

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

In the Matter of:)	
)	OAH No. 13-0574-CSS
E L. D, JR.)	CSSD No. 001178361
_____)	

DECISION AND ORDER

I. Introduction

This case involves E L. D, Jr.'s appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on April 6, 2013. The obligee child is K, 2 years old. The custodian is A A. H.

The hearing was held in three separate proceedings and was completed on August 15, 2013. The hearing was recorded and both parties participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD.

Based on the record and after careful consideration, Mr. D's child support is set at \$846 per month for August 2011 through December 2012, and \$895 per month for January 2013, and ongoing.

II. Facts

A. Procedural Background

Ms. H applied for child support for K in August 2011, after which the Superior Court issued an order establishing Mr. D's paternity of K on October 23, 2012.¹ CSSD initiated a child support action for Mr. D and subsequently issued an Amended Administrative Child and Medical Support Order on April 6, 2013 that set his ongoing child support at \$1,122 per month for one child, with arrears of \$22,386 for the period from August 2011 through April 2013.² Mr. D filed an appeal and requested a formal hearing. He stated he pays support for three older children, and he provided a copy of a proposed child support for his daughter that was issued by the Alaska Superior Court in Fairbanks.³

¹ Exhs. 1-2.
² Exh. 7.
³ Exh. 8.

*B. Material Facts*⁴

Mr. D is in the military. As of April 2013, his rank was E5 with 11 years of service.⁵ Using Mr. D's leave and earnings statements (LES), CSSD determined that he had total gross income for 2011 of \$75,565.73.⁶ That figure includes taxable income of \$38,758.35, the PFD of \$1,174, and other military benefits (referred to as military non-income pay) of \$36,807.38.⁷

For 2012, CSSD determined Mr. D had total gross income of \$68,043.47, which includes taxable income of \$38,659.99, and military non-income pay of \$29,383.43. Mr. D's income also included the PFD of \$878.⁸

For 2013, CSSD determined Mr. D's total gross income was \$76,909.09, which includes taxable income of \$37,425.20 and military non-income pay of \$39,483.89. Mr. D's taxable income includes the 2013 PFD of \$878.⁹

It is from these income figures that CSSD calculated Mr. D's child support obligation for 2011 through 2013.

Mr. D has three children who are older than the obligee in this case. He has twin sons who were born in 2007.¹⁰ Mr. D pays \$300 per month in support for these children pursuant to military orders for him to support his dependents. He has been paying this child support by way of an allotment taken out of his pay on a monthly basis. It is recorded in every LES he provided from January 2011 through April 2013.¹¹

Mr. D also has a daughter who is older than K in this case. She was born in 2009, and Mr. D pays support for her pursuant to several orders issued by the superior court in Fairbanks. For the period from May 2011 through May 2012, Mr. D was ordered to pay \$1,276.63 per month.¹² From June 2012 through December 2012, Mr. D was ordered to pay \$638.04 per

⁴ The material facts are taken from Mr. D's hearing testimony or the documentary evidence, unless otherwise cited.

⁵ Exh. A at pg. 28.

⁶ Exh. 9 at pg. 1.

⁷ Exh. 9 at pgs. 1-2. Non-income pay includes in-kind benefits such as housing and food.

⁸ Exh. 9 at pgs. 3-5.

⁹ Exh. 9 at pgs. 6-7.

¹⁰ Exh. B at pgs. 1-2.

¹¹ Exh. A.

