

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

IN THE MATTER OF:)

J W. L III)

OAH No. 11-0382-CSS

CSSD No. 001137635

REVISED DECISION AND ORDER

I. Introduction

The obligor, J W. L III, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 30, 2011. The obligee child is A, age 6. The custodian is K A. K.

The hearing was held on October 17, 2011 and recorded. Both Mr. L and Ms. K participated. Erinn Brian, Child Support Specialist, represented CSSD.

The proposed decision was issued on February 7, 2012. In response, Mr. L filed a Proposal for Action requesting that the decision be remanded to the administrative law judge (ALJ) to take additional evidence and make additional findings regarding his 2011 income.

On March 6, 2012, Deputy Commissioner Angela M. Rodell remanded the decision to the ALJ to conduct a supplemental hearing and take additional evidence regarding Mr. L' actual 2011 income. The hearing was held on April 12, 2012. Both parties participated. Erinn Brian once again appeared on CSSD's behalf.

This revised decision replaces the original decision and order in its entirety. The specific changes concern Mr. L' actual 2011 income and each calculation using that income figure. Mr. L' child support is modified to \$1,568 per month for one child, effective July 1, 2011.

II. Facts

A. Background

Mr. L's child support obligation for A was set at \$1,199 per month in 2008.¹ In June 2011, Ms. K requested a modification review and CSSD notified Mr. L.² He supplied his 2010 tax return and paystubs,³ and on August 30, 2011, CSSD issued a Modified Administrative Child

¹ Exh. 1.

² Exhs. 2-3.

³ Exh. 4.

Support and Medical Support Order that increased his child support to \$1,750 per month.⁴ Mr. L appealed on September 27, 2011.⁵

B. Material Facts

Mr. L is employed by No Name Alaska, Inc. (NN). In 2010, he received \$167,398.96 from the company.⁶ His 2011 W-2 indicates his taxable wages totaled \$163,419.02 for the year.⁷

The NN paystubs list all of the different types of pay an employee receives throughout the year.⁸ Of the specific items listed on his 2011 paystubs, the “Safety incentive” of \$2,075 reflects a bonus which is paid only once every five years and is based on the employee’s years of service.⁹ This bonus was not part of Mr. L’s regular pay and thus it does not constitute a regular source of income for child support purposes.¹⁰

Subtracting the “Safety incentive” from Mr. L’s 2011 pay as reflected on his W-2 results in total earnings for the year of \$161,344.02. In addition to the mandatory deductions from income for federal taxes, Social Security and Medicare, and unemployment insurance, Mr. L makes voluntary payments into a retirement fund. His 2011 W-2 indicates that he paid \$4,890.31 into the retirement fund last year.¹¹ This total annual figure results in a monthly deduction of \$407.53,¹² which is inserted into the deductions portion of the child support calculation.

Mr. L is also entitled to a deduction from income for supporting a prior child in the home. He and his wife, B, have two children older than A living in the home with them. The first is C, 15, who lives with the obligor on a 50/50 basis, and for whom Mr. L also pays \$794.44 per month in court-ordered child support to C’s mother.¹³ Mr. L’s total deduction for supporting C is determined by adding together his child support payment to C’s mother and one-half of the

⁴ Exh. 5.

⁵ Exh. 6.

⁶ Exh. 8 at pg. 3.

⁷ W-2 from obligor’s documents received February 16, 2011.

⁸ *See, for example*, Exh. 8.

⁹ *Id.*

¹⁰ Another line item, a figure of \$351.81 in the “Expense domestic” category, was a reimbursement for out-of-pocket work expenses. *See* Exh. 8 at pg. 5. This amount also would have been excluded from his earnings, but the figure has an asterisk next to it on the paystubs, which indicates it was excluded from his taxable wages. Consideration of this line item is therefore moot.

¹¹ Box 12D on W-2 from obligor’s documents received February 16, 2011.

¹² \$4,890.31 ÷ 12 = \$407.53.

¹³ Exh. 7 at pg. 2.

deduction allowed to him by Civil Rule 90.3(a)(1)(D) for supporting a prior child in the home.¹⁴ The deduction for supporting a prior child in the home is computed by running a one-child support calculation from Mr. L's income.¹⁵ Since C lives in his home only 50% of the time, the resulting number from the calculation is divided in half and that amount is added to the cash payment he makes to her mother. The result is \$1,665.94 – this figure is the total deduction to which he is entitled for supporting C in the home.¹⁶

The second child living in the L home is D, 13. She is not Mr. L's biological child, but rather his wife's child from a prior relationship. Mr. L adopted D in a stepparent adoption on June 5, 2006.¹⁷ As discussed below, even though D is older than A, Mr. L is not entitled to an additional deduction for supporting her in the home because D is not a prior child as defined by Civil Rule 90.3.

