

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

IN THE MATTER OF:)

K A. H)

OAH No. 12-0256-CSS

CSSD No. 001179776

REVISED DECISION AND ORDER

I. Introduction

This case involves the obligor K A. H's appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on March 29, 2012. The obligee child is F, 5. The custodian is B L. Z.

The hearing was held on August 22, 2012. Both parties appeared. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

The proposed decision was issued on December 6, 2012. Both CSSD and Ms. Z filed a proposal for action. On January 7, 2013, Deputy Commissioner of Revenue Angela M. Rodell returned the proposed decision to the ALJ to take additional evidence about the "Army's actions for soldiers who file bankruptcy and civilian job opportunities for Mr. H."

A supplemental hearing was held on January 15, 2013; both parties appeared and one witness testified on Mr. H's behalf. Andrew Rawls appeared for CSSD. The parties were given until January 17, 2013, to submit their final evidentiary documents.

This revised decision replaces the original decision and order in its entirety. Based on the record and after due deliberation, Mr. H's petition for a variance based on financial hardship pursuant to Civil Rule 90.3(c) is granted. He met his burden of proving by clear and convincing evidence that "manifest injustice would result if the support award were not varied." As a result, his child support is varied under Civil Rule 90.3(c) to \$500 per month for all time periods at issue, specifically, from October 2011 forward.

II. Facts

A. Procedural Background

Ms. Z began receiving public assistance benefits for F in October 2011.¹ CSSD initiated a child support action against Mr. H and issued an administrative child support order that set his ongoing child support at \$700 per month, with arrears of \$2,564 from October 2011 through

February 2012.² Mr. H requested an administrative review and CSSD issued an Amended Administrative Child and Medical Support Order on March 29, 2012, that set his ongoing support to \$862 per month, with arrears of \$5,172 through March 2012.³ He was given credit for monthly payments of \$600 made directly to the custodian, so his arrears were reduced to \$1,572.⁴ Mr. H contacted CSSD several times in an attempt to have his order reviewed⁵ – he even filed a request for modification, which CSSD subsequently denied.⁶ He then appealed CSSD’s denial of his modification petition on July 19, 2012.⁷ At the hearing, however, the parties agreed that Mr. H’s attempts to have CSSD reconsider its March 29, 2012 Amended Administrative Child and Medical Support Order should be treated as an appeal of that order. As a result, the June 28, 2012 Decision on Request for Modification Review is vacated as moot.

B. Material Facts

Mr. H and Ms. Z are the parents of F, who is five years old. The parties are divorced. Ms. Z was granted primary custody of F in October 2011.⁸

Mr. H remarried after he and Ms. Z divorced. He and his second wife lived on base in private housing and he received the BAH allowance of \$1,065 per month.⁹ They were divorced on February 8, 2012, after which time he had to move into the barracks and was no longer eligible for the BAH.¹⁰

1. Mr. H’s income

Mr. H is an E-5 in the military with approximately 8 years of service.¹¹ His 2011 base pay was \$2,620.20 per month, which totaled \$31,442.40 in taxable income.¹² In addition, on a monthly basis he received non-taxable benefits consisting of Basic Allowance for Subsistence (BAS) of \$325.04; and Basic Allowance for Housing (BAH) of \$1,017.¹³ When annualized, all

¹ Exh. 1 at pg. 9.

² Exh. 1.

³ Exh. 4.

⁴ Exh. 4 at pg. 10.

⁵ Exhs. 5-8.

⁶ Exhs. 9-12.

⁷ Exh. 13.

⁸ Exh. 15 at pgs. 3-11.

⁹ Exh. 20 at pg. 4. There are several types of BAH, all determined based on the military member’s location, pay grade, and whether the soldier has dependents. http://militarypay.defense.gov/pay/bah/02_types.html.

¹⁰ “Defense policy requires enlisted service members without dependents in pay grades E-6 and below to live in barracks . . .” http://www.armytimes.com/benefits/housing/online_hbml08_housing_barracks.

¹¹ See Obligor’s July 2012 Leave and Earnings Statement (LES), Exh. 18 at pg. 6.

¹² Exh. 17 at pg. 3.

