

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

IN THE MATTER OF:)	
)	OAH No. 09-0636-CSS
I. S. N., JR.)	CSSD No. 001157541
_____)	

DECISION AND ORDER

I. Introduction

The obligor, I. S. N., Jr., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on November 17, 2009. The Obligee children are J., M., F. and D., who range in age from six to one and one-half years of age.

The formal hearing was held on December 22, 2009. Mr. N. appeared in person; the other party to this case is the State of Alaska. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on December 22, 2009.

Based on the record and after careful consideration, Mr. N.’s child support is set at \$516 per month, effective March 1, 2009, based on his actual income.

II. Facts

A. History

The obligee children began receiving foster care services in March 2009.¹ On September 21, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. N.² He requested an administrative review and provided income information.³ On November 17, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. N.’s ongoing child support at \$1,023 per month, with arrears of \$4,644 for the period from March 2009 through November 2009.⁴ Mr. N. appealed on November 23, 2009, asserting he had been looking for work for four months.⁵

¹ Exh. 5 at pg. 8.
² Exh. 1.
³ Exhs. 2 & 4.
⁴ Exh. 5.
⁵ Exh. 6.

B. Material Facts

Mr. N.'s children were taken into state custody and began receiving foster care services in March 2009. Mr. N. and his wife remained in the family home. They are litigating the return of the children and expect to go to trial later this month. Mr. N.'s wife is currently attending outpatient treatment and cannot work at this time.

Mr. N. customarily is employed doing seasonal construction work. He also receives dividend income from his Native corporation. He owns 176 shares of stock and typically receives \$40-\$50 per share in December of each year and \$15 per share in April.

Mr. N.'s 2009 income consists of earnings of \$3,168.66, which he received from R. R. for work during the second and third quarters,⁶ and unemployment benefits of \$5,725.⁷ It is also estimated that he will receive income from his Native corporation, taken from his 2008 figures, of approximately \$4,528.73 (non-taxable dividends) and \$3,130.16 (taxable non-dividend distributions).⁸ When the PFD is added, his total estimated income for 2009 is \$17,857.55.⁹ This income results in a support amount of \$516 per month for four children.¹⁰

Mr. N. has regular monthly expenses of approximately \$1,840 per month, which includes \$410 for the space rent for their trailer; \$300 for food; \$200 for heat; \$200 for electricity; \$50 for Internet, \$118 for two cell phones; \$173 for gasoline; \$67 for vehicle insurance; \$60 for personal care items; and \$160 for tobacco. He and his wife have unpaid medical bills in excess of \$18,000.

III. Discussion

A. Mr. N.'s Income

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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. By regulation, CSSD collects support in a foster care case from the date foster care

⁶ Exh. 7 at pg. 1. He testified he left that job because he had been unfairly treated. In 2008, Mr. N. worked for A. C. during the third and fourth quarters of the year and earned a total of \$6,589.77. Exh. 7 at pg. 1. In 2007 he earned \$10,895.20 working for the No Name sanitation department, but he left that job to move to Anchorage with his family. In 2006, Mr. N. earned \$11,963.76. *Id.*

⁷ Exh. 7 at pgs. 1-3.

⁸ Exh. 4 at pg. 15.

⁹ *See* Exh. 5 at pg. 6.

¹⁰ Exh. 5 at pg. 6.

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

services were initiated on behalf of the child(ren).¹² The record in this case indicates that foster care services began in March 2009, so that is the first month in which Mr. N. is obligated to pay support for his children through CSSD.¹³ As the person who filed the appeal, Mr. N. has the burden of proving by a preponderance of the evidence that the child support amount calculated by CSSD in its Amended Administrative Child Support and Medical Support Order is incorrect.¹⁴

CSSD prepared two calculations of Mr. N.'s 2009 child support obligation. The first used a total income figure of \$17,857.55, which includes the different amounts from all of his income categories, as discussed in the Facts section, above. This income figure results in a child support amount of \$516 per month for four children, and CSSD made it effective for the period from March 2009 through October 2009.¹⁵

The second calculation CSSD prepared started with earnings of \$31,200, which the agency determined by multiplying Mr. N.'s hourly wage of \$15 per hour times 2,080 hours to equal full-time work paid at that wage.¹⁶ The total income in this calculation, \$40,163.89, includes Mr. N.'s Native corporation dividends and the PFD, but not the unemployment benefits amount, obviously because he would not receive unemployment if he worked full-time for the year. This second calculation results in a child support amount of \$1,023 per month for four children, and is the ongoing support amount effective November 2009.¹⁷

CSSD's first calculation is the correct one to use in Mr. N.'s case. It is based on the best estimate of the obligor's actual income for the year, which is generally consistent with his historical earnings. The resulting child support amount of \$516 per month constitutes a reasonable measure of Mr. N.'s ability to pay support. The second calculation, at \$1,023 per month, is not correct, both as to the amount and the effective date of November 2009.¹⁸ It uses an income figure – \$31,200 – that is three times higher than Mr. N.'s highest reported annual income, yet there is no finding of voluntary and unreasonable unemployment that must precede

¹² 15 AAC 125.105(a)(1)-(2).

¹³ Exh. 5 at pg. 8.

¹⁴ 15 AAC 05.030(h).

¹⁵ See Exh. 5 at pg. 6.

¹⁶ See Exh. 5 at pgs. 4 & 7.

¹⁷ Exh. 5 at pg. 7.

¹⁸ Child support obligations are to be calculated annually. See Civil Rule 90.3(a). There is no evidence in the case of an event that justifies establishing an ongoing child support amount in November that is different than the calculation for the earlier part of the year.

imputing income to an obligor parent.¹⁹ There is simply no evidence that would justify this inflated ongoing child support amount.

Mr. N.'s child support is now correctly calculated at \$516 per month for four children. It is from this figure that his hardship request will be considered.

B. 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."²⁰ 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^[21]

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).²²

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. N. 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. While it is true that the obligor is not currently employed, he receives Native corporation dividends twice per year that allow him to catch up on his bills and living expenses. He expects to return to a seasonal construction job in the future.

IV. Conclusion

Mr. N. 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 child support

¹⁹ The prerequisite for imputing income to an obligor is that CSSD must first make a finding that the parent is voluntarily and unreasonably unemployed or underemployed. *See* Civil Rule 90.3(a)(4). The agency's forms allow a caseworker to check a box in the section for findings of fact, as in its Amended Administrative Child Support and Medical Support Order. CSSD's order in Mr. N.'s case did not include such a finding. *See* Exh. 5 at pg. 4.

²⁰ Civil Rule 90.3(c).

²¹ Civil Rule 90.3(c)(1).

²² *See* Civil Rule 90.3, Commentary VI.E.1.

is correctly calculated at \$516 per month for four children, and this figure should be adopted. Mr. N. 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. His child support should remain at \$516 per month.

V. Child Support Order

- Mr. N. is liable for child support for J., M., F. and D. in the amount of \$516 per month for the period from March 2009 through January 2010 and ongoing;
- All other provisions of the November 17, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 11th day of January, 2010.

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 29th day of January, 2010.

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

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