

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

IN THE MATTER OF:)

C. A. R.)

) OAH No. 09-0699-CSS
) CSSD No. 001142507
)

DECISION AND ORDER

I. Introduction

The obligor, C. A. R., appealed a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in his case on December 9, 2009. The obligee child is K., who is 4 years of age.

The hearing was held on January 20, 2010. Mr. R. appeared telephonically; the custodian, K. L. R., appeared in person. Andrew Rawls and Erinn Brian, Child Support Specialists, appeared for CSSD. The hearing was recorded and the record closed on February 3, 2010.

Based on the record and after careful consideration, Mr. R.' child support is modified to \$697 per month, effective for the period from May 2009 through August 2009. A child support order issued by the Superior Court became effective on September 1, 2009.

II. Facts

A. History

Mr. R.' child support obligation for K. was previously established at \$567 per month in July 2006.¹ On April 29, 2009, Ms. R. initiated a modification review of the order.² On April 30, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. R. provided income information.⁴ On August 30, 2009, the Superior Court issued a divorce decree and child support order setting Mr. R.' child support obligation at \$653.73 per month, effective September 1, 2009.⁵ On December 9, 2009, CSSD issued a Notice of Denial of

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.

Modification Review for the reason that a child support amount calculated from Mr. R.' income failed to reach the 15% change required by Civil Rule 90.3 in order to justify a modification.⁶ Ms. R. appealed on December 22, 2009, asserting that Mr. R.' income increased by 15% due to combat pay and other wages.⁷

B. Material Facts

Mr. R. is in the military. He began 2009 as an E4 with 5 years of service and in October 2009, he attained 6 years of service.⁸ He spends approximately four months per year overseas and receives combat (hazardous duty) pay for those four months and in 2009, he also received family separation pay for two of those months. Mr. R. has been through jump school and receives parachute specialty pay year-round. Mr. R.' 2009 income includes the following taxable and nontaxable amounts:

Base Pay (E4 w/ 5 yrs = \$2,127.60 x 9 mos.)	\$19,148.40 ⁹
Base Pay (October 2009)	2,176.08 ¹⁰
Base Pay (\$2,218.50 for Nov-Dec 2009)	4,437.00 ¹¹
Parachute Pay (\$150 x 12)	1,800.00 ¹²
Hazardous Duty Pay (\$325 x 4)	1,300.00 ¹³
Family Separation Pay (\$250 x 2)	<u>500.00¹⁴</u>
Total taxable income:	\$29,361.48
Basic Allowance for Housing (\$1,270 x 12)	15,240.00 ¹⁵
Basic Allowance for Subsistence (\$323.87 x 12)	<u>3,886.44¹⁶</u>
Total nontaxable income:	\$19,126.44
TOTAL INCOME	\$48,487.92

⁶ Exh. 6.

⁷ Exh. 7.

⁸ Exh. 10 at pg. 3.

⁹ Exh. 10 at pg. 2; *see* Mr. R. May 2009-September 2009 LESs, attached to an email he sent to the OAH on January 13, 2010.

¹⁰ Exh. 10 at pg. 3.

¹¹ Exh. 10 at pg. 4.

¹² *Id.*

¹³ Mr. R. May 2009 LES, attached to email dated January 13, 2010.

¹⁴ *Id.*

¹⁵ Exh. 10 at pg. 2.

¹⁶ *Id.*

Mr. R. pays Alabama state taxes and contributes 2% of his income to a Thrift Savings Plan (TSP). Finally, Mr. R. is not eligible for a permanent fund dividend. For 2009, he received total income from all sources of \$48,487.92. When inserted into CSSD's online child support calculator, Mr. R.' annual income results in a child support amount of \$697 per month for one child.¹⁷

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁸ 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 is not required to modify the child support obligation.

If a modification is warranted, it is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁹ This administrative modification will be short-lived, however, as the Superior Court ordered Mr. R. to pay support of \$653.73 per month, effective September 1, 2009.²⁰ Thus, any support amount entered in this case will be effective only for the period from May 2009 through August 2009.

The person who filed the appeal, in this case, Ms. R., has the burden of proving by a preponderance of the evidence that the agency's child support determination is incorrect.²¹

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." Civil Rule 90.3 specifies 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."²² The base pay and other taxable items are put into the calculation in the taxable income column.²³ The other benefits go into the nontaxable income column.²⁴ Taxes and other mandatory deductions are also included.

¹⁷ Exh. 11.

¹⁸ AS 25.27.190(e).

¹⁹ 15 AAC 125.321(d). In this case, the notice was issued on April 30, 2009. Exh. 3.

²⁰ Exh. 5.

²¹ 15 AAC 05.030(h).

²² Civil Rule 90.3, Commentary III.A.28.

²³ See Exh. 11.

²⁴ *Id.*

Mr. R.' child support was set at \$567 per month in 2006, so any increase over \$652 meets the 15% threshold amount and allows the modification.²⁵ For this modification review, CSSD initially estimated Mr. R.' 2009 earnings at \$47,164, which led to a child support amount of \$631.92 per month.²⁶ Because this figure did not reach a 15% change from his prior child support order of \$567 per month, CSSD denied Ms. R.' request for modification.

During the hearing, it was determined that Mr. R.' child support should be modified. He received a raise in base pay during 2009 and his testimony revealed that Mr. R. travels out of country on a regular basis, so his annual income for 2009 should include his combat and family separation pay. As a result, Mr. R.' 2009 income yields a child support amount of \$697 per month for one child. This figure is more than a 15% change from his 2006 order, so Mr. R.' child support should be modified accordingly.

IV. Conclusion

Ms. R. met her burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was incorrect, as required by 15 AAC 05.030(h). Mr. R.' modified child support is now correctly calculated at \$697 per month, effective for the period from May 2009 through August 2009. The Superior Court order controls Mr. R.' child support obligation as of September 1, 2009.

V. Child Support Order

- Mr. R.' child support is modified to \$697 per month, effective from May 2009 through August 2009.

DATED this 23rd day of February, 2010.

By: Signed _____
Kay L. Howard
Administrative Law Judge

²⁵ \$567 + 15% = \$652.

²⁶ Exh. 6 at pg. 5.

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 12th 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.]