¹² Exh. E at pgs. 2-3.

month.¹³ From January 2013 through June 2013, Mr. D was ordered by the court to pay child support for his daughter of \$525.02 per month.¹⁴ And finally, from July 2013 forward, Mr. D is obligated to pay child support of \$1,097.75 per month.¹⁵

Combining all of Mr. D's prior child orders, and using his actual income figures, his child support obligation for K is \$846 per month for August 2011 through December 2012, and \$895 per month for January 2013 and ongoing.¹⁶

Mr. D reported regular monthly expenses of approximately \$2,426.¹⁷ His April 2013 LES showed that he had total pay of about \$2,370 for the month.¹⁸ Ms. H is also in the military. She listed expenses of approximately \$2,271, but no information about her income is in the record.¹⁹

III. Discussion

Mr. D filed the appeal in this matter. As the party who filed the appeal, he has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order is incorrect.²⁰

A. Child Support Calculation

A parent is obligated both by statute and at common law to support his or her children.²¹ 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).²² In this case, Ms. H requested child support services in August 2011, so that is the first month in which Mr. D is obligated to pay support in this administrative child support action.²³

¹³ Exh. E at pg. 10.

¹⁴ Exh. E at pg. 18.

¹⁵ Exh. E at pg. 26.

¹⁶ Exh. 10.

¹⁷ Exh. D at pg. 1.

¹⁸ Exh. A at pg. 28. For purposes of comparing his expenses and total pay during the month, Mr. D's rent and child support payments were removed from his list of expenses because they are paid by allotment rather than out of his available cash monies.

¹⁹ Exh. C. Ms. H's rent was subtracted from her expenses, because hers is most likely paid by allotment, also.
²⁰ 15 AAC 05.030(h).

²¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

²² 15 AAC 125.105(a)(1)-(2).

²³ See Exh. 1.

Civil Rule 90.3 specifically provides that a military parent's total income from all sources includes "Armed Service Members base pay plus the Obligor's allowances for quarters, rations, COLA and specialty pay."²⁴ The base pay figure is put into the worksheet in the taxable income section.²⁵ The other benefits go into the non-taxable income section.²⁶ 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 rent-free in base housing, the housing allowance is treated 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.²⁷ 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.

The first Administrative Child and Medical Support Order set Mr. D's child support calculation at \$1,125 per month, which CSSD then reduced to \$1,066 per month in the amended order.²⁸ Neither calculation took into consideration the child support Mr. D pays for his three older children.

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," minus mandatory deductions such as taxes and Social Security. One of the allowed deductions concerns child support obligations for prior children. Civil Rule 90.3(a)(1)(C) states that an obligor 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" This deduction is applicable in Mr. D's case and he has been given this deduction in CSSD's latest calculations. As a result, his child support is now correctly calculated at \$846 per month for August 2011 through December 2012, and \$895 per month for January 2013 and ongoing.

²⁴ Civil Rule 90.3, Commentary III.A.29 (emphasis added).

²⁵ See Exh. 10 at pg. 2.

²⁶ *Id.*

²⁷ See Civil Rule 90.3, Commentary III.A.19.

²⁸ See Exhs. 1 & 7.

B. Financial Hardship

Mr. D's primary appeal issue is that he cannot afford the child support amount calculated by CSSD. His child support is now correctly calculated and it is from these figures that Mr. D's request to lower the support amount based on financial hardship should be considered.

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."²⁹

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).³⁰

The establishment of this child support order has undoubtedly created stress for Mr. D. However, based on the evidence in its entirety, Mr. D did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for K were not reduced. Mr. D's child support should not be reduced.

IV. Conclusion

Mr. D proved that CSSD's Amended Administrative Child and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). The calculation is based on his most recent income information and now includes a deduction for the support he pays for prior children.

Mr. D did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced, and he is thus not entitled to a variance from the amounts calculated. Mr. D's child support is correctly calculated at \$846 per month for August 2011 through December 2012, and \$895 per month for January 2013 and ongoing. These figures should be adopted.

V. Child Support Order

- Mr. D is liable for child support for K in the amount of \$846 per month for August

²⁹ Civil Rule 90.3(c).

³⁰ See Civil Rule 90.3, Commentary VI.E.1.

2011 through December 2012, and \$895 per month for January 2013, and ongoing.

- All other provisions of the Amended Administrative Child and Medical Support Order remain in full force and effect.

DATED this 7th day of February, 2014.

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 24th day of February, 2014.

By: Signed

Signature
Kay L. Howard

Name
Administrative Law Judge

Title

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