

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

IN THE MATTER OF:)	
)	OAH No. 13-0803-CSS
H D. G)	CSSD No. 001188861
_____)	

DECISION AND ORDER

I. Introduction

The obligor, H D. G, appealed an Administrative Review Decision that CSSD issued on May 6, 2013. The obligee children are T, 4 years old, and E, 2 years old. The other party is M C. G.

The hearing was held on July 2, 2013. Both parties participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Administrative Review Decision dated May 6, 2013 is affirmed. Mr. G's child support is set at \$759 for two children for December 2012; and \$914 per month for two children for January 2013 through April 2013. The court has assumed jurisdiction over Mr. G's ongoing child support obligation as of May 1, 2013.

II. Facts

A. Procedural Background

Ms. G applied for child support for T and E on December 17, 2012.¹ CSSD initiated a child support action against Mr. G and subsequently issued an Amended Administrative Child and Medical Support Order that set his ongoing child support at \$914 per month, with arrears of \$3,619 for the period from December 2012 through May 2013.² Mr. G filed an appeal, asserting the child support determination was incorrect.³

¹ Exh. 1.
² Exh. 17.
³ Exh. 19.

*B. Material Facts*⁴

Mr. G and Ms. G are the parents of T and E, 4 and 2 years of age, respectively. The parties were previously married and were in the process of getting a divorce at the time of the hearing.

After the hearing in this case was held, CSSD received copies of child support orders the court had issued in the parties' litigation regarding child support. In the first one, the court ordered Mr. G to pay child support in the amount of \$1,017.79 per month for T and E, minus a health insurance adjustment of \$11 per month, effective as of May 1, 2013.⁵ The legal ramification of this order is that the court has assumed jurisdiction over Mr. G's child support obligation for T and E as of May 1, 2013. As a result, CSSD may only charge Mr. G with support pursuant to the agency's own authority through April 2013, and this decision may only cover the time frame from December 2012 through April 2013.⁶

When this matter came to hearing, Ms. G had primary custody of the children. On April 8, 2013, the parties entered into a Mediated Temporary Parenting Agreement in which they agreed that Mr. G would have one overnight with the children per week, in addition to other three-hour time blocks during the week.⁷ The parties returned to mediation and on April 22, 2013, agreed to exercise shared physical custody of T and E, with Mr. G having them overnight for a total of five overnights in a two week period.⁸

Mr. G is an E-4 in the military with approximately 7 years of service.⁹ At the time of the hearing he was stationed at No Name, Alaska, but on July 5, 2013, he received orders transferring him to Fort Bragg, North Carolina.¹⁰

As a member of the military, Mr. G receives a monthly base pay amount that is considered his taxable income.¹¹ He also receives non-taxable benefits consisting of Basic Allowance for Housing (BAH); Basic Allowance for Subsistence (BAS); and a Cost of Living

⁴ The material facts are taken from Mr. G's hearing testimony or the documentary evidence, as cited.

⁵ Exh. 19 at pg. 2. The second order is a modification and is irrelevant here.

⁶ CSSD will continue to collect support from Mr. G after May 1, 2013, but under the authority of the court and not the agency.

⁷ Exh. 19 at pg. 8.

⁸ Exh. 15 at pg. 1.

⁹ Exh. 5 at pg. 4.

¹⁰ Exh. 21 at pg. 1.

¹¹ Exh. 18 at pgs. 1-2.

Allowance (COLA).¹² These other military benefits, while non-taxable, must be included in an obligor parent's total income from all sources.¹³

CSSD estimated the total of Mr. G's 2012 base pay and non-taxable military benefits to be \$41,373.48.¹⁴ Using its online child support calculator, CSSD used this income figure to calculate a child support amount of \$759 per month for two children (\$562 for one child).¹⁵ For 2013, CSSD estimated the total of Mr. G's base pay and non-taxable military benefits to be \$48,804.67.¹⁶ Using its online child support calculator, CSSD used this income figure to calculate a child support amount of \$914 per month for two children (\$677 for one child).¹⁷

Mr. G has two prior children, A, 13, and E, 9. Mr. G pays child support for E of \$300 per month, pursuant to a North Carolina divorce decree.¹⁸ CSSD gave Mr. G a deduction from income of \$300 per month for the child support he pays for E.¹⁹ A has been living with Mr. G since May 2013.²⁰ Mr. G testified he paid \$400 per month to A's mother before the child came to live with him, but Mr. G has no evidence of those payments.