¹³ Exh. 17 at pg. 3.

of his entitlements for 2011 totaled \$16,104,¹⁴ making his total income \$47,546.40.¹⁵ When inserted into CSSD's online child support calculator, this income figure yields a correct support amount of \$709 per month.¹⁶

In 2012, Mr. H's base pay increased to \$2,845.20 in March, making his total taxable income \$33,227.40.¹⁷ His non-taxable BAS also had a slight increase, to \$348.44 per month.¹⁸

Mr. H's housing benefits changed significantly as a result of his February divorce. He received the BAH of \$1,065 for only two months, which totals \$2,130.¹⁹ However, since March 2012, he has been housed in the barracks and does not receive a BAH payment.²⁰

If Mr. H received a BAH, it would be \$921 per month, based on his rank, duty location and unmarried status.²¹ However, the value of the housing provided for him by the military is not \$921 per month. Mr. H's barracks room at No. Name measures about 112 square feet, and has a small walk-in closet. He shares a kitchen area and bathroom with another soldier,²² and has to rent storage space for the furniture and other personal belongings that do not fit in his room. Rental listings in No Name, Texas, where No Name is located, show that a one-bedroom apartment with twice the square footage of his quarters ranged in price from \$325-\$350 per month.²³ In addition, a website advertised one-bedroom apartments there for \$425-\$435 per month.²⁴

For calculating Mr. H's support obligation, the value of the barracks housing provided by his employer is roughly equal to renting a one-bedroom apartment for \$425 per month in No Name, near No Name.²⁵ Other apartments are somewhat less expensive, but the one renting for \$425 per month appears to be the closest to the base. The apartment is larger than his barracks room, but he also has access to a shared kitchenette and bath, which increases the space that is available to him. As a result of valuing Mr. H's employer-provided housing based on the cost of

¹⁴ Exh. 17 at pg. 2.

¹⁵ Exh. 17 at pg. 2.

¹⁶ Exh. 17 at pg. 1.

¹⁷ See CSSD's Military Pay Worksheet, Exh. 20 at pg. 2.

¹⁸ Exh. 20 at pg. 2.

¹⁹ Exh. 20 at pgs. 4-5.

²⁰ Testimony of Mr. H.

²¹ The parties agree that the obligor's BAH would be \$921 per month. CSSD obtained this figure from military websites regarding service members' pay. Mr. H agreed the amount would be correct. See Obligor's Post-Hearing Brief at pg. 4.

²² Exh. D.

²³ Exhs. B & C.

²⁴ Exh. A.

²⁵ See Exh. A.

renting a similar apartment in No Name, the BAH line item in Mr. H's child support calculation becomes \$425 per month, or \$4,250 annually for the ten months from March 2012 through December 2012.

In addition to the in-kind value of his housing, Mr. H receives \$242.10 per month for BAH-Diff, also known as the BAH-Differential.²⁶ BAH-Diff is defined as a "housing allowance amount for a member who is assigned to single-type quarters and who is authorized a basic allowance for housing solely by reason of the member's payment of child support."²⁷ The amount of the BAH-Diff is the *difference* between the normal BAH with dependents and the BAH without dependents.²⁸ In essence, Mr. H receives the BAH-Diff because he is obligated to pay child support, not because of his housing circumstances. By the end of the year, Mr. H will have received the BAH-Diff for ten months, for a total of \$2,421.

Mr. H's non-taxable benefits are the BAS, BAH-Diff and the in-kind BAH value. All of these benefits total \$12,584.38.²⁹ When that figure is added to his taxable income, his total income from all sources is revised to \$46,209.68.³⁰ When inserted into CSSD's online child support calculator, this income figure yields a 2012 child support amount of \$676 per month for one child.³¹

2. Other financial considerations

Mr. H is stationed at No Name, Texas. His current enlistment expires in December 2014, unless he reenlists. He works in an internet technology (IT) capacity and has a security clearance. Mr. H has another military occupational specialty (MOS), which is photography, but it is not his preferred occupation. Being a photographer in the military may or may not require his current level of security clearance. Mr. H also has a degree in automotive technology, but it has been about ten years since he used it. Primarily he worked at a Jiffy Lube location and a car dealership. He made about \$12 per hour at that time in that occupation.

²⁶ Exh. 20 at pg. 6.

²⁷ http://militarypay.defense.gov/pay/bah/02_types.html.

²⁸ http://militarypay.defense.gov/pay/bah/02_types.html.

