

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

IN THE MATTER OF: )  
 )  
K. D. H. ) OAH No. 09-0667-CSS  
 ) CSSD No. 001159815  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case involves the obligor K. D. H.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on November 3, 2009. The obligee child is K., who is 4 years of age.

The hearing was held on January 5 & 26, 2010. Mr. H. appeared telephonically with his attorney, Jason A. Weiner; the custodian, L. J. B., did not participate.<sup>1</sup> Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on February 16, 2010.

Based on the record and after careful consideration, Mr. H.'s child support is set at \$911 per month from June 2009 through October 2009, and \$681 per month, effective November 2009 and ongoing.

**II. Facts**

*A. Procedural Background*

Ms. B. applied for child support services on behalf of K. in June 2009. On August 17, 2009, CSSD issued an Administrative Child Support and Medical Support Order that set Mr. H.'s child support at \$787 per month.<sup>2</sup> He provided income information.<sup>3</sup> On November 3, 2009, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. H.'s ongoing child support at \$658 per month, effective December 1, 2009, with arrears of \$4,613 for the period from June 2009 through November 2009.<sup>4</sup> Mr. H. filed an appeal on

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<sup>1</sup> Just before the hearing, calls were placed to Ms. B.'s two telephone numbers on record. Neither call was answered.

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

<sup>3</sup> Exh. 6.

<sup>4</sup> Exh. 7.

December 7, 2009, asserting CSSD did not use current and/or accurate income information and did not account properly for future income information.<sup>5</sup>

*B. Material Facts*

Mr. H. is in the military – he is an E-5 with 6 years of service.<sup>6</sup> He was recently stationed in Germany through November 2009.<sup>7</sup> While overseas, Mr. H. received base pay of \$2,499.20 per month, which is taxable; and monthly nontaxable benefits consisting of Basic Allowance for Sustenance (BAS) of \$323.87; Basic Allowance for Housing (BAH) of \$1,948; and a Cost of Living Allowance (COLA) of \$197.40.<sup>8</sup> These figures result in total annual income of \$59,619.24, and when inserted into CSSD’s online child support calculator (in the correct taxable and nontaxable categories) they yield a child support amount of \$911 per month.<sup>9</sup> This amount is effective from June 2009, when the obligation began, through October 2009, the last month Mr. H. was stationed overseas.

In November 2009, Mr. H. received a permanent change of duty station to Ft. Knox, Kentucky. His commander wrote that in his new location, Mr. H. would no longer receive BAH of \$1,948 or COLA benefits.<sup>10</sup> Mr. H. did not provide his LES’s for October 2009 through December 2009, so CSSD used military pay charts available online to determine his base pay and benefits. As of November 2009, Mr. H. began receiving base pay of \$2,583.90 per month; BAH of \$930; and BAS of \$323.87.<sup>11</sup> These figures result in total annual income of \$46,053.24, and when inserted into CSSD’s online child support calculator they yield a child support amount of \$681 per month.<sup>12</sup> This figure is also applicable to 2010.<sup>13</sup>

Mr. H. testified that he is currently married and going through a divorce. He indicated he has two other children, but both are younger than K. and do not impact this child support calculation.

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<sup>5</sup> Exh. 8.  
<sup>6</sup> Exh. 6 at pg. 1.  
<sup>7</sup> Exh. 5 at pg. 4.  
<sup>8</sup> Exh. 6 at pg. 2.  
<sup>9</sup> Attachment A. There are minor differences in CSSD’s calculation, *see* Exh. 7 at pg. 9, but the resulting child support amounts of \$911 per month are identical.  
<sup>10</sup> Exh. 5 at pg. 4.  
<sup>11</sup> Exh. 9 at pgs. 1-3.  
<sup>12</sup> Attachment B.  
<sup>13</sup> Attachment C.

Nothing is known of Ms. B.'s circumstances, other than that she withdrew from CSSD's services on January 28, 2010.<sup>14</sup> She could not be reached for the hearing and has not otherwise appeared or presented any evidence in this appeal.

### III. Discussion

Mr. H. is challenging the calculation of his child support amount. He has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.<sup>15</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>16</sup> By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).<sup>17</sup> In this case, Ms. B. requested child support services in June 2009, so that is the first month Mr. H. is obligated to pay support in this administrative child support action. Because Ms. B. has withdrawn from services, CSSD will not collect ongoing child support from Mr. H., but his support obligation may be reinstated in the event Ms. B. renews her request for child support assistance.

Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions. The rule states specifically that a military parent's total income from all sources includes "Armed Service Members base pay plus the obligor's allowances for quarters, rations, COLA and specialty pay."<sup>18</sup> The reason for including the non-pay benefits, especially the BAH, in the child support calculation is because they reduce the parent's living expenses and allow the military member to use the remainder of his or her cash pay to cover other expenses. If the soldier lives off base, the BAH benefit used is the actual monetary amount included in the soldier's pay and reflected in the Leave and Earnings Statement (LES). If the soldier lives in base housing provided by the military, Civil Rule 90.3 directs CSSD to treat the housing benefit as an in-kind contribution, and its value, for child support purposes, is considered to be the same amount the soldier would receive for BAH while living off base.<sup>19</sup>

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<sup>14</sup> See Exh. 10.

<sup>15</sup> 15 AAC 05.030(h).

<sup>16</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>17</sup> 15 AAC 125.105(a)(1)-(2).

<sup>18</sup> Civil Rule 90.3, Commentary III.A.29.

<sup>19</sup> Civil Rule 90.3, Commentary III.A.19.

CSSD calculated Mr. H.'s child support at \$911 per month for June through October 2009, and \$658 per month as of November 2009.<sup>20</sup> With the minor adjustments made in the latter figure to \$681 per month, Mr. H.'s child support is now correctly calculated.

One final matter should be addressed. CSSD credited Mr. H. with a direct child support payment to Ms. B. in the amount of \$600 for the month of June 2009.<sup>21</sup> CSSD is free to credit Mr. H. with this payment if the agency has evidence to support it. Mr. H. filed cancelled checks showing he made many payments to Ms. B., but the last one in the record is dated April 29, 2009,<sup>22</sup> and there is no statement from Ms. B. that Mr. H. made a payment of \$600 for June 2009.

#### **IV. Conclusion**

Mr. H. met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Based on his actual income from all sources, his child support is now correctly calculated at \$911 per month from June 2009 through October 2009; and \$681 per month from November 2009, forward. Ms. B. has withdrawn from services, but in the event she renews her request for child support services, this support obligation may be reinstated.

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

- Mr. H. is liable for child support in the amount of \$911 per month for the period from June 2009 through October 2009; and \$681 per month from November 2009, forward;
- Ongoing child support is suspended as of February 1, 2010, and shall remain suspended unless K. receives public assistance benefits or Ms. B. renews her request for child support services;

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<sup>20</sup> Exh. 7 at pgs. 6 & 7.

<sup>21</sup> See Exh. 7 at pg. 8.

<sup>22</sup> Exh. 5 at pg. 22.

- All other provisions of the November 3, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 8<sup>th</sup> day of March, 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 30<sup>th</sup> day of March, 2010.

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

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