The parties apparently separated just before, or early in, December 2012. Mr. G vacated the family home and Ms. G remained there with the children until January 24, 2013.²¹ While Ms. G and the children lived in the former family home, Mr. G's BAH benefit of \$1,620 per month paid the rent for the residence. In recognition of this, CSSD reduced Mr. G's 2012 income by \$1,620, the amount of the BAH.²² Mr. G also made direct payments to Ms. G of \$140 in December 2012, \$105 in January 2013, and \$1,465 in March 2013, all of which total \$1,710. CSSD has already credited Mr. G with the total of these payments.²³

¹²

Id.

¹³ Civil Rule 90.3, Commentary III.A.28.

¹⁴ Exh. 17 at pgs. 9-10.

¹⁵ *Id.*

¹⁶ Exh. 17 at pg. 11.

¹⁷ *Id.* CSSD did not include its calculation worksheet for 2013 in the Pre-Hearing Brief, so the one-child amount for 2013 was taken from the first page of the Amended Administrative Child and Medical Support Order issued on May 6, 2013. *See* Exh. 17 at pg. 1.

¹⁸ Exh. 11 at pg. 1.

¹⁹ *See* Exh. 17 at pg. 9.

²⁰ Exh. 19 at pgs. 2-3.

²¹ Exh. 5 at pg. 15.

²² *See* CSSD's Administrative Review Decision, Exh. 16 at pg. 2.

²³ *See* Exh. 18, a summary of Mr. G's account that credited the payments to him on May 8, 2013.

III. Discussion

Mr. G filed the appeal in this matter. Thus, he has the burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision is incorrect.²⁴

A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.²⁵ 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).²⁶ In this case, Ms. G requested child support services on December 17, 2012, so that is the first month during which Mr. G is obligated to pay support in this administrative child support action.²⁷ Because the court has taken jurisdiction over Mr. G's support obligation as of May 1, 2013, as discussed above, this child support decision will only cover the time period from December 2012 through April 2013.

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."²⁸ The base pay figure is put into the worksheet in the taxable income section.²⁹ The other benefits go into the non-taxable income section.³⁰ 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.³¹ 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.

²⁴ 15 AAC 05.030(h).

²⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

²⁶ 15 AAC 125.105(a)(1)-(2).

²⁷ See Exh. 1.

²⁸ Civil Rule 90.3, Commentary III.A.29 (emphasis added).

²⁹ See Exh. 10 at pg. 2.

³⁰ *Id.*

³¹ See Civil Rule 90.3, Commentary III.A.19.

*B. Deduction for Prior Children*³²

Mr. G requested a deduction from income for paying child support for his two prior children, A, 13, and E, 9.

According to Civil Rule 90.3(a)(1)(C), a noncustodial 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” Pursuant to the Rule, Mr. G is clearly entitled to a deduction from income for the support he pays for his younger child, E, because he was ordered to pay this amount of support for her in his divorce from her mother. CSSD has correctly deducted \$300 per month from Mr. G’s income in the child support calculation for T and E.³³ However, Mr. G is not entitled to a deduction from income for the \$400 payment he claims he made for A before the child came to live with him in May 2013. He stated that he made the payment through an allotment, but a \$400 allotment is not reflected on either of his December 2012 or January 2013 Leave and Earnings Statements (LES’s).³⁴ Further, Mr. G has not provided any documentation to show that the child support was ordered by a court or administrative agency such as CSSD.³⁵

IV. Conclusion

Mr. G did not meet his burden of proving by a preponderance of the evidence that CSSD’s Administrative Review Decision was incorrect, as required by 15 AAC 05.030(h). His child support has been correctly calculated, and he has been given the correct deduction for paying support for a prior child, and CSSD has already credited him with the direct payments totaling \$1,710 that he has already made. CSSD’s Administrative Review Decision should be affirmed.

³² See Civil Rule 90.3(a)(1)(C).

³³ See Exh. 17 at pg. 9.

³⁴ See Exh. 5 at pgs. 4-5.

³⁵ Mr. G may be entitled to a prospective deduction for supporting A in his home, since the child began living with him in May 2013. However, he will have to present that issue to the court that issued his child support order.

V. Child Support Order

- The Administrative Review Decision dated May 6, 2013 is affirmed.

DATED this 4th day of December, 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 17th day of January, 2014.

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

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