

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

IN THE MATTER OF:	)	
	)	OAH No. 09-0576-CSS
A. I. F.	)	CSSD No. 001094532
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The Obligor, A. I. F., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on September 16, 2009. The Obligee child is R., who is 15 years of age.

The hearing was held on November 12, 2009. Ms. F. appeared in person; the custodian, R. S. B., participated by telephone. Andrew Rawls, Child Support Specialist, appeared for CSSD. The hearing was recorded; the record closed on November 3, 2009.

Based on the record as a whole, Ms. F.'s modified child support amount is set at \$417 per month, effective March 1, 2009.

**II. Facts**

**A. History**

Ms. F.'s child support obligation for R. previously was set at \$50 per month in June 2006.<sup>1</sup> Mr. B. initiated modification of the order on January 27, 2009.<sup>2</sup> On February 25, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On February 27, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Ms. F.'s modified ongoing child support at \$413 per month, effective March 1, 2009.<sup>4</sup> Ms. F. filed an appeal on October 20, 2009, asserting she was laid off on January 30, 2009, and her only income since then has been unemployment benefits.<sup>5</sup>

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<sup>1</sup> Exh. 1. Prior to June 2006, Ms. F.'s child support obligation was \$757 per month, but it was reduced to \$50 per month when she was briefly incarcerated for a DUI in 2006. See Exh. 2 at pg. 15; testimony of Ms. F.

<sup>2</sup> Exh. 2.

<sup>3</sup> Exh. 3.

<sup>4</sup> Exh. 4.

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

## **B. Material Facts**

Ms. F. is currently unemployed. Formerly she was employed as a project engineer with U. O. S. for a one-year period from the second quarter of 2008 through the first quarter of 2009. Ms. F. earned \$113,235.30 from U. O.S. in those four quarters, of which \$14,433.97 was received during the first quarter of 2009.<sup>6</sup> She was laid off for lack of work on January 30, 2009.

Ms. F. is now receiving \$419 per week in unemployment benefits (UIB), of which \$157.60 per week is garnished for her child support arrears.<sup>7</sup> CSSD estimated her total UIB income at \$14,267 in 2009.<sup>8</sup> Her total income from all sources – her wages and unemployment benefits – is estimated at \$28,700.97.<sup>9</sup> This figure does not include the 2009 PFD because she is not eligible for the dividend due to her criminal history. This income, when inserted into CSSD's online child support calculator, results in a child support amount of \$417 per month.<sup>10</sup>

Ms. F. has a degree in E. E. Since being laid off she has applied to several potential employers in her own and related fields,<sup>11</sup> but she has not expanded her work search outside this general area of professional expertise on any significant basis.

Ms. F. lives alone in a rental but she also maintains an additional bedroom in her apartment for R., who spends the summers with her. Ms. F. has regular monthly expenses of approximately \$2,045, which includes \$835 for rent; \$460 for food; \$125 for natural gas; \$100 for electricity; \$165 for telephone, cable and Internet; \$80 for gasoline; \$170 for vehicle maintenance; \$80 for insurance; \$25 for entertainment; and \$50 for personal care items. Ms. F. owns a 1994 Ford Ranger, which is paid off, and she has about \$22,900 in personal debt for a medical bill and family and school loans that she cannot afford to make payments on at this time.<sup>12</sup>

The custodial parent, R. S. B., lives in Maryland. He is an archeologist and earns approximately \$82,000 per year. In addition to their child R., Mr. B. supports another child and his sister's son, as well. The parties usually share R.'s travel expenses for visitation in Alaska,

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<sup>6</sup> Exh. 6 at pg. 2.

<sup>7</sup> *Id.*

<sup>8</sup> Exh. 6 at pg. 8.

<sup>9</sup> *See* Attachment A.

<sup>10</sup> *Id.*

<sup>11</sup> W. S., U., D., H. P.s, S. O. and G., P. B. S., A., B. & Associates, A. E. S., C. H., L. M. and A.. *See* Letter received from Ms. F. on November 13, 2009.

