

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

IN THE MATTER OF: )  
 )  
S. J. P. )  
 )  
\_\_\_\_\_ ) OAH No. 10-0235-CSS  
CSSD Case No. 001133095

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of S. J. P. for the support of J. T. T. The custodian of record is N. E. T.

The Child Support Services Division issued a support order setting Mr. P.'s support order at \$582 per month on November 28, 2005. On December 23, 2009, Mr. P. filed a request for review and modification. On March 25, 2010, the division denied the request. Mr. P. appeals.

The assigned administrative law judge conducted a telephonic hearing on May 19, 2010. Mr. P. and Ms. T. participated and Andrew Rawls represented the division.

Based on the record, modified ongoing child support is set at \$351 per month.

**II. Facts**

S. J. P. is a sergeant in the United States Army. He has five biological children. Two of them live in the home with Mr. P. and his wife. Mr. P.'s oldest child is the subject of a child support order in the amount of \$353 month.<sup>1</sup> His second oldest child lives in Mr. P.'s home. His third oldest child is the subject of a child support order in the amount of \$380 per month.<sup>2</sup> J. is the fourth oldest of his children. Mr. P.'s youngest child is less than two years old and lives with his parents; Mr. P.'s wife presently provides day care for the infant and does not work outside the home.

In May, 2008, Mr. P.'s duty station was transferred from Fort Richardson, Alaska, to Fort Jackson, South Carolina,<sup>3</sup> where he served as a drill sergeant and was paid an extra \$375 per month in wages. Beginning in January, 2010, he was no longer serving as

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<sup>1</sup> Ex. 5, p. 8. Mr. P. is paying arrears in the amount of \$47 per month on this order. *Id.*

<sup>2</sup> Ex. 5, p. 9.

<sup>3</sup> Ex. 3, pp. 4-5.

a drill sergeant and he no longer received that extra income; his pay grade in 2010 is E-4. Mr. P. was scheduled for transfer to Fort Bragg, North Carolina, in June, where he will be in a parachute company on jump status; he anticipated remaining at the E-4 pay grade for the remainder of the year.

Mr. P.'s total anticipated income in 2010 is \$42,075, consisting of wages (\$25,525) and a basic allowance for housing (BAH) (\$17,131); he is entitled to the standard deductions for federal income tax (\$208.72 per month) and Social Security (\$175.48), together with a deduction for the cost of two older children in the home (\$622 per month).<sup>4</sup> After those deductions, his anticipated 2010 adjusted annual income is \$37,327, and his presumptive child support obligation is \$351 per month.<sup>5</sup>

At the time of the hearing Mr. P.'s monthly net disposable income, before child support deductions, was about \$3,252.79.<sup>6</sup> At the time of the hearing his monthly household expenses, not including his child support obligations, totaled about \$3,579.50-\$3,729.50, including rent (\$1,236), food (\$450), utilities (\$229.50), telephone, cable TV and Internet (\$150), transportation (\$963-\$1,013),<sup>7</sup> personal care items (\$200), clothing (\$200-\$300), life and health insurance (\$151). He spends an additional \$405 per month on entertainment (\$100), and debt (\$305).

N. T. is employed as a civil engineer by the United States Army Corps of Engineers. She lives alone with her child. Her monthly total income, excluding child support from Mr. P., is \$6,000 and her take home pay is \$4,200. Her monthly household expenses total about \$4,250, including rent (\$1,250), food (\$300), utilities (\$350), telephone, cable TV and Internet (\$300), transportation (\$1,315),<sup>8</sup> personal care items (\$200), health and rental insurance (\$400), entertainment (\$100), and debt (\$35).

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<sup>4</sup> Appendix A-1.

<sup>5</sup> Appendix A-2.

<sup>6</sup> Gross income \$3,451.80 (\$2,293.80 regular pay + \$1,158.00 BAH) minus withholding for income tax (\$23.53), Social Security (\$142.22) and Medicare (\$33.26). *See* Ex. 7, p. 1.

<sup>7</sup> Mr. P. testified that the household owns two vehicles, a 2003 Dodge Durango with a monthly payment of \$632. He also testified that he owns a motorcycle, free and clear, and that gasoline (\$150-\$200), maintenance (\$80) and insurance (\$96) total about \$326-\$376 per month.

<sup>8</sup> Ms. T. testified that she owns a 2008 Lincoln Navigator with a monthly payment of \$900. She also testified that gasoline (\$300), maintenance (\$30) insurance (\$85) total about \$1,415 per month.

## II. Discussion

A child support order may be modified when the support obligation changes by 15% or more<sup>9</sup> or there is a material change of circumstances.<sup>10</sup> The presumptive support obligation is based on the actual income that the obligor is expected to earn during the time the order will be in effect.<sup>11</sup>

The division initially denied modification, based on the lack of a 15% or more change in his support obligation as calculated for income at the E-6 pay grade.<sup>12</sup> At the hearing on appeal, Mr. P. testified that his pay grade was E-4, and he provided current leave and earnings statements showing that was his pay grade.<sup>13</sup> Based on his current leave and earnings statements, the division recalculated Mr. P.'s support obligation and submitted a post-hearing memorandum with the updated calculations showing more than a 15% change in the support obligation.<sup>14</sup>

The division's revised calculation includes a monthly amount of \$323.87 as the basic allowance for subsistence (BAS); however, Mr. P.'s leave and earnings statements do not show that he receives BAS.<sup>15</sup> With that exception, the division's calculations are supported by the preponderance of the evidence, and are adopted. Mr. P.'s presumptive support obligation, omitting BAS, is \$351 per month as shown on Appendix A-2, attached.

