are \$1,140 per month.⁸

Mr. T. is currently living in the VA domiciliary in Anchorage. His monthly expenses consist of \$100 for rent; \$300 for food; and \$120 for cable and cell phone services.⁹ His last employment was on June 9, 2009 and he entered the domiciliary on July 19, 2009.

The custodial parent, Ms. H., is sympathetic to Mr. T.’s situation. She is employed as a file clerk and earns approximately \$2,300 per month. Her husband is not working at this time and provides child care while she works. Ms. H. also testified that the younger of the two children in this case, S., is not Mr. T.’s biological child. Rather, she testified, her husband is S.’s biological father and at this time she and Mr. T. are pursuing paternity disestablishment so that her husband can be put on S.’s birth certificate. The parties understand that Mr. T. will remain liable for child support for S. until his paternity of the child is disestablished.

Mr. T. did not apply for the 2008 permanent funded dividend. He testified he was busy with midterms at school and forgot to file for the dividend. In addition, he claims he is taking

⁴ Exh. 8. 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).

⁵ Exh. 9.

⁶ Exh. 10 at pg. 1.

⁷ *Id.*

⁸ Exh. 9 at pg. 2.

⁹ Testimony of Mr. T.

medication that caused him to forget to file, so he believes the dividend should not be included in his income for the purpose of calculating child support.

III. Discussion

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”¹⁰ If the newly calculated child support amount is more than a 15% change from the previous order, the Rule assumes a material change in circumstances has occurred and the support amount may be modified.¹¹

CSSD initially set Mr. T.’s modified child support at \$109 per month from October 2008 through December 2008, and \$318 per month, effective January 2009.¹² Prior to the hearing, however, CSSD prepared new calculations based on the total income Mr. T. received from his wages, disability pay and the PFD. For 2008, the division determined Mr. T.’s total gross income was \$12,043.43, which results in a child support amount of \$265 per month for two children.¹³ CSSD included the 2008 PFD in Mr. T.’s income, but did not add the \$1,200 amount for the energy rebate granted to qualifying Alaska residents in 2008. That figure should be added to his total income for the year, and as a result, Mr. T.’s income for 2008 totaled \$13,243.43, and the child support amounts would be \$217 per month for one child and \$292 per month for two children.¹⁴

CSSD’s initial calculation for 2009 utilized the 2008 permanent fund dividend amount in addition to Mr. T.’s total annual disability payments of \$7,332 which the agency projected he would receive in 2009. These figures yield total gross income of \$9,401, which results in a child support amount of \$157 per month for one child and \$212 per month for two children.¹⁵ Now that the specific amount of the 2009 PFD has been announced at \$1,305, that figure should be used in the 2009 calculation instead of the 2008 PFD amount. Making that specific change results in total gross income of \$8,637 and a child support amount of \$144 per month for one child and \$194 per month for two children.¹⁶

10 AS 25.27.190(e).
11 Civil Rule 90.3(h).
12 Exh. 8.
13 Exh. 11 at pg. 1.
14 See Attachment A.
15 Exh. 11 at pg. 2.
16 See Attachment B.

Mr. T. argued that the 2008 PFD and energy rebate should not be included in his child support calculation for that year. He testified that he forgot to file for the dividend, and that he was taking medications that caused him to forget. Mr. T.'s request cannot be granted. CSSD's regulations direct the agency to include a PFD in the calculation of an obligor's income "unless the evidence available to the agency indicates that the parent is not eligible for a permanent fund dividend" ¹⁷ It is unfortunate that Mr. T. forgot to apply for the 2008 PFD. The dividend and related energy rebate totaled over \$3,000 last year. These funds could have helped Mr. T. and/or his children significantly. However, there is no evidence in the record that Mr. T. was not eligible for the dividend, so those funds must be attributed to him for his child support calculation.

CSSD's calculations are now correctly calculated at \$292 per month for two children for 2008 and \$194 per month for two children in 2009 and ongoing. Mr. T. stated that he cannot afford the modified child support amount and requested a variance due to financial hardship. It is from these correct child support calculations that Mr. T.'s request will be analyzed.

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." ¹⁸ 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 ^[19]

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). ²⁰

¹⁷ 15 AAC 125.050(e) (emphasis added).

¹⁸ Civil Rule 90.3(c).

¹⁹ Civil Rule 90.3(c)(1).

²⁰ See Civil Rule 90.3, Commentary VI.E.1.

Based on the evidence presented, I find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3 that would support lowering his child support from the amount calculated. Mr. T. 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. Although Mr. T.'s circumstances are rather unique, there are no "unusual circumstances" present that would warrant varying his child support calculated under Civil Rule 90.3 for G. and S.

Mr. T.'s child support obligation should not be reduced from the amounts calculated because he is participating in a work therapy program and receives a stipend of \$7.25 per hour for the work he does in this program. Based on his 30-hour work week, the VA estimated it will pay him up to \$1,140 per month for the work he performs on this program. Because of federal restrictions on the use of these funds, they cannot be included in Mr. T.'s income to calculate his child support obligation.²¹ But the monthly stipend has practically doubled Mr. T.'s income and with expenses that total just over \$500 per month, there is no reason Mr. T. cannot afford the child support amount calculated under Civil Rule 90.3.

IV. Conclusion

Mr. T. 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 now correctly calculated at \$217 per month for one child and \$292 per month for two children in 2008 and \$144 per month for one child and \$194 per month for two children for 2009 and ongoing. Until such time as Mr. T.'s paternity of S. is disestablished, he remains liable for supporting both children. After it is disestablished, he will be liable for supporting G. only. The calculations should be adopted.

V. Child Support Order

- Mr. T.'s child support is modified to \$292 per month for two children, G. and S., effective October 1, 2008;
- Mr. T.'s child support is further modified to \$194 per month for two children (\$144 per month for one child), effective January 1, 2009, and ongoing;

²¹ See Exh. 9 at pg. 2.

- All other provisions of CSSD's August 12, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 7th 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 27th 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.]