

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

IN THE MATTER OF:	)	
	)	OAH No. 11-0170-CSS
A L. G	)	CSSD No. 001166016
_____	)	

**DECISION AND ORDER**

**I. Introduction**

A G appeals an administrative order by the Child Support Services Division (CSSD) establishing his child support obligation. The custodial parent is C J. R and the child in this case is J D. R.

A hearing was held on May 18, 2011. Ms. R appeared in person. CSSD was represented by Child Support Specialist Andrew Rawls. Mr. G did not appear for the hearing, but did submit written testimony. Based on the evidence in the record, Mr. G' child support should be set at \$588 per month for calculating his arrears, and his ongoing child support should be set at \$595 per month.

**II. Facts**

*A. Background*

A request for child support services was received by CSSD on February 23, 2010.<sup>1</sup> An Administrative Child Support and Medical Support Order was issued on January 28, 2011.<sup>2</sup> Mr. G requested an administrative review of that order.<sup>3</sup> Based on that administrative review, CSSD issued an Amended Administrative Child and Medical Support Order.<sup>4</sup> Mr. G appealed.<sup>5</sup>

Prior to the hearing, Mr. G submitted written testimony and supporting documents. He indicated that he might not be able to attend the hearing because of his work schedule. He called the Office of Administrative Hearings and stated that he wanted to rely on the written submission if his work schedule precluded his appearance by phone or in person.

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1 Exhibit 1.  
2 Exhibit 3.  
3 Exhibit 4.  
4 Exhibit 6.  
5 Exhibit 7.

*B. Material Facts*

Mr. G serves in the U.S. Army. He has two older children from prior relationships, and he is paying a total of \$937 per month in child support for those children.<sup>6</sup> It is not clear from the record what rank Mr. G holds. Mr. G submitted a copy of his military ID which shows that he holds the rank of E-3. He also submitted an Enlisted Record Brief that shows he obtained the rank of Specialist on October 10, 2010.<sup>7</sup> At the hearing, CSSD indicated that a Specialist was equivalent to the rank of E-4. In its post hearing submission, CSSD presented a print out from a web page that indicates that a Specialist is an E-4.<sup>8</sup> This printout also shows monthly pay amounts for different pay grades.<sup>9</sup> CSSD has not shown that this particular web site is reliable in general, or that there is reason to believe that the information about ranks and pay rates is accurate. Without more, this information is not something that a responsible person would rely on in the conduct of serious affairs. Accordingly, it is not admissible evidence.<sup>10</sup>

Regardless of his rank and whether he was promoted in 2010, the only admissible evidence in the record of Mr. G' actual income is from before October of 2010.<sup>11</sup> At that time, he had a base pay of \$1,705.80 per month, a monthly subsistence allowance of \$323.87, a housing allowance of \$1,565 per month, and a cost of living allowance (COLA) of \$526.14.

Ms. R testified that Mr. G had provided J with a car seat, diapers, and other supplies worth approximately \$150.

**III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>12</sup> 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." For members of the armed services, total income includes housing, subsistence, and cost of living allowances, in addition to base pay.<sup>13</sup> An

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<sup>6</sup> See *In Re A.L.G.*, OAH No. 10-0482-CSS (Dept of Revenue 2010).

<sup>7</sup> Exhibit 4, page 5. Ms. R testified that Mr. G told her he had been promoted.

<sup>8</sup> Exhibit 12, page 1.

<sup>9</sup> Exhibit 12, page 2.

<sup>10</sup> 15 AAC 05.030(h).

<sup>11</sup> Exhibit 11, pages 1 – 3.

<sup>12</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>13</sup> 15 AAC 125.030(27).

obligor parent is entitled to a credit against this total income for child support for older children if the support is required by a court order and is actually being paid.<sup>14</sup>

Mr. G' written testimony raises several issues. According to this testimony, Ms. R had agreed to accept a lower child support amount, and has not consistently allowed him visitation with his daughter. He wants to help provide for his daughter, but has encountered problems doing so. Child support awards are based on the income of the parent, and except in unusual circumstances may not be varied simply because the parents agreed to a different amount.<sup>15</sup> Nor may the amount be varied because visitation has been denied.<sup>16</sup> Child support is for the benefit of the child, and other disputes between the parents must be resolved through the court system if the parents can't resolve their differences by themselves.

Mr. G also wrote that he does not receive any additional dependent pay for J.<sup>17</sup> In calculating child support, the focus is not on whether a particular child is or can be listed as a dependent. Instead, the question is focused on the total income of the parent. For one child, the support amount is normally 20% of adjusted income.<sup>18</sup>

When the custodial parent first requests child support services, arrears are calculated from the date the parent requested services through the effective date of the child support award.<sup>19</sup> Credit may be allowed for in kind support only to extent the parents agree to the dollar value of that support.<sup>20</sup> The calculation for ongoing support is based on the total income the parent is likely to earn when the support is paid.<sup>21</sup>

The best information available about Mr. G' income comes from his Leave Earning Statements. These statements show that he will have annual taxable wages of \$20,469.60 and non-taxable earnings of \$28,980.12. There is no evidence that Mr. G will be eligible to receive a Permanent Fund Dividend. Using CSSD's online child support calculator, Mr. G' arrears, from February 2010 through the April 21, 2011 Amended Administrative Child Support and Medical

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<sup>14</sup> Civil Rule 90.3(a)(1)(C).

<sup>15</sup> 15 AAC 125.075(b)(1).

<sup>16</sup> 15 AAC 125.075(c)(1).

<sup>17</sup> Exhibit 4, page 2 & 5.

<sup>18</sup> Civil Rule 90.3(a)(2).

<sup>19</sup> 15 AAC 125.105(a)(2).

<sup>20</sup> 15 AAC 125.105(c). Ms. R agrees that Mr. G provided \$150 of in kind support. Mr. G has not stated the amount he believes is accurate. Because Ms. R has not agreed to a higher amount, \$150 is the maximum credit that can be allowed even if Mr. G believes he provided more support.

<sup>21</sup> 15 AAC 125.050(c).

Support Order would be based on a child support obligation of \$588 per month.<sup>22</sup> His ongoing child support obligation should be set at \$595 per month for one child.<sup>23</sup>

#### **IV. Conclusion**

Beginning on February 1, 2010, Mr. G' child support obligation was \$588 per month. He is entitled to a credit for in kind support of \$150. Beginning on May 1, 2011, Mr. G' ongoing child support obligation is \$595 per month for one child.

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

- Mr. G' child support obligation is set at \$588 per month from February 1, 2010 through April 30, 2011;
- Mr. G is entitled to a credit against his child support arrears of \$150;
- Effective May 1, 2011, Mr. G' ongoing child support obligation is set at \$595 per month;
- All other provisions of the Amended Administrative Child and Medical Support Order of April 21, 2011 remain in full force and effect.

DATED this 24<sup>th</sup> day of May, 2011.

By: Signed  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>22</sup> Attachment A.

<sup>23</sup> Attachment B.

**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 27<sup>th</sup> day of June, 2011.

By: Signed \_\_\_\_\_  
Signature  
Jerry Burnett \_\_\_\_\_  
Name  
Deputy Commissioner \_\_\_\_\_  
Title

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