

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

In the Matter of:)	
)	OAH No. 14-0556-CSS
D K)	CSSD No. 001186506
_____)	

DECISION AND ORDER

I. Introduction

This case involves D K's appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on March 28, 2014. The obligee child is B, 5 years of age. The custodian is L L. E.

The hearing was held on May 5, 2014 and July 17, 2014. Mr. K participated in both hearings by telephone; Ms. E did not appear in the first hearing, but she participated by telephone during the second hearing. Mr. K continued to file documents up until the date of this decision, which is the 120-day deadline for the administrative law judge to issue the proposed decision. James Pendergraft, Child Support Specialist, represented CSSD. The hearings were recorded.

Based on the record and after careful consideration, Mr. K's child support is set at \$642 per month for the period from September 2012 through December 2012; \$764 per month for all of 2013; \$766 per month for January 2014 through June 2014, and \$584 per month, effective July 2014 and ongoing.

II. Facts

The following facts are established by a preponderance of the evidence: Mr. K is an E-7 in the service with 22 years of service. He is currently transitioning out of the military through its Wounded Warriors program. He was recently stationed in No Name City, but as of July 2014, he has been relocated to an East coast medical facility in order to receive treatment prior to his separation. It is not known how long his treatment will last.

Mr. K has four children older than B. They are O, 17; U, 16; V, 15; and W, 14. Since 1999, Mr. K has been paying support in the total amount of \$615 for O and U, and the two girls, V and W, are the product of his marriage to C, his wife since 1990. Mr. K and C have been separated since 2010, but he is under military orders to support his family. As a result, his entire housing allowance (BAH) goes to his wife, who is unemployed, and he has been paying all of hers and the girls' expenses. Mr. K has most recently been living in the barracks on post, but as

of July 2014, he was transferred to the East coast to receive medical treatment from the Wounded Warriors program. Mr. K was able to make arrangements for his daughters to live with him, so apparently they will be moving in with him sometime in the future, although he did not indicate when that would occur.

After the hearing, CSSD prepared multiple supplemental calculations and Mr. K filed documents on numerous occasions in response to CSSD's calculations. In fact, his last filing occurred earlier on the date of this proposed decision. As a result, it has not been possible to have a period of time in which the appeal is "ripe" and a decision is being prepared. This decision must be issued today because it is the final day of the 120-day period the OAH has in which to issue a proposed decision from the date the appeal was filed with the agency.¹ The record cannot remain open any longer.

The following calculations correctly show Mr. K's income and ability to pay support: for 2012, \$642 per month, effective September 2012 through December 2012;² \$764 per month for all of 2013;³ \$766 per month for January 2014 through June 2014;⁴ and \$584 per month, effective July 2014, and ongoing.

III. Discussion

Mr. K 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.⁵

A parent is obligated both by statute and at common law to support his or her children.⁶ 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).⁷ In this case, CSSD received a request for child support services from Ms. E's child support agency on September 11, 2012, so that is the first month in which Mr. K is obligated to pay support in this administrative child support action.⁸

¹ See AS 44.64.060(d).

² Attachment A, taken from Exhibit 12, but with BAH removed, as discussed below.

³ Exh. 18.

⁴ Exh. 20.

⁵ 15 AAC 05.030(h).

⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁷ 15 AAC 125.105(a)(1)-(2).

⁸ See Exh. 1.

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. 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."⁹

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. K's case and CSSD has given him the deduction from income of \$615 per month for the support he pays for O and U.

There are two issues that need to be resolved in this appeal. First, in addition to the deduction for paying support for prior children, Civil Rule 90.3(a)(1)(D) states that an obligor parent is entitled to a deduction from income for supporting prior children in the home for whom the obligor has primary or shared custody. Mr. K has been transferred to a medical facility in order to receive treatment prior to being separated from the military. CSSD apparently told Mr. K that to qualify for this deduction, the children had to be living in his home. Mr. K states he was then able to make arrangements for his daughters to live with him, so apparently they will be moving in with him sometime in the future. However, Mr. K's filing on August 12, 2014 states that his prior children, V and W, "*will be* presiding with me."¹⁰ The statement does not say that they *are* living with him, and there is no proof that they are as of yet. Thus, it is not possible at this time to make a finding that Mr. K's daughters *are living with him*. As a result, he has not met his burden on this issue and is not entitled to the deduction until he can establish that V and W are actually in his home.

The other issue is whether Mr. K's BAH should be included in his income. He requested that his BAH not be included in his income for child support purposes because the military has directed that it be used to support his family, meaning C, V and W. The BAH payment goes to his wife to provide for her housing, and Mr. K does not receive any of it, nor does he receive any of the benefit of the BAH entitlement. In response, CSSD argues that the BAH should be included in Mr. K's income because it is part of his benefit package from the military.

⁹ Civil Rule 90.3, Commentary III.A.29 (emphasis added).

¹⁰ Emphasis added.

Moreover, CSSD argues, Mr. K has been living in the barracks, so even if the BAH goes to his wife, Mr. K's housing is still provided free of charge.

This point in Mr. K's appeal should be decided under the provisions of Civil Rule 90.3(c). Child support determinations calculated under Civil Rule 90.3 are presumed to be correct. The parent may obtain a reduction in the amount, 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."¹¹ The existence of "unusual circumstances" may also provide a sufficient basis for a finding of good cause to vary the calculated child support amount.¹² It is appropriate to consider all relevant evidence 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).¹³

Based on all of the evidence presented, and on the totality of circumstances in this case, Mr. K's child support should be calculated without the BAH included in his income. Mr. K has been required by the military to surrender his BAH to pay for housing for his wife and children, and because C is unemployed, Mr. K has also been required to pay all of her bills. Now that he is transitioning out of the military as a Wounded Warrior, leaving the BAH out of his income will avoid manifest injustice in this case.

Thus, for all years at issue, Mr. K's BAH should not be included in the child support calculations for B. CSSD's submission for 2012 included Mr. K's BAH, so that has been removed and recalculated in Attachment A. The calculations for both 2013 and for the first part of 2014 include a calculation without the BAH, so those are adopted. The ongoing 2014 calculation, beginning with Mr. K's time in medical treatment, included the BAH,¹⁴ so that has been corrected in Attachment B, which will be adopted, effective July 2014.

IV. Conclusion

Mr. K proved by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order is incorrect, as required by 15 AAC 05.030(h). His child support should be set in the amounts stated in the findings of fact, and as supplemented with

¹¹ Civil Rule 90.3(c).

¹² Civil Rule 90.3(c)(1).

¹³ See Civil Rule 90.3, Commentary VI.E.1.

¹⁴ Exh. 21.

Attachments A and B. To the extent these calculations leave out Mr. K's military non-income pay known as the BAH, they represent a variance under Civil Rule 90.3(c).

V. Child Support Order

- Mr. K is liable for child support for B in the amount of \$642 per month for the period from September 2012 through December 2012; \$764 per month for all of 2013; \$766 per month for January 2014 through June 2014, and \$584 per month, effective July 2014 and ongoing;

- All other provisions of the Amended Administrative Child and Medical Support Order dated March 28, 2014 remain in full force and effect.

DATED this 12th day of August, 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 16th day of September, 2014.

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

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