²⁹ CSSD attributed only *one* month of the \$1,065 BAH to Mr. H in 2012, and *eleven* months of the BAH-Diff and in-kind BAH. This, in spite of his testimony, which was consistent with his LES's, that he received the BAH in January *and* February. He testified he had received the BAH for March, also, but that the military had taken it away for that month. Equally confusing is Mr. H's counsel's statement that the obligor received one month of the BAH in 2012. See Obligor's Post-Hearing Briefing at pg. 6, last line. Since neither CSSD nor the obligor's brief explained this apparent inconsistency, Mr. H's testimony and his LES's will be the basis for the calculations here.

³⁰ Attachment A.

³¹ Attachment B. This calculation also includes a 1% Thrift Savings Plan (TSP) deduction from income, which Mr. H established he is paying. See Exh. 20 at pg. 4.

Mr. H is currently attending night school at No Name Texas College, where he is pursuing an Associate of Arts degree in Network Systems Administration. He is receiving tuition assistance and hopes to finish the degree by the end of 2013. He would then have the option of going on to get a Bachelor of Arts degree, which he could finish in two to three years. An advantage of staying in school is that some of his student loans are being deferred while he is still enrolled.

When Mr. H's second marriage ended in early 2012, he voluntarily took on a substantial portion of the marital debt – \$15,000 – as an incentive for his ex-wife to sign their divorce papers. Since February 2012 he has paid about one-third of it. Mr. H now has debts totaling about \$31,146,³² and has sold furniture, tools and appliances to make ends meet. However, he has not defaulted on any of his debts and is not currently being pursued by any creditors.

Mr. H's Leave and Earnings Statements (LES's) indicate that after taxes and other mandatory deductions are taken from his pay, he has \$1,621 per month available to pay his monthly obligations, including his mid- and end-of-month pay and the allotments that are paid directly from his paychecks. Yet Mr. H's expenses worksheet listed regular expenses of \$1,812.³³ Thus, on paper this suggests that he has a deficit of about \$200 every month, but he testified at the supplemental hearing that after paying all of his bills, he has about \$50 left over every month.³⁴ The paid bills include CSSD's garnishment of \$926.63 per month from his pay, which consists of the current child support amount of \$862 per month and a token payment toward the arrears.³⁵

Ms. Z's finances are also stressed. Her expenses worksheet indicates that she works full-time earning \$14 per hour, which equals \$29,120 per year.³⁶ That annual total is only \$2,426.67 per month H earnings,³⁷ yet she reported expenses totaling \$3,025 per month.³⁸ Ms. Z has two children other than F in the home, and testified that she received one child support payment on behalf of one of her two other children, but that is all. She also receives food stamps and day care assistance, but she does not have sufficient resources on a month-to-month basis to support her household.

³² Exh. 14.

³³ Exh. 14.

³⁴ In response to questioning later in the hearing, Mr. H stated that he has \$50 left over with which to pay for gas, the Internet and his cell phone. That amount is most likely insufficient to cover all three of those expenses.

³⁵ See Exh. 11 at pg. 2.

³⁶ \$14 x 2080 hours per year = \$29,120.

³⁷ \$29,120 ÷ 12 = \$2,426.67 per month.

III. Discussion

Mr. H filed the appeal in this matter. He is challenging the BAH and BAS figures CSSD used in determining his 2012 and ongoing child support obligation for F,³⁹ and claims that it would be manifestly unjust to have to pay the support amount calculated because of the financial hardship it would create. He maintains that without an adjustment, he will be forced to file bankruptcy and will lose his security clearance and be discharged from the military.

As the party who filed the appeal, Mr. H has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order dated March 29, 2012 is incorrect.⁴⁰

A. *Child support calculation*

A parent is obligated both by statute and at common law to support his or her children.⁴¹ By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care benefits were initiated on behalf of the child(ren).⁴² In this case, public assistance benefits began to be paid for F in October 2011, so that is the first month for which Mr. H is obligated to pay support in this administrative child support action.⁴³

Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. The Commentary to the Rule states that an obligor's income includes "perquisites or in-kind compensation to the extent that they are significant and reduce living expenses, including but not limited to employer provided housing (including military housing)"⁴⁴ In-kind compensation is especially relevant for service members, whose housing and food costs are typically provided by or paid for by the military. Civil Rule 90.3 accounts for this unique situation by stating that income for military personnel includes their "base pay plus the obligor's

³⁸ Exh. 15 at pg. 2.

