

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

IN THE MATTER OF:)

J C. D R)

OAH No. 12-0046-CSS

CSSD No. 001158644

DECISION AND ORDER

I. Introduction

The Obligor, Master Sergeant (MSgt.) J C. D R, requested modification of his current child support obligation. His child support for one child was established in November 2009 and set at \$1,185 per month for one child. The obligee child is V. The custodian of record is E D. W. Child Support Specialist, Andrew Rawls, represented the Child Support Services Division (CSSD). A telephonic hearing was held March 19, 2012. The evidence received at hearing does not support a finding that there has been a material change in circumstance. Therefore, CSSD's Decision on Request for Modification Review issued December 27, 2011 is affirmed.

II. Facts

MSgt. D R's child support obligation for V is \$1,185 per month set in November 2009.¹ On September 16, 2011, CSSD received his request for modification review.² In support of his request he wrote that his support obligation should be modified because he cannot support the children living in his house, and that since he moved to a different base in November 2010, his income has been reduced from \$95,653 to \$48,294.³

CSSD performed a child support calculation based on MSgt. D R's January Military Leave and Earnings Statement (LES) and the Defense Travel Management Office's Overseas Housing Allowance Calculator.⁴ This calculation resulted in a monthly child support obligation for one child in the amount of \$1,178.⁵

MSgt. D R testified that he has experienced a significant reduction in income since moving to a new base, as he no longer receives a cash housing allowance. He explained that the

¹ Exh. 1.
² Exh. 2.
³ Exh. 5.
⁴ Exh. 6, 7.
⁵ Exh. 7 at 1.

reduction in cash has made it difficult to provide for his wife and four children. When queried about his monthly expenses, the unchallenged evidence established that MSgt. D R's expenses were approximately \$1,400 per month. His annual wage, excluding any military non-income pay, is \$48,294. When the PFD is added, MSgt. D R's adjusted monthly gross income is \$40,584.⁶

CSSD included non-income pay in its calculations. This resulted in a gross monthly income in excess of \$7,200. MSgt. D R believes non-income pay should not have been included for purposes of calculating child support. He also believes that unless varied, continuing to pay child support under the existing order will result in a financial hardship to him and his current family.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁷ Civil Rule 90.3(a)(1) provides that an obligor parent's child support amount is to be calculated based on his or her "total income from all sources." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."⁸ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) presumes a material change in circumstances has occurred and the order may be modified.

When calculating child support, the first step is to determine the obligor's child support obligation under Civil Rule 90.3(a). In a modification request such as the instant matter, the second step is to compare the amount calculated at step one to the existing child support obligation to determine whether there is a 15% change from the existing support amount. If so, modification would be appropriate. Finally, when, as here, the obligor requests the amount of support be varied from the amount owing, it must be determined whether the obligor has established by clear and convincing evidence that manifest injustice would result if the support amount were not varied.⁹ This analysis is set forth below.

A. MSgt. D R's Income

⁶ See Exh. 7 at 3; Attachment A.

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ AS 25.27.190(e).

⁹ Alaska Rule Civ. Pro. 90.3(c)(1).

CSSD calculated MSgt. D R's annual gross income, including the \$1,174 PFD, to be \$86,183.44. This amount is based on MSgt. D R's earning per month: base pay in the amount of \$4,089, cost of living allowance (COLA) in the amount of \$747¹⁰, basic allowance for housing (BAH) in the amount of \$1,899.18, and basic allowance for subsistence (BAS) in the amount of \$384.44. When totaled, he has an annual total income (excluding \$1,174 for the PFD) in the amount of \$85,009.¹¹

MSgt. D R questioned the propriety of including noncash equivalents for cash allowances, as in the case of BAH, that he no longer receives, or that may vary, as in the monthly amount of COLA received. They are included because the commentary to Alaska Rule Civ. Pro. 90.3 instructs that when calculating the obligor's income from all sources, and the obligor is an armed service member, income from all sources includes "base pay plus the obligor's allowances for quarters, rations, COLA and specialty pay."¹² The lack of a cash payment does not preclude these allowances from being included in income.¹³ One of the purposes of child support is to replicate the support available for the child, had the family remained intact.¹⁴ Had the family remained intact, these in-kind contributions are significant and reduce MSgt. D R's living expenses. The benefit received would have been available to V. Therefore, CSSD correctly calculated MSgt. D R's gross income for purposes of child support.

