

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

IN THE MATTER OF:)	
)	OAH No. 10-0336-CSS
C. C.)	CSSD No. 001140808
_____)	

REVISED DECISION AND ORDER

I. Introduction

The obligor, C. C., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). The obligee child is I. C. G. The custodian of record is A. G.

A hearing was held on August 2, 2010. Mr. C. and Ms. G. both participated by telephone. CSSD was represented in person by Child Support Specialist Erinn Brian. At the conclusion of the hearing, the record was left open until August 9, 2010, to allow additional time for CSSD to submit a revised support calculation.

A proposed decision was issued by the Office of Administrative Hearings on August 11, 2010. Mr. C. submitted a Proposal for Action. The Deputy Commissioner reviewed the Proposal for Action and the Proposed Decision. He then remanded this matter to the Office of Administrative Hearings to make additional findings concerning unusual circumstances that would make application of Civil Rule 90.3 unjust. This revised order is now issued.

Based on the testimony and exhibits in the record, Mr. C.'s child support is modified and set at \$1,023 per month, effective May 1, 2010.

II. Facts

A. Background

On November 16, 2007, the Office of Administrative Hearings issued a Child Support Order setting Mr. C.'s ongoing support obligation at \$585 per month.¹ Ms. G. requested a modification of that order on March 30, 2010.² A Notice of Petition for Modification of

¹ Exhibit 1.
² Exhibit 2.

Administrative Support Order was mailed to the parties on April 9, 2010.³ A Modified Administrative Child Support and Medical Support Order was issued by CSSD on June 8, 2010.⁴ This order set Mr. C.'s support obligation at \$844 per month based on information received from the National Department of Labor.⁵

Mr. C. appealed.⁶ He states in his appeal that he cannot afford the higher child support obligation, that he pays support for an older child from a prior relationship, and that he does provide medical insurance for I.

B. Material Facts

Mr. C. is serving in the military and is currently stationed in England.⁷ Prior to the hearing, Mr. C. submitted additional wage information.⁸ He also testified that he is contributing 15% of his base pay to a voluntary retirement plan and paying \$547 per month in child support for his older child. Mr. C. testified that his Basic Allowance for Housing (BAH) is larger than usual because his current wife has remained in Virginia while he is in England. He receives a BAH for both locations.

After reviewing Mr. C.'s Military Leave and Earnings Statements,⁹ CSSD recalculated his child support obligation to be \$1,398 per month.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹¹ 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 may modify the child support obligation, but is not

³ Exhibit 3.

⁴ Exhibit 4.

⁵ Exhibit 4, page 4.

⁶ Exhibit 5.

⁷ He testified that he expects to remain in England until February of 2011.

⁸ Exhibit 6.

⁹ Exhibit 6.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ AS 25.27.190(e).

required to do so. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹² Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹³

Exhibit 6 consists of Mr. C.'s Leave and Earning Statements for May, June and July of 2010. This is the best evidence of what Mr. C. is likely to earn when the child support payments are made.¹⁴ His base pay is \$3,435.60 per month, or \$41,227.20 per year. In addition, Mr. C. receives a subsistence allowance, BAH, and COLA. These amounts change slightly each pay period; the total amount for these three statements is \$15,637.92. This equates to an annual amount of \$62,551.68.¹⁵

Mr. C. questioned whether both of the base housing allowances he receives should be included as income. Civil Rule 90.3 assumes that, with some exceptions, a percentage of all money coming into a household will be spent supporting the parents' children. The BAH is money allocated to service members to pay housing costs which would otherwise have to be paid from taxable wages. This money is normally included as income,¹⁶ and a percentage of it is expected to be devoted to child care expenses.

There are unusual circumstances in this case related to Mr. C.'s housing allowances. His first allowance, for the family home in Virginia, is typical of housing allowances routinely received by service members. His second allowance, however, is paid in the exact amount that he owes for his overseas housing. It is similar to having an employer pay for a hotel room when the employee is on a business trip. This payment does not reduce Mr. C.'s other living expenses since he must still maintain a home in Virginia. Nor is there any money left over from this payment that could be used for child support or other purposes. Mr. C. has shown by clear and convincing evidence that it would be manifestly unjust to include this second housing allowance as income for purposes of calculating his child support obligation.¹⁷

¹² 15 AAC 125.321(d).

¹³ 15 AAC 05.030(h).

¹⁴ Civil Rule 90.3, Commentary III.E.

¹⁵ CSSD's post hearing filing suggests that COLA should be based on a six month average, but there is no evidence in the record for calculating a six month average.

¹⁶ Civil Rule 90.3, Commentary III.A.29.

¹⁷ Civil Rule 90.3(c)(1).

Mr. C.'s second housing allowance is \$2100 per month, or \$25,200 per year. When this amount is excluded, his total annual income for child support purposes consists of base pay of \$41,227.20 per year plus allowances of \$37,351.68 per year.

Mr. C. also contributes 15% of his base pay to the Thrift Savings Plan. He is entitled to a deduction for that contribution, but only up to 7.5% of his gross wages.¹⁸ This monthly deduction is \$257.67. He is also entitled to a deduction of \$547 per month for child support paid on behalf of an older child.

When these numbers are inserted into CSSD's online child support calculator, the resulting child support obligation is \$1,023 per month.¹⁹ This is still a significant increase from the prior child support obligation, so should not create an undue hardship for the custodial parent.

IV. Conclusion

There is a material change in circumstances justifying a modification to Mr. C.'s child support obligation. Strict application of Civil Rule 90.3 would result in manifest injustice, however, so Mr. C.'s second housing allowance is excluded from this calculation. His child support should be modified to \$1,023 per month for one child.

V. Child Support Order

- Ongoing child support is set at \$1,023 per month, effective May 1, 2010.
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated June 8, 2010 remain in full force and effect.

DATED this 20th day of September, 2010.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

¹⁸ Civil Rule 90.3(a)(1)(B).

¹⁹ Attachment A.

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 27th day of September, 2010.

By: *Signed* _____

Signature

Jerry Burnett

Name

Deputy Commissioner

Title

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