³⁹ Mr. H did not contest the 2011 calculation, so it will be adopted as correct, subject to the results of the discussion regarding a financial hardship under Civil Rule 90.3(c).

⁴⁰ 15 AAC 05.030(h).

⁴¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁴² 15 AAC 125.105(a)(1)-(2).

⁴³ See Exh. 1.

⁴⁴ Civil Rule 90.3, Commentary III.A.19.

allowances for quarters, rations, COLA and specialty pay.”⁴⁵ CSSD’s regulations contain essentially identical language.⁴⁶

In a specific child support calculation, the soldier’s base pay amount is put into the worksheet in the taxable income section.⁴⁷ The other benefits go into the non-taxable income section.⁴⁸ If the soldier lives off base and receives a BAH allowance, that figure is inserted into the non-taxable section of the calculation worksheet because it is the actual cash benefit given to the soldier to pay for his or her housing. If the soldier lives in quarters on base and does not have housing costs, the housing allowance or BAH figure he or she *would have received* while living off post is treated as an in-kind contribution, and its value, for child support purposes, is considered the same amount the soldier would receive for BAH while living off base.⁴⁹ The reason for including the non-pay benefits in the calculation, especially the BAH, is because they reduce the parent’s living expenses and allow a military member to use the remainder of his or her cash pay to cover other expenses.

If Mr. H were currently living off base, the parties agreed he would receive a BAH allowance of \$921 per month. In the calculation for 2012, CSSD used that amount as the value of the housing provided to Mr. H upon his assignment to barracks housing at No Name. Mr. H argues that figure is too high because the value of the housing the military provides for him does not equal that amount. In the case of *Beard v. Morris*,⁵⁰ the Alaska Supreme Court indicated a court, or, in this case, an administrative tribunal, may make findings relating to the value of a Coast Guard parent’s employer-provided housing in the barracks on base.⁵¹ That case was remanded to the lower court for specific findings on the housing issue, so it is not known how the Superior Court ruled on that issue. But the significance of the *Beard* case in Mr. H’s appeal is the authorization given to the administrative law judge, if it is necessary, to consider and rule on the value of a soldier’s employer-provided housing in rent-free housing on base.

In order to determine the value of base housing, it is necessary to have evidence in the record regarding the actual cost of renting and living in comparable housing off base in the local community. The information regarding the cost of off-base housing that is subject to local

⁴⁵ Civil Rule 90.3, Commentary III.A.28.

⁴⁶ See 15 AAC 125.030(a) (19), (27).

⁴⁷ See Exh. 20 at pg. 1.

⁴⁸ *Id.*

⁴⁹ See Civil Rule 90.3, Commentary III.A.19.

⁵⁰ 956 P.2d 418 (Alaska 1998).

⁵¹ *Id.*

market forces and economic conditions is necessary in order to determine the value of similar housing on base, be it barracks or a multiple-bedroom residence.

Mr. H testified about his quarters and documented that the cost of renting a roughly similar one-bedroom apartment in No Name near No. Name would be \$425 per month. This is the amount that should be used for the value of Mr. H's employer-provided housing. CSSD objects to altering the value of a military member's in-kind housing benefit, arguing that it should reflect the amount of the soldier's BAH allowance for housing, were he or she living off post in the local community.

The word "allowance" is not defined in Civil Rule 90.3 or CSSD's regulations. The Army's website describes allowances this way:

In addition to salary and bonuses, the Army provides military allowances to offset the cost of living. Soldiers who live on an Army post receive military housing and meals for free. If your situation calls for you to live off post, the Army provides allowances for your housing and meals. Soldiers also receive allowances for clothing and official travel.^[52]

Thus, according to the Army, an "allowance" is the actual pay given to the member for acquiring housing and food services off post. But a soldier who lives on base doesn't receive an allowance for housing, he or she receives the housing itself. There is nothing in Civil Rule 90.3 or CSSD's regulations that requires the *value* of the housing on base to be the same amount as the allotment paid for purchasing housing in the local community. In actuality, it makes sense that the value of the housing provided on post would be somewhat lower than an allotment given to a member to purchase housing off base. Especially for the lower-ranking member who is required to live on post – that soldier does not receive an allotment and therefore does not have the option of choosing less expensive housing in the community and pocketing the balance of the allotment to pay other bills.

