

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

IN THE MATTER OF:)
)
A. L. G.) OAH No. 10-0482-CSS
) CSSD No. 001160555
_____)

DECISION AND ORDER

I. Introduction

This case involves the obligor A. L. G.’ appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 25, 2010. The obligee child is J., who is 4 years of age. The custodian is K. M. S.

The hearing was held on October 19, 2010. Both Mr. G. and Ms. S. appeared by telephone. A. Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on November 2, 2010.

Based on the record and after careful consideration, Mr. G.’ child support is set at \$631 per month, effective June 2009 and ongoing.

II. Facts

A. Procedural Background

CSSD received a UIFSA child support petition from Ms. S.’s state of residence on June 19, 2009.¹ On February 26, 2010, CSSD issued an Administrative Child Support and Medical Support Order that was served on Mr. G. on May 16, 2010.² He requested an administrative review and provided income information and documentation showing that he pays support of \$306 per month for a prior child.³ On August 25, 2010, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. G.’ ongoing child support at \$698 per month, effective September 1, 2010, with arrears of \$10,470 for the period from June 2009 through August 2010.⁴ Mr. G. filed an appeal on September 22, 2010.⁵

¹ Exh. 2.
² Exh. 3.
³ Exhs. 4 & 6.
⁴ Exh. 8.
⁵ Exh. 9.

B. Material Facts

Mr. G. is in the military. He entered the service in October 2008 and trained at Ft. Leonard Wood in Missouri. In April 2009 he came to Alaska, where he currently resides. He became an E3 in October 2009 and is anticipating a promotion in the near future.

In 2009, Mr. G. had taxable income of \$19,067.40 and nontaxable benefits valued at \$24,937.17, for total income of \$44,004.57.⁶

Mr. G. has a prior child, K., who is 6 years old. Mr. G. pays child support for his son in the amount of \$306 per month to the state of North Carolina.⁷ There is no dispute about this payment – Mr. G. documented it and CSSD has already included that obligation in the deductions from income in his child support calculation for J..⁸

Mr. G. has paid some child support directly to Ms. S., although he could not remember the specific amounts or dates of payment. Ms. S. testified that he has given her about \$200 during 2009 and 2010. The parties and CSSD agreed that Mr. G. is entitled to a credit for direct payments of \$100 for 2009 and \$100 for 2010.

III. Discussion

Mr. G. 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.⁹

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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).¹¹ In this case, Ms. S.'s state of residence submitted a child support petition to CSSD in June 2009, so that is the first month Mr. G. is obligated to pay support in this administrative child support action.

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

⁶ Exh. 10 at pg. 2.

⁷ Exh. 4 at pg. 2.

⁸ See Exh. 8 at pg. 9.

⁹ 15 AAC 05.030(h).

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

¹¹ 15 AAC 125.105(a)(1)-(2).

Members base pay plus the obligor's allowances for quarters, rations, COLA and specialty pay."¹² 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.¹³

After the hearing, CSSD calculated Mr. G.' child support at \$631 per month for 2009.¹⁴ This calculation includes a deduction from income for the child support Mr. G. pays for his prior child K. in the amount of \$306 per month.¹⁵ For 2010, CSSD calculated his support at \$714 per month, using Mr. G.' June 2010 Leave and Earnings Statement (LES).¹⁶ However, that figure is only a 14% increase from the 2009 calculation, so it is not a large enough change to modify the 2009 amount of \$631 per month.¹⁷ Thus, Mr. G.' child support is now correctly calculated at \$631 per month.

One final matter should be addressed. Mr. G. testified, and Ms. S. confirmed, that he had given her child support funds directly in the amount of \$100 in 2009 and \$100 in 2010. The parties and CSSD agreed that Mr. G. is entitled to these two credits, and CSSD's post-hearing brief suggested the credits be applied in June 2009 and January 2010.¹⁸

IV. Conclusion

Mr. G. 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 for 2009, Mr. G.' child support is now correctly calculated at \$631 per month, effective June 2009 and ongoing. This amount should be adopted. Further, Mr. G. is entitled to a credit for child support he paid directly to Ms. S. in the amount of

¹² Civil Rule 90.3, Commentary III.A.29.

¹³ Civil Rule 90.3, Commentary III.A.19.

¹⁴ Exh. 10 at pg. 1.

¹⁵ *Id.*

¹⁶ Exh. 11 at pg. 1.

¹⁷ *See* 15 AAC 125.105(e).

\$100 in 2009 and \$100 in 2010. CSSD's suggestion that they be applied in June 2009 and January 2010 should be adopted.

V. Child Support Order

- Mr. G. is liable for child support for J. in the amount of \$631 per month, effective June 2009 and ongoing;
- Mr. G. is entitled to a credit for direct child support payments in the amount of \$100 for June 2009 and \$100 for January 2010;
- All other provisions of the August 25, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 30th day of November, 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 21st day of December, 2010.

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

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