

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

IN THE MATTER OF: )

M. B. O. )

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) OAH No. 09-0540-CSS  
) CSSD No. 001141092/001152344  
)

**DECISION AND ORDER**

**I. Introduction**

The Obligor, M. B. O., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in her case on September 23, 2009. The Oblige child is C., who is 16 years of age. The hearing was held on October 29, 2009. Ms. O. appeared by telephone. The State of Alaska is the other party. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on November 5, 2009.

Based on the record and after due deliberation, Ms. O.’s child support is modified to \$350 per month for one child, effective April 1, 2009, and ongoing, based on the good cause provisions of Civil Rule 90.3(c).

**II. Facts**

**A. Background**

Ms. O.’s child support obligation for C. (and her older sister K., who has emancipated) was set at \$419 per month for two children (and \$310 per month for one child) in March 2008.<sup>1</sup> Ms. O. requested a modification on February 27, 2009.<sup>2</sup> On March 9, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Ms. O. provided financial information.<sup>4</sup> On September 23, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Ms. O.’s ongoing child support to \$514 per

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3.  
<sup>4</sup> Exh. 4.

month, effective April 1, 2009.<sup>5</sup> Ms. O. appealed on October 1, 2009, asserting primarily that she cannot make ends meet with the increased child support amount.<sup>6</sup>

**B. Material Facts**

Ms. O. is employed by the A. S. C. H. Company, where she earned a total of \$25,476 through September 19, 2009.<sup>7</sup> That year-to-date total encompasses 41 weeks of earnings, so when it is divided by 41 weeks, it equals average earnings of \$621.37 per week. This weekly average, multiplied by 52 weeks, equals total estimated income for Ms. O. of \$32,311.24 for 2009. Ms. O. is not entitled to receive a permanent fund dividend, so that amount is not included in her income. In addition to her income from wages, Ms. O. receives Native corporation dividends from her 113 shares in the No Name Native Corporation. She received \$15.96 per share in April 2009 and will be receiving \$41.96 per share in December 2009, for a total of \$6,922.38 for the year.<sup>8</sup>

Ms. O. has seven children. The oldest five children are all emancipated, live on their own and support themselves. However, one of her older children just lost her job so she and her two-year-old daughter have moved into Ms. O.'s household. Ms. O. has two younger children for whom she is still obligated to pay support: C., the obligee in this case, who is in foster care and Ms. O.'s youngest child, M. H., who is currently receiving treatment at Northstar Behavioral Services. Ms. O. provides her clothing and other personal items. The actual cost of her treatment is provided by Denali KidCare, but Providence Hospital billed Ms. O. for M. H.'s stay in the Discovery unit before going to Northstar.

Ms. O.'s boyfriend, J., has been paying their rent, but he is currently in jail so she had to move into an efficiency apartment with a lower rent amount that she could afford. Ms. O. has regular monthly expenses of \$2,294, which breaks down as follows: \$700 for rent; \$1,000 for food; \$300 for public transportation while her vehicle is being repaired; \$86 for vehicle insurance; \$68 for storage; \$20 for post office box rental; and \$120 for her daughter M. H.'s needs while she's in treatment.<sup>9</sup> Ms. O. has two vehicles, a 1996 Ford Taurus, which she is

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

<sup>6</sup> Exh. 6.

<sup>7</sup> Exh. 6 at pg. 13. Ms. O.'s earnings report for each week includes the last pay period of 2008, so \$640 was subtracted from the running total in order to obtain the correct year-to-date total through September 19, 2009.

<sup>8</sup> CSSD's Submission to the Record, received on November 2, 2009.

<sup>9</sup> Exh. 6 at pgs. 3-4.

going to give to her daughter, and a van currently under repair that Ms. O. will use when it is fixed. Ms. O. did not know how she would be able to afford to pay for the van's repair. In addition to these regular monthly expenses, Ms. O. owes the Internal Revenue Service approximately \$500 for her 2008 tax bill and the State of Alaska for overpaid unemployment benefits of \$587. Finally, Ms. O. has the outstanding medical bill for M. H.'s stay at the Discovery unit before she went into treatment at Northstar, but Ms. O. did not know the specific amount of that bill.