Historically, CSSD has always used what a military member's housing allotment off post *would be* as the measure of his or her free housing on base. However, as with Mr. H, the soldier who cannot chose to live off post and allocate his or her resources differently should be able to present evidence as to the *actual value* of the quarters provided. Mr. H has presented evidence sufficient to establish that the value *in his specific case* is \$425 per month. That figure fairly represents the value of his employer-provided housing.

⁵² <http://www.goarmy.com/benefits/money/allowances-covering-the-cost-of-living.html>.

Mr. H's child support is now correctly calculated at \$709 per month for October through December 2011, and \$676 per month beginning in January 2012. It is from these amounts that Mr. H's request for a variance should be considered.

B. Financial hardship

The other issue in this appeal is whether Mr. H is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). He maintains that he cannot afford the monthly support amount, especially given that he has had to take on such a significant debt from his failed marriage. He claims that if he cannot meet his financial obligations, he will have to file for bankruptcy, will lose his security clearance and will be discharged from the military.

The response of CSSD and Ms. Z is that F should not have to bear the brunt of the debts from Mr. H's second marriage. They argue that Mr. H should not be granted a hardship variance because 1) Mr. H voluntarily took on marital debt from his last marriage; 2) Mr. H is not on the brink of bankruptcy, as he claims; and 3) even if he did have to file bankruptcy, he would not automatically be discharged from the military.

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."⁵³

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child, to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).⁵⁴

The parties discussed Army Regulation (AR) 380-67 at the supplemental hearing. This 100-page document, called the "Personnel Security Program," outlines the Army's "policies and procedures for access to classified information and assignment in a sensitive position."⁵⁵ Under the regulation, "excessive indebtedness" and "recurring financial difficulties" are among the

⁵³ Civil Rule 90.3(c).

⁵⁴ See Civil Rule 90.3, Commentary V.I.E.1.

⁵⁵ AR 380-67 at pg. i, RAR August 4, 2011.

many criteria the Army considers in deciding whether to grant a member of the military a security clearance.⁵⁶

Likewise, the above factors are also considered in determining whether a member should lose his or her security clearance.⁵⁷ There are no hard and fast rules in AR 380-67; the member's commander makes the determination, and has the authority to consider all of the relevant circumstances.⁵⁸ A bankruptcy is a potentially disqualifying factor as to a member's ability to retain a security clearance, but only if the bankruptcy is "due to financial irresponsibility," or the member has "continuing financial irresponsibility thereafter."⁵⁹ The Army is concerned primarily with the circumstances that led up to the bankruptcy and with factors such as whether it was caused by a history of negative or unresolved financial activities, with "little or no apparent voluntary effort by the individual to pay amounts owed."⁶⁰ In considering whether to reject a member's security clearance, the member's commander may also consider mitigating factors, such as the member's systematic efforts, over a period of one year, generally, to satisfy creditors, have a favorable change in financial habits and remain in stable employment.⁶¹ Rather than the actual bankruptcy itself, the Army focuses on the member's sense of responsibility and whether his or her financial difficulties will continue to be a problem.

In spite of the Army's apparent flexibility regarding how a member's financial situation affects his or her security clearance and future in the military, Mr. H's supervisor, Capt. T L T, testified that his inability to pay child support would constitute a "recurring financial difficulty" under AR 380-67, and that as a result, losing his security clearance would be "a real threat." Capt. T also stated she thought Mr. H's ability to secure a commensurate job in the civilian sector would be reduced, especially if he had lost his security clearance.

In addition to Capt. T's testimony, Mr. H's commanding officer, Capt. Y S. B, filed a letter after the supplemental hearing.⁶² Capt. B stated that Mr. H had done a "remarkable job" managing his personal life after beginning to experience financial difficulties in early 2012. However, the captain also stated:

⁵⁶ AR 380-67 § 2-4(l).

⁵⁷ AR 380-67, Appendix I-8(a).

⁵⁸ "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable . . ." AR 380-67, Appendix I-1(c).

⁵⁹ AR 380-67, Appendix I-8.

⁶⁰ AR 380-67, Appendix I-8(b)(1).