Mr. P.'s testimony indicates that his current household expenses (\$3,579.50-\$3,729.50) are substantially greater than his net monthly income (\$3,252.79), even before considering his child support obligation for his older children. Adding to his child support obligations for all three children to his monthly household expenses, the shortfall in income is even greater: his total expenses of \$4,662.50-\$4,812.50 (household expenses plus child support) exceed his net disposable income by \$1,409.71-\$1,559.71. Mr. P. is incurring an increasing debt load in order to meet his continuing expenses.

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<sup>9</sup> 15 AAC 125.321(b)(1).

<sup>10</sup> 15 AAC 125.321(b)(2)(B).

<sup>11</sup> 15 AAC 125.030(a).

<sup>12</sup> Exhibit 4.

<sup>13</sup> Ex. 5; Exhibit 7.

<sup>14</sup> Ex. 8.

<sup>15</sup> There is no explanation in the record for the absence of BAS. However, the best available evidence for Mr. P.'s income is his leave and earnings statement, and that document does not show any BAS.

That an individual's reasonable household expenses exceed available income is a circumstance that can be taken into account and the support obligation may be reduced if the presumptive child support obligation would result in a manifest injustice.<sup>16</sup> The obligor must provide clear and convincing evidence of manifest injustice.<sup>17</sup> In determining whether there is manifest injustice, all of the relevant circumstances should be considered.<sup>18</sup> Manifest injustice may be found where the support obligation determined by the obligor's income would cause substantial hardship to the obligor's other children.<sup>19</sup> The obligor's debts may constitute grounds for a reduction in support if there are exceptional circumstances.<sup>20</sup>

In this case, Mr. P. has an infant son,<sup>21</sup> and because his wife is providing day care during the infancy he must bear the entire financial burden of supporting the family.<sup>22</sup> Mr. P.'s household expenses are for the most part not unreasonably large, except for the monthly payment of \$632 for a vehicle, but even absent any vehicle payment at all, his monthly net disposable income would still be nearly \$1,000 per month less than his total monthly expenses.

Ms. T., the custodial parent, has take home pay substantially equal to her monthly household expenses. She testified that in recent months she has received \$262-\$404 per month in child support from Mr. P.; this is because the amount withheld from his pay is limited to 40% of his net disposable income (about \$1,301.12).<sup>23</sup> Ms. T. testified that if the amount of the support order were reduced from the \$582 she would have to make adjustments, but she did not indicate that a reduction would cause substantial hardship for J.

In this particular case, it is clear that in the short run, that is, until his vehicle loan is paid off and his wife is able to work outside the home, imposition of the presumptive

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<sup>16</sup> 15 AAC 125.075(a)(2).

<sup>17</sup> 15 AAC 125.075(a).

<sup>18</sup> *See*, 15 AAC 125.080.

<sup>19</sup> 15 AAC 125.075(a)(2)(F). *See*, Civil Rule 90.3, Commentary at VI(B)(2).

<sup>20</sup> 15 AAC 125.075(b)(2). *See*, Civil Rule 90.3, Commentary at VI(B)(4).

<sup>21</sup> Infants typically require greater financial support than older children. *See*, Civil Rule 90.3, Commentary at VI(B)(6).

<sup>22</sup> The child support guidelines recognize that during the first two years, it is generally reasonable for a parent to stay at home and provide care, rather than working. Civil Rule 90.3, Commentary at III(C).

<sup>23</sup> *See* 15 AAC 125.540(c). Net disposable income is determined under 15 U.S.C. 1672. It consists of income after deductions required by law.

support obligation will result in a substantial increase in Mr. P.'s debt burden. However, imposition of the presumptive amount will not result excessive withholding. Moreover, there is substantial evidence that Mr. P.'s financial circumstances may substantially improve in the course of the next year: his infant son will soon turn two (allowing Mr. P.'s wife to enter the workforce), Mr. P. anticipates an increase to the E-5 pay scale towards the end of 2010, and his vehicle should be paid off within a year. Under these circumstances, Mr. P. has not shown by clear and convincing evidence that imposition of the presumptive amount is manifestly unjust.

#### **IV. Conclusion**

A material change of circumstances is presumed and the prior support order should be modified to reflect Mr. P.'s 2010 anticipated income.

### **CHILD SUPPORT ORDER**

The Amended Administrative Child Support and Medical Support Order dated November 28, 2005, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated November 28, 2005, is **AFFIRMED**:

Modified ongoing child support is set at \$351 per month, effective January 1, 2010.

DATED: July 1, 2010.

*Signed*  
\_\_\_\_\_  
Andrew M. Hemenway  
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 26<sup>th</sup> day of July, 2010.

By: Signed \_\_\_\_\_  
Signature  
Andrew M. Hemenway \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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