Using this income amount and applying the formula in Civil Rule 90.3(a), MSgt. D R's monthly child support obligation for one child is \$1,178.¹⁵

B. *Modification*

MSgt. D R's child support previously was set at \$1,185 per month in 2009 for one child. When calculated using his most current income information, his child support amount is \$1,178 per month. This amount is less than a 1% difference from the amount of child support currently paid. Therefore, MSgt. D R has failed to meet the threshold for a presumptive material change in circumstance.

C. *Exception to the Amount of Child Support Ordered*

¹⁰ This amount varies by month based on the exchange rate between the dollar and the Euro.

¹¹ Exh. 7 at 2.

¹² Commentary Alaska Rule Civ. Pro. 90.3 III.A.28.

¹³ Military housing is an in-kind compensation that should be included when calculating income. Commentary Alaska Rule Civ. Pro. 90.3 III.A.19.

¹⁴ Commentary Alaska Rule Civ. Pro. II.

¹⁵ Exh. 7.

MSgt. D R raises three arguments in support of his request for a downward adjustment in his child support obligation: that his income has been dramatically reduced; the COLA varies based on the exchange rate; and that failure to adjust his obligation will cause a financial hardship on his subsequent children.

MSgt. D R no longer receives a cash housing allowance. This reduces the amount of money he receives, but it has been replaced with an in-kind compensation. For the reasons set forth above, this change does not result in a negative impact to the economic status of the family. Therefore, it has not been established by clear and convincing evidence that under these circumstances it would be manifestly unjust if the amount of support were not varied.

Similarly, he has not shown that the slight fluctuation in COLA received is the type of unusual circumstance contemplated by Civil Rule 90.3(c). This is especially so when, as discussed in the next paragraph, the family's adjusted gross income exceeds its monthly expenses.

MSgt. D R lives in base housing with his wife and four children. All of the children are younger than V. His wife does not work outside of the home. The unchallenged evidence established that the family's monthly cash expenses totaled approximately \$1,500.¹⁶ When calculated using the amount of annual income advanced by MSgt. D R, \$48,294 (annual wages excluding BAH, BAS, and COLA), the adjusted annual income calculated using CSSD's online child support calculator is \$40,384.24, or \$3,335.35 per month.¹⁷ After monthly expenses and child support, the family's income exceeds all expenses by \$664.¹⁸ This does not support a finding that unless varied, MSgt. D R's child support obligation would be manifestly unjust.

IV. Conclusion

MSgt. D R has not met his burden of proving by a preponderance of the evidence that the December 27, 2011 Decision on Request for Modification Review was in error. Nor has he met his burden of proving by clear and convincing evidence that manifest injustice would result if his child support were not varied pursuant to Civil Rule 90.3(c). Therefore, the current child support amount is \$1,185 per month for one child as calculated under Civil Rule 90.3(a) in November 2009.

¹⁶ D R Testimony.

¹⁷ Attachment A to Decision and Order.

¹⁸ \$3,335 - \$1,500 - \$1,171 = \$664.

V. Child Support Order

- CSSD’s November 4, 2009 Amended Administrative Child Support and Medical Support Order remains in full force and effect.
- CSSD’s December 27, 2011 Decision on Request for Modification Review is affirmed.

DATED this 28th day of March, 2012.

By: Signed
Rebecca L. Pauli
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 16th day of April, 2012.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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