⁶¹ AR 380-67, Appendix I-8(c).

⁶² Letter received on January 17, 2013, marked by the administrative law judge as Exh. 23.

[B]ased on his budget, I can confirm that SGT H will end up being in great debt leading to a bankruptcy. If this transpires, I will be forced to bar him from reenlisting in the Army will be [sic] immediately separated from the Army in accordance with AR 635-200 with less than honorable discharge. I highly doubt that SCT H will become successful in the civilian work force if he is separated from the Army with less than honorable discharge on his permanent record. This will definitely negatively affect his ability to provide for his dependent in the long run.^[63]

Mr. H has a duty to support his child. The Alaska Supreme Court has clearly stated that this duty takes priority over other debts and obligations.⁶⁴ F is entitled to receive child support in an amount commensurate with Mr. H's ability to pay, as calculated pursuant to Civil Rule 90.3. Ms. Z is in no better financial situation than Mr. H – her monthly income is not sufficient to support her household and she is forced to rely on food stamps and day care assistance to meet her basic obligations to the children in her home.

Based on the evidence in its entirety, however, Mr. H proved by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for F were not reduced. Mr. H's commander wrote that the obligor is in serious danger of having to declare bankruptcy and of being discharged from the military. He has other job skills, but he has not used them for several years and would likely have significant difficulty finding other employment.

Both CSSD and Ms. Z are correct in that Mr. H's debt from his second marriage should not deprive F of the support to which he is due. However, Mr. H's circumstances are different from those of a civilian in the same situation – the civilian probably would not be facing the loss of his or her job as a result of the bankruptcy. In this case, fashioning a child support amount that enables Mr. H to retain his job in the military is a reasonable and acceptable goal. Without a job, he would be even harder pressed to provide F with support. On balance, it is more cost-effective for Mr. H's child support to be reduced somewhat so as to try to preserve his employment, than to leave it as calculated and risk him losing his career and his ability to pay any support for a period of time. Also, lowering the monthly support amount will enable Mr. H to retire the arrears faster.

Mr. H's child support should be varied under Civil Rule 90.3(c) to \$500 per month for all time periods, a reduction of \$209 per month from the last three months in 2011, and a \$176 per

⁶³ Exh. 23 at pg. 2.

⁶⁴ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

month reduction from the revised 2012 child support amount of \$676 per month calculated in this decision. This result represents a fair balance as between Mr. H and Ms. Z when her circumstances are considered.

C. Medical credits

One other matter should be addressed. Mr. H raised the issue of health care premiums he pays on F's behalf. This matter is being referred to the parties' caseworker at CSSD. The Medical Support portion of the administrative order requires the purchase of medical insurance when it is available at a reasonable cost.⁶⁵ The procedure set out in the order allows each parent to provide proof of insurance and the cost of that insurance. The order then directs CSSD to provide appropriate credits and debits based on the cost of insurance.⁶⁶ Pursuant to this order, CSSD has the authority to administratively change the credit or debit amount as the cost of insurance changes, without issuing a new order.⁶⁷ The current amount of any credit or debit is not set in this child support decision, but CSSD will be making the proper adjustment to Mr. H's child support amount once it has proof of his insurance coverage for F and the amount he pays for it.

IV. Conclusion

Mr. H 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). His income for 2012 has been updated to reflect the adjustment in the value of his employer-provided housing and the child support amount has been recalculated accordingly. Mr. H also met his burden of proving that his child support should be varied downward under Civil Rule 90.3(c) from the calculated amounts to \$500 per month for all time periods at issue. This will better enable him to provide at least some support for F and at the same time, to pay his bills and hopefully avoid bankruptcy and discharge from the military.

V. Child Support Order

- Mr. H is liable for child support for F in the amount of \$500 per month for one child, effective October 2011, and ongoing;
- Mr. H is entitled to credit for the payments he has made directly to Ms. Z through allotments from his pay; CSSD is directed to credit him with any and all payments made

⁶⁵ Exh. 4 at pg. 2 (section II.A.1 of the order).

⁶⁶ Section II.B & C of the order.

to Ms. Z in this manner;

- All other provisions of CSSD's Amended Administrative Child Support and Medical Support Order dated March 29, 2012, remain in full force and effect.

DATED this 22nd day of January, 2013.

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 28th day of January, 2013.

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

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