### **III. Discussion**

#### **A. Ms. O.'s income**

A parent is obligated both by statute and at common law to support his or her children.<sup>10</sup> 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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>11</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. If the 15% change has not been met, CSSD may, but is not required, to modify the child support obligation. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>12</sup>

Ms. O.'s child support was set at \$419 per month for two children and \$310 for one child in 2008. In response to her petition for modification, CSSD used Ms. O.'s first two quarters of earnings as reported to the Alaska Department of Labor and Workforce Development to estimate her total 2009 income at \$37,533, including the PFD, and calculate a modified child support amount of \$514 per month for one child.<sup>13</sup> Before the hearing, Ms. O. provided year-to-date income information through September 19, 2009, which CSSD used to revise the calculation to \$542 per month.<sup>14</sup> Although the estimate of Ms. O.'s income from earnings is lower in the second calculation, it includes an additional \$6,922.38 from her Native corporation in 2009 that

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<sup>10</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>11</sup> AS 25.27.190(e).

<sup>12</sup> 15 AAC 125.321(d). In this case, the notice was issued on March 9, 2009. Exh. 3.

<sup>13</sup> Exh. 5 at pg. 6.

<sup>14</sup> Exh. 7.

was not in the first calculation. The calculation of \$542 appears to be correct and it meets the necessary 15% difference that supports a modification of a child support order.

**B. Financial hardship**

Ms. O.’s primary issue on appeal is that she cannot afford the child support amount calculated by CSSD from her actual income. CSSD was not asked for a position on this issue during the hearing, but in a separate procedure from the appeal process, the division’s enforcement team has granted an earlier hardship request that Ms. O. submitted to lower the amount collected from her on a monthly basis. CSSD is now going to be collecting a total of \$678.99 per month from Ms. O. – \$534 on this case (\$514 per month plus \$20 for arrears); \$58.95 on the case involving arrears owed to C.’s father; and \$86.04 on a third case in which Ms. O. is paying arrears owed to M. H.’s father.<sup>15</sup>

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.”<sup>16</sup> 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>[17]</sup>

It is appropriate to consider all relevant evidence 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>18</sup>

Based on the evidence presented, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. O. proved by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. Several factors constitute “unusual circumstances” in this case. Ms. O.’s boyfriend, who

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<sup>15</sup> CSSD’s representations during the hearing.

<sup>16</sup> Civil Rule 90.3(c).

<sup>17</sup> Civil Rule 90.3(c)(1).

<sup>18</sup> See Civil Rule 90.3, Commentary VI.E.1.

had been paying their rent, is now incarcerated and Ms. O. has had to move into an efficiency apartment. Now joining her there is Ms. O.'s adult daughter, who just lost her job, and her 2 year-old granddaughter. Ms. O.'s daughter will not be able to help support the family financially while she is unemployed, so Ms. O. will have to absorb those extra costs. Also, although M. H. is not currently in the home, Ms. O. is responsible for her support, as well. Ms. O. does not have medical insurance and she has to pay for M. H.'s hospitalization at Providence before she went into Northstar, in addition to all of M. H.'s personal needs while she is in treatment.

One of the difficulties for Ms. O. is the fact that her financial circumstances are not exactly as one would conclude from her total annual income. A significant portion of Ms. O.'s yearly income – over 21% – is received in only two payments per year from her Native corporation, so those funds are not readily available to her throughout the year to cover her monthly living expenses. Rather, Ms. O. uses her Native dividends to catch up on bills and the other financial obligations she gets behind on during the year. When analyzed on a monthly basis without the addition of the corporate dividends, Ms. O. has net income of \$26,651.32, which equals \$2,220.94 per month. After subtracting CSSD's monthly collections of \$678.99, Ms. O. has only \$1,541.95 with which to pay her monthly obligations of \$2,294.

Accordingly, Ms. O.'s modified child support calculation should be set in the amount of \$350, a reduction of \$192 per month from the amount CSSD calculated. This is a modest increase from the \$310 per month for one child set in 2008 and Ms. O.'s child support should be revisited if M. H. returns to Ms. O.'s home while C. is still a minor. This circumstance would require a new calculation based on the third party formula found in Civil Rule 90.3(i).

#### **IV. Conclusion**

Ms. O. met her burden of proving by clear and convincing evidence that manifest injustice would result if her modified child support amount calculated under Civil Rule 90.3 were not varied. There is good cause to reduce Ms. O.'s modified child support to \$350 per month, effective April 1, 2009.

#### **V. Child Support Order**

- Ms. O. is liable for modified ongoing child support in the amount of \$350 per month, effective April 1, 2009;

- All other provisions of CSSD's September 23, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 25th day of November, 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 14th day of December, 2009.

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

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