

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

IN THE MATTER OF:)

O. A. R.)

OAH No. 08-0193-CSS

CSSD No. 001136163

DECISION AND ORDER

I. Introduction

The Obligor, O. A. R., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on March 21, 2008. The Obligee child is A., DOB 00/00/00.

The hearing was held on May 2, 2008. Mr. R. appeared in person; the custodian, S. Y. D., did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on May 2, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record as a whole and after careful consideration, CSSD’s order modifying Mr. R.’s child support order to \$207 per month is affirmed.

II. Facts

A. Procedural facts

Mr. R.’s child support previously was set at \$120 per month effective March 1, 2005.² On January 10, 2008, Mr. R. requested a modification and provided income information.³ On January 10, 2008, CSSD issued a Notice of Petition for Modification of Administrative Support Order.⁴ On March 21, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. R.’s child support at \$207 per month, effective February 1, 2008.⁵ Mr. R. filed an appeal on April 15, 2008, asserting he has three child support cases and is

¹ Ms. D. provided contact information for the hearing, but a call placed to her telephone number at the beginning of the hearing went unanswered.

² Exh. 1.

³ Exhs. 2 & 4.

⁴ Exh. 3.

⁵ Exh. 5.

experiencing a financial hardship because he is not working and is living in a treatment center for homeless disabled veterans.⁶

B. Material facts

Mr. R. is a disabled veteran. He was in the military for 7 ½ years and separated in April 2003. He is currently unemployed and homeless and living in the Veterans Administration (“VA”) domiciliary located in Anchorage.⁷ Since December 2007, Mr. R. has been participating in a VA alcohol treatment program, which he believed he would complete this month (July 2008). When he is finished, he will be required to attend an aftercare program for six to nine months and work on relapse prevention.

Mr. R. requested a modification in order to lower his child support and get caught up on his arrears. He hopes he would then be able to get his driver’s license back and be better able to reenter the workforce after a several year absence.⁸ Mr. R. also receives employment counseling and is participating in a vocational rehabilitation program. For purposes of the military, Mr. R.’s disability involved his back and right leg and knee, but at this time Mr. R. is physically able to work.

Mr. R. has six children in three cases at CSSD. A., the child in this case, is the third oldest child. In January 2004, the Superior Court issued an order for Mr. R. to pay support for his two oldest children in the amount of \$381 per month.⁹

Mr. R. receives VA benefits of \$951 per month, which are nontaxable.¹⁰ He has regular expenses totaling \$587 per month for items such as debt repayment, personal care items, insurance, and a cell phone.¹¹ He also has some undocumented expenses; Mr. R. testified that when he has paid all of his obligations for the month, he usually has about \$150-\$175 left over and has on two occasions paid most of that money to CSSD. He said he had made two payments of about \$150 each (totaling \$300) toward all of his cases. Mr. R. is required to address his child support obligation as part of his treatment plan.

⁶ Exh. 7.

⁷ Except where indicated, the facts are taken from Mr. R.’s testimony during the hearing in this case and in his other child support hearing, held on the same day, In the Matter of O. A. R., OAH No. 08-0192-CSS.

⁸ Mr. R. was briefly employed in 2007 but had to stop working because of a “situation” that arose.

⁹ See In the Matter of O. A. R., OAH No. 08-0191-CSS, Exh. 1.

¹⁰ It is not known whether the money Mr. R. receives from the VA is for his disabilities only, but for child support purposes any distinction is irrelevant, so long as the funds are designated as nontaxable in the child support calculations.

III. Discussion

A. Income

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." According to Civil Rule 90.3, total income from all sources includes VA and disability benefits.¹² Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹³ If the newly calculated child support amount is more than 15% different than the previous order, the Rule assumes a material change in circumstances has occurred and authorizes a modification of the obligor's child support order.¹⁴

Mr. R.'s child support for A. was set at \$120 per month in 2006. That amount was based on his VA income at the time A.'s case was established. After he requested this modification, CSSD calculated Mr. R.'s modified child support at \$207 per month, based on his current VA benefits of \$951 per month and the 2007 PFD amount of \$1654, which totals annual income of \$13,066.¹⁵

CSSD's determination of Mr. R.'s income includes an additional deduction for paying support for his two prior children of \$51.79 per month.¹⁶ Civil Rule 90.3(a)(1)(B) provides that a parent who pays support for a prior child is entitled to a deduction in that amount from the parent's income, so long as the payment has been ordered by a court or administrative agency such as CSSD, and the amount is being paid. Mr. R. is required to pay his child support as part of his treatment plan, and he has made two payments of about \$50 each on his three child support cases. Therefore, in his support obligation for A., CSSD correctly gave Mr. R. the deduction for paying support for his two older children.¹⁷

Thus, subject to whether Mr. R. is entitled to a variance based on a hardship determination, as discussed below, CSSD correctly determined Mr. R.'s income and set his child support obligation at \$207 per month for one child.

¹¹ See Exh. 10 (this exhibit is the completed form that CSSD sent to Mr. R. as Exh. 8).

¹² Civil Rule 90.3, Commentary III.A.25-26.

¹³ AS 25.27.190(e).

¹⁴ Civil Rule 90.3(h).

¹⁵ Exh. 6.

¹⁶ *Id.*

¹⁷ CSSD gave Mr. R. a deduction from his income of \$51.79 per month, which appears to be a more specific mathematical calculation of his payments. The agency's number should be used; it is virtually the same amount as he

B. Financial hardship

The next issue in this appeal is whether Mr. R. is entitled to a reduction of the child support amount calculated, pursuant to Civil Rule 90.3(c). This is referred to informally as a hardship request and is based on Mr. R.'s testimony that he cannot afford the child support amount calculated.

Child support amounts 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." Civil Rule 90.3(c). If there are "unusual circumstances" in a particular case, this 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^[18]

It is necessary to consider all the relevant evidence in order to determine whether the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).¹⁹

Mr. R. did not prove by clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3 is not varied. His financial situation is definitely strained, but Mr. R.'s bills and expenses are also very low at this time. The primary reason Mr. R.'s child support situation is difficult is because he has three separate cases and his support obligation for the oldest children was set by the court in an amount much higher than the other two cases. Given the evidence as a whole, the fact that he has three child support matters does not constitute "unusual circumstances." His child support obligation has been calculated according to his actual income and he is participating in a vocational rehabilitation program that should help him find gainful employment in the near future and allow him to begin paying his monthly child support obligation in full, as well as gradually take care of his arrears. The sooner he returns to work, the sooner Mr. R. will begin to see real progress on his child support payments.

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¹⁸ Civil Rule 90.3(c)(1).

IV. Conclusion

CSSD correctly determined Mr. R.'s income and correctly gave him a deduction for paying support for his two prior children. Therefore, Mr. R. did not meet his burden of proving CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. Also, Mr. R. did not prove by clear and convincing evidence that manifest injustice would result if the child support calculated pursuant to Civil Rule 90.3 were not varied. His modified child support has been correctly calculated and should be affirmed.

V. Child Support Order

- CSSD's March 21, 2008, Modified Administrative Child Support and Medical Support Order is AFFIRMED.

DATED this 21st day of July 2008.

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 11th day of August 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

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

¹⁹ See Civil Rule 90.3, Commentary VI.E.1.