

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

In the Matter of:)	
)	OAH No. 14-1066-CSS
U A. J)	CSSD No. 001192302
_____)	

DECISION AND ORDER

I. Introduction

The obligor, U A. J, has appealed an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on April 28, 2014. The obligee child is E, 1 year of age. The custodian is J A. T.

The hearing was held on July 21, 2014. Both parties participated by telephone. James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Administrative Review Decision is affirmed, with one small adjustment: Mr. J's child support is set at \$635 per month for the period from June 2013 to the present, and ongoing. His request for a reduction based on financial hardship is denied.

II. Facts

A. Procedural Background

Ms. T applied for child support services for E in June 2013.¹ CSSD initiated a child support action and issued an Administrative Child and Medical Support Order on February 3, 2014 that set Mr. J's child support at \$648 per month for one child, with arrears of \$5,832 from June 2013 through February 2014.² He filed income information and requested an administrative review.³ After the review, CSSD issued an Administrative Review Decision that affirmed its earlier order.⁴ Mr. J filed an appeal.⁵

B. Material Facts

Mr. J is in the military. According to his December 2013 Leave and Earnings Statement (LES), his rank is E3 with just over one year of service. Mr. J and his wife, N, live in base

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

housing and are expecting a child in January. N has been attending cosmetology school for about 1½ years, and expects to finish her education this month. Mr. J thinks the school may be helping her find employment, but he did not know for sure.

Using Mr. J’s December 2013 LES, CSSD determined that he had total gross income for 2013 of \$40,364.04.⁶ That figure includes his monthly base pay and other military benefits, also referred to as military non-income pay. He does not receive COLA, the cost of living adjustment typically received by members of the military in Alaska. Specifically, Mr. J’s monthly pay includes:⁷

<u>Pay Type</u>	<u>Amount/mo.</u>	<u>Yearly Total</u>
Base pay	\$1,787.40	\$21,448.80
BAH (Basic Allowance for Housing)	\$1,224.00	\$14,688.00
BAS (Basic Allowance for Subsistence)	\$352.27	\$4,227.24
		Total \$40,364.04

Mr. J reported regular monthly expenses of \$2,535.86,⁸ which includes \$1,250 for rent; \$300 for food; \$31.81 for natural gas; \$85.97 for Internet service; \$93.50 for electricity; \$125 for cell phones; \$445.59 for the payment on a 2004 Ford Mustang purchased in January 2013;⁹ and \$204 for the payments on two consumer debts totaling \$1,300.

Ms. T has minimal expenses because she has recently moved and is living with family members. She reported \$620 in expenses,¹⁰ which includes \$270 for food; \$130 for electricity; \$70 for a cell phone; \$100 for gasoline; and \$50 for entertainment. She stated that her rent “will be” between \$600-\$900, so it appears that she has plans to obtain housing.

III. Discussion

As the party who filed the appeal, Mr. J has the burden of proving by a preponderance of the evidence that CSSD’s Administrative Review Decision is incorrect.¹¹ Since the review decision affirmed CSSD’s earlier Administrative Child Support and Medical Support Order, Mr.

⁶ Exh. 12 at pg. 3. Adding the PFD of \$900 results in total annual income of \$41,264.04. Exh. 12 at pg. 1.

⁷ Exh. 12 at pg. 3.

⁸ Exh. 11 at pg. 1.

⁹ Mr. J still owes \$13,230 for the vehicle.

¹⁰ Exh. 10 at pg. 1.

¹¹ 15 AAC 05.030(h).

J must prove that the monthly child support calculation of \$648 found in the administrative order is incorrect.

A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.¹² CSSD's regulations provide that the agency will collect 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).¹³ In this case, Ms. T requested child support services in June 2013, so that is the first month in which Mr. J is obligated to pay support in this administrative child support action.¹⁴

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. The rule specifically addresses a military member's income. It provides that the soldier's total income includes "Armed Service Members base pay *plus* the Obligor's allowances for quarters, rations, COLA and specialty pay."¹⁵ The base pay figure is put into the worksheet in the taxable income section.¹⁶ The other benefits go into the non-taxable income section.¹⁷ 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.¹⁸

Mr. J objects to having any military benefits other than his base pay included in his income. He argues that because he does not receive those other benefits, they should not be included in his income for child support purposes. Mr. J is incorrect in asserting that he does not receive those other benefits. He *does* receive them, in that they are used to pay his expenses. That is the reason for including the non-pay benefits in the calculation. They reduce the parent's

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹³ 15 AAC 125.105(a)(1)-(2).

¹⁴ *See* Exh. 1.

¹⁵ Civil Rule 90.3, Commentary III.A.29 (emphasis added).

¹⁶ *See* Exh. 10 at pg. 2.

¹⁷ *Id.*

¹⁸ *See* Civil Rule 90.3, Commentary III.A.19.

living expenses and allow a military member to use the remainder of his or her cash pay to cover other bills.

CSSD's Administrative Child Support and Medical Support Order set Mr. J's child support calculation at \$648 per month, which the agency revised to \$635 per month after the hearing.¹⁹ The latter calculation was based on Mr. J's December 2013 LES, which CSSD broke down into the separate pay categories on an attached worksheet.²⁰

B. Financial Hardship

Mr. J's second appeal issue is that he cannot afford the child support amount calculated by CSSD. His child support is now correctly calculated at \$635 per month and it is from this figure that Mr. J'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."²¹

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).²²

The establishment of this child support order has undoubtedly created financial stress for Mr. J, but his duty to his biological child takes priority over other debts and obligations he may have assumed later.²³ E is entitled to receive child support in an amount based on Mr. J's ability to pay, as calculated pursuant to Civil Rule 90.3. That obligation has been correctly determined under the rule, and there is no evidence in the record that shows there is "good cause" to reduce his obligation.

¹⁹ See Exh. 12.

²⁰ See Exh. 12 at pg. 3.

²¹ Civil Rule 90.3(c).

²² See Civil Rule 90.3, Commentary VI.E.1.

²³ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

Thus, based on the evidence in its entirety, Mr. J 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 E were not reduced. Mr. J's child support should remain as calculated by CSSD.

IV. Conclusion

Mr. J has not met his burden of proving that CSSD's Administrative Review Decision was incorrect, as required by 15 AAC 05.030(h). Other than a minor post-hearing adjustment, CSSD correctly calculated his child support based on his most recent income information. Neither did Mr. J prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. He is thus not entitled to a variance from the amount calculated. Mr. J's child support is correctly calculated at \$635 per month, effective June 2013 and ongoing. This figure should be adopted.

V. Child Support Order

- CSSD's Administrative Review Decision dated April 28, 2014 is affirmed, with one adjustment: Mr. J is liable for child support for E in the amount of \$635 per month, effective June 2013, and ongoing;
- All other provisions of the Administrative Review Decision remain in full force and effect.

DATED this 26th 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 12th day of September, 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.]