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. Mr. L's child support has been \$1,199 per month, as set in June 2008. Thus, a child support calculation of \$1,378.85 or more would be sufficient to warrant modification in this case.¹⁹

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.²⁰ In this case, the notice was issued on June 27, 2011, so a modification would be effective as of July 1, 2011.²¹

In a child support matter, the person who files the appeal has the burden of proving that the division's order was issued in error.²² Mr. L filed the appeal, so he must prove by a

¹⁴ See Civil Rule 90.3(a)(1)(D).

¹⁵ *Id.*

¹⁶ $\$794.44 + (\$1,743 \div 2) = \$1,665.94$. See Attachment A.

¹⁷ Exh. 10 at pg. 2.

¹⁸ AS 25.27.190(e).

¹⁹ $\$1,199 \times 1.15 = \$1,378.85$.

²⁰ 15 AAC 125.321(d).

²¹ Exh. 3.

²² 15 AAC 05.030(h).

preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.²³

A. *Total Income from All Sources*

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." Mr. L disagrees with the income figure CSSD attributed to him.

In addition to his regular work hours, Mr. L's paystubs list on average 16 different income categories for which he might receive pay. The following is a representative list of the separate pay categories that appear,²⁴ and Mr. L's explanation of their meaning:

Reg Hrs Autopay		Regular pay based on 40 hrs. per week
Transfer Straight	*	Filling in for a supervisor
Call Out Straight	*	For call-outs during off-duty time at work
School Off Duty	*	Attending schooling while in town
Training Straight	*	Receiving training while at work
Transfer Premium	*	Overtime while filling in for a supervisor
Captive pay		Detained and unable to return home due to weather
Holdover Premium	*	Overtime during captive pay status
OTST		Regularly allotted overtime for the year
OVERTIME	*	Overtime over and above regularly allotted
Schoffot		Changeout pay – a regular part of his compensation
Schdot		“ “ “ “ “ “
Add'lTime	*	Work on New Year's Eve
HolidayWorked 1	*	Other holidays worked
NSlope HolPay Hrly		Paid every year even if the employee is not on the Slope
Expense Domestic	*	Reimbursement for work expenses paid by the employee
Safety Incentive	*	A bonus paid every 5 years based on years of service
VPP Bonus		Bonus based on company performance in the prior year

Mr. L argues that not all of the items listed on his paystubs should be included as income for the child support calculation. He asserts some of them do not occur on a regular basis and so there is no guarantee he will earn income in those specific income categories in the future. The items listed above that he requested not be included are marked with an asterisk. CSSD agreed that three of the items he identified – the Expense Domestic, Safety Incentive, and Holdover

²³ 2 AAC 64.290(e).

²⁴ On Mr. L's paystubs some of the names of the pay categories are shortened by a letter or two, for example, Transfer Straight, which actually appears as "Transfer Straig". The complete words have been included here for clarification. For some of the pay categories, such as "Schoffot" and "Schdot", the actual name is unknown, so what is known of the category comes solely from Mr. L's explanation.

Premium pay categories – are not regular sources of income and should not be included, but the division opposed deleting any other types of pay from his income for child support purposes.²⁵

Mr. L’s request not to include all of his earnings in his income can be granted only as to the “Safety incentive” line item of \$2,075, which is paid only once every five years. This pay category should be excluded from his income because it was not part of his regular pay and does not constitute a regular source of annual income for child support purposes. The “Expense domestic” amount of \$351.81 appeared at first also to apply, but it was not included on his W-2, thus making its exclusion from his income moot for purposes of the child support calculation.²⁶

All of the other different types of pay Mr. L received throughout the year should be included in his income because those funds represent Mr. L’s total compensation package. It is not known why NN separates an employee’s pay into so many different categories, but it does not matter whether some of his pay was for filling in for a supervisor or for being unable to return home because of the weather at his job site. If all of his earnings were reported as a single amount, or as just straight pay and overtime, rather than line by line, as is done now, the total earnings figure, minus the expense reimbursement and the 5-year bonus, would all be included in the obligor’s income for the child support calculation. Separating his earnings into multiple line item categories does not change the analysis or the result.