<sup>12</sup> Exh. 8.

but Ms. F. has recently been unable to afford her portion of this expense. Mr. B. has also solely paid for R.'s orthodontics, which cost \$4,000.

### **III. Discussion**

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

A parent is obligated both by statute and at common law to support his or her children.<sup>13</sup> Civil Rule 90.3(a)(1) provides that an obligor parent's child support amount is to be calculated based on his or her "total income from all sources." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>14</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a material change in circumstances has occurred and the order may be modified. If a person has erratic income from year to year, Civil Rule 90.3 allows CSSD to use in the child support calculation an average income figure taken from several years' worth of income.<sup>15</sup> In most cases, CSSD uses the average income from a three-year period of time.

Ms. F.'s child support previously was set at \$50 per month in 2006. Pursuant to the petition for modification, CSSD calculated her modified child support at \$413 per month, based on Ms. F.'s first quarter 2009 wages from U., plus her unemployment benefits of \$11,897, and the 2008 Permanent Fund dividend, all of which equals \$28,399.97 in total annual income.<sup>16</sup>

Prior to the hearing, CSSD submitted another child support calculation for consideration. CSSD arrived at this amount, \$464 per month, from the average of Ms. F.'s earnings and unemployment benefits that she received during the period from 2005 through 2009.<sup>17</sup> This calculation is higher than the agency's earlier modification of \$413 per month because the latter figure, derived from average income over a span of five years, naturally reflects Ms. F.'s significantly higher income from U. in 2008.<sup>18</sup>

CSSD averaged Ms. F.'s income pursuant to Civil Rule 90.3, Commentary III.A., which states:

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<sup>13</sup> *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>14</sup> AS 25.27.190(e).

<sup>15</sup> Civil Rule 90.3, Commentary III.E.

<sup>16</sup> Exh. 4 at pg. 6.

<sup>17</sup> Exh. 6 at pg. 1.

<sup>18</sup> *See* Exh. 6 at pg. 8.

Time Period for Calculating Income. Child support is calculated as a certain percentage of the income which will be earned when the support is to be paid. This determination will necessarily be somewhat speculative because the relevant income figure is expected future income. The court must examine all available evidence to make the best possible calculation.

The determination of future income may be especially difficult when the obligor has had very erratic income in the past. In such a situation, the court may choose to average the obligor's past income over several years . . . .

Using an average income figure is not the best method of calculating Ms. F.'s modified child support obligation. Although Civil Rule 90.3 allows income figures to be averaged for the purpose of making child support calculations, it is not necessary to do so in this case. Ms. F.'s income has varied somewhat during two of the last five years, but it has not been so "erratic" that her income should be averaged. Her actual income in 2009 – consisting of nearly equal portions of first quarter earnings and unemployment benefits for the remainder of the year – is the correct income figure to use and it results in a child support amount of \$417 per month.

**B. Financial hardship**

Ms. F. testified that she cannot afford to pay child support in the amount set in the modification order and requested a variance pursuant to Civil Rule 90.3(c).

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>19</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>[20]</sup>

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<sup>19</sup> Civil Rule 90.3(c).

<sup>20</sup> Civil Rule 90.3(c)(1).

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>21</sup>

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. F. 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.

Ms. F. has a duty to support R., and this duty takes priority over other debts and obligations. R. is entitled to receive child support in an amount commensurate with Ms. F.'s ability to pay, as calculated pursuant to Civil Rule 90.3. She may have to substantially expand her job search and accept a position in any field so that she can return to the work force sooner rather than later. But even if her living expenses exceed her net income, there are no "unusual circumstances" present, as contemplated by Civil Rule 90.3, which would justify varying Ms. F.'s child support from the amount calculated from her actual 2009 income.

#### **IV. Conclusion**

Ms. F. did not meet 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. Her child support is now correctly calculated at \$417 per month, which should be adopted.

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

- Ms. F. is liable for modified ongoing child support in the amount of \$417 per month, effective March 1, 2009;
- All other provisions of CSSD's September 16, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 4th day of December, 2009.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>21</sup> Civil Rule 90.3, Commentary VI.E.1.

**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 22nd 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.]