B. Deduction for Supporting a Prior Child

Civil Rule 90.3(a)(1)(C) provides that a parent is entitled to a deduction from income for “child support . . . payments arising from prior relationships which are required by other court or administrative proceedings and actually paid” A companion provision of the rule, Civil Rule 90.3(a)(1)(D), provides that a parent is entitled to a deduction from income for the cost of providing support “for children from prior relationships living with the parent.”²⁷ Both deductions are applicable in this case.

A “prior relationship” within the meaning of Civil Rule 90.3(a)(1)(D) is a relationship of the parent; that is, the child must be the parent’s biological child from a prior relationship or the parent’s adoptive child in order to qualify for the deduction.

²⁵ See CSSD’s Post-Hearing Brief at pg. 1.

²⁶ See n.10.

²⁷ Civil Rule 90.3(a)(1)(D).

A parent's obligation to support a biological child begins when the child is born.²⁸ Thus, with biological children, the date of birth generally determines whether a child is a child of a prior relationship. It is not necessarily so with adopted children, who are considered to be from prior relationships only if they are adopted before the parent's obligation arose to support the child for whom support is being calculated. It is the adoption itself that triggers the adoptive parent's obligation to support the adoptive child. Children who are adopted after the parent's support obligation arose for the child of the order are considered "subsequent children," not prior children. The commentary to Civil Rule 90.3 defines "subsequent children" as "children . . . who were born or adopted after the support obligation arose."²⁹

In this case, Mr. L pays court-ordered child support of \$794.44 per month for C, who is almost 16 years of age. C also lives in Mr. L's home on a half-time basis. This entitles him to an additional deduction of 50% of the monthly amount allowed under Civil Rule 90.3(a)(1)(D) for supporting a prior child in the home. There is no dispute that Mr. L is entitled to a deduction from income for both methods of supporting C. The total deduction from income which should be inserted into the child support calculation is \$1,665.94 per month.

Mr. L is not entitled to a deduction for supporting D in the home. A, for whom support is being determined in this appeal, was born on June 11, 2005, and that is the date Mr. L's obligation to support her arose.³⁰ Mr. L adopted D later, on June 5, 2006, and that is the date his legal obligation to support her arose.³¹ Thus, regardless of D's age, she is considered a subsequent child in relation to A under Civil Rule 90.3; she is not a child of a prior relationship. As a result, Mr. L is not entitled to a deduction from income for supporting her in the home.

C. Child Support Calculation

Mr. L's total annual income for 2011 was \$161,344.02. This is the figure that should be used to calculate his child support modification. The 2011 Permanent Fund dividend of \$1,174 is also included in his income.

In addition to the usual deductions for federal income tax, Social Security, Medicare, and unemployment insurance, Mr. L is entitled to a monthly deduction of \$405.73 for his retirement

²⁸ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

²⁹ *In Re L. S.*, OAH No. 06-0630-CSS at 4 (Commissioner of Revenue 2006). *See also* Civil Rule 90.3, Commentary VI.B.2 (referencing "subsequent children" as "children . . . who were born or adopted after the support obligation arose."); *CSSD v. Kovac* at 1111.

³⁰ Exh. 1 at pg. 1.

³¹ Exh. 10 at pg. 2.

contribution. Also, he is entitled to a deduction for supporting C – both for direct payments to her mother and also for supporting her in his home – in the total amount of \$1,665.94. When all of these figures are inserted into CSSD’s online child support calculator, it results in a child support amount of \$1,568 per month for one child.³²

IV. Conclusion

CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect. Mr. L’s child support obligation for A has been recalculated using his total income from all sources and incorporating the usual deductions, as well as a deduction for his retirement contribution, and two deductions for supporting C, his child of a prior relationship. The result is a child support calculation of \$1,568 per month. This figure is a correct measure of Mr. L’s modified child support obligation, and it should be adopted, effective July 1, 2011.

V. Child Support Order

- Mr. L’s child support obligation for A is modified to \$1,568 per month for one child, effective July 1, 2011, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 30, 2011, remain in full force and effect.

DATED this 25th day of April, 2012.

By: Signed
Kay L. Howard
Administrative Law Judge

³² 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 7th day of May, 2012.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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