

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

|                  |   |                      |
|------------------|---|----------------------|
| In the Matter of | ) |                      |
|                  | ) |                      |
| D M. D           | ) | OAH No. 15-0370-CSS  |
| _____            | ) | Agency No. 001192953 |

**Final DECISION AND ORDER**

**I. Procedural Background**

A proposed decision, dated September 30, 2015, was issued in this matter. The obligor D M. D filed a Proposal for Action (PFA) and the matter was forwarded to the Final Decision Maker. The PFA focused on the amount of Basic Housing Allowance (BAH) included for purposes of child support. The proposed decision included the monetary value of BAH using comparable Alaska housing costs. However, when he filed his PFA Mr. D was no longer stationed in Alaska. He argued that if in-kind income such as housing was to be included, then CSSD’s calculation should reflect the value of comparable housing in his new location. The Final Decision Maker agreed and returned the matter to the Office of Administrative hearings for the limited purpose of taking evidence about “comparable values for BAH in current location.”<sup>1</sup>

In response to the return an Order dated December 31, 2015 was issued. This order reminded Mr. D that it was his burden to come forward with evidence sufficient to establish a comparable housing allowance and that if he failed to do so the comparable Alaska value could be used. This order also set forth a briefing schedule. The record closed without further participation by Mr. D. Because he failed to come forward with evidence of comparable housing in his new location the BAH for comparable in-kind Alaska housing will be used.

**II. Introduction**

D M. D has three objections to the Administrative Child Support and Medical Support Order dated June 12, 2014. He was served with this order on November 19, 2014. This order established Mr. D’s child support obligation for the obligee child D, age 2, in the amount of \$708 per month, effective July 1, 2014 and ongoing. This order also set arrears

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<sup>1</sup> October 30, 2015 Non-Adoption Option A.

in the amount of \$8,495 from July 1, 2013 through June 30, 2014. Mr. D requested an administrative review of the June 2014 order. On February 13, 2015, CSSD affirmed the June 2014 Administrative Child Support and Medical Support Order.

The custodian is B A. The Child Support Services Division was represented by Child Support Specialist Andrew Rawls. Two hearings were held in this matter. Mr. D participated in person as did Mr. Rawls. Ms. A participated by telephone. The record remained open to provide Mr. D with an opportunity to submit receipts in support of his request for a direct credit against his arrears. The record closed on June 30, 2015 without further participation by either Mr. D or Ms. A.

### **III. Facts**

Mr. D raises three issues in his appeal: the amount of Basic Allowance for Housing (BAH) included as income for purposes of child support, the deduction of travel expenses to see his son, and a direct credit for in-kind items provided to D and his mother. Only the facts relevant to these issues will be discussed.

#### *A. Basic Allowance for Housing*

Mr. D lives on base in military housing. His living arrangement provides for a room, utilities, shared shower, and common room. Mr. D compared his living situation to a dormitory with no privacy.<sup>2</sup>

If he lived off base he would receive a Basic Allowance for Housing, which would be identified as a line-item on his Leave and Earnings Statement (LES) and included as income for child support. Because the military provides his housing, there is no BAH on his LES. Therefore, the value of the BAH received can be found by locating comparable living arrangements in the community.

In an attempt to determine Mr. D's BAH, CSSD located eight local advisements for rooms to rent and averaged the rent.<sup>3</sup> The rooms ranged from \$350 per month to \$920 per month. Some had private bath rooms and some had shared bathrooms. The average of all rooms was \$692.50. This is what CSSD believes to be the value of the BAH received by Mr. D.

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<sup>2</sup> D Testimony.

<sup>3</sup> Exh. 14.

B. *Travel Expenses*

The State of Georgia has entered a Temporary Order by Consent ordering that Mr. D “shall be responsible for transporting the minor child to and from Mother’s residence for visitation periods.”<sup>4</sup> Mr. D offered that his travel expenses should be deducted or treated as a credit against any support ordered.

C. *Credit for In-Kind Purchases*

Mr. D has purchased items for D including clothing and diapers. He would like a credit for these expenses. He was unable to provide receipts for the purchased items.

**IV. 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.<sup>5</sup>

A. *Basic Allowance for Housing*

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.”<sup>6</sup> The base pay figure is put into the calculation in the taxable income column.<sup>7</sup> The other benefits go into the nontaxable income column.<sup>8</sup> 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 on base in housing provided by the military, CSSD treats the housing benefit as an in-kind contribution, and its value, for child support purposes, is considered to be the value of a soldier’s employer-provided housing on base.

In order to determine the relative value of base housing, CSSD researched the actual cost of renting and living in comparable housing off base in the local community. The information provided by CSSD takes into consideration local market forces and economic conditions and is a

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<sup>4</sup> *D v. A*, Temporary Order by Consent, No Name Superior Court – Georgia, 2015-CV-0000 (March 00, 2015).

<sup>5</sup> 15 AAC 05.030(h).

<sup>6</sup> Civil Rule 90.3, Commentary III.A.29.

<sup>7</sup> *See* Exh. 6 at pg. 9.

<sup>8</sup> *Id.*

reliable representation of the relative value of similar housing on base.<sup>9</sup> Mr. D argued that the relative value of his base housing is much lower than the amount offered by CSSD, but he could not corroborate or independently verify the value of his housing.

The housing provided by CSSD included both shared and private rooms, as well as shared and private bathrooms. These appear to be comparable to the rooms described by Mr. D. Averaging the market value of these rooms is market value of Mr. D's employer provided housing. Therefore, his income for purposes of child support should include BAH in the amount of \$692.50 per month.

#### B. *Visitation*

Civil Rule 90.3(g) provides that “*after* determining an award of child support ... the court shall allocate reasonable travel expenses....”<sup>10</sup> Mr. D asks that the cost of his travel to visit D be considered when awarding child support. His request is denied. Civil Rule 90.3(g) clearly states that travel expenses are considered and allocated *after* the monthly child support obligation is determined. Mr. D's request to have travel expenses considered in the calculation of the support award itself is inconsistent with Rule 90.3(g) and beyond the jurisdiction of this tribunal.

Moreover, the State of Georgia has entered a Temporary Order by Consent ordering that Mr. D “shall be responsible for transporting the minor child to and from Mother's residence for visitation periods.”<sup>11</sup> If he would like to pursue travel expenses, he should do so through the court. His request is denied.

#### C. *Direct Credit*

Mr. D also seeks credit towards his child support obligation for items he reports purchasing for D. The Alaska Supreme Court has stated that it is the custodial parent's prerogative “to decide how to spend the support money on the children.”<sup>12</sup> A non-custodial parent should not be able to claim credit that overrules the decisions of the custodial parent. Notwithstanding the right of the custodial parent, CSSD may give an obligor credit for direct payments made to the custodian in satisfaction of an immediate duty of support. The statute, AS 25.27.020(b), provides that the agency *shall* consider all payments made before the obligor

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<sup>9</sup> A court or an administrative tribunal may make findings relating to the value of a military parent's employer-provided housing in the barracks on base. *Beard v. Morris*, 956 P.2d 418 (Alaska 1998).

<sup>10</sup> Emphasis added.

<sup>11</sup> *D v. A*, Temporary Order by Consent, No Name Superior Court – Georgia, 2015-CV-0000 (March 00, 2015).

<sup>12</sup> *CSSD v. Campbell*, 931 P.2d 416, 420 (Alaska 1997).

parent is ordered to pay child support through CSSD.<sup>13</sup> If the payments to the custodian are made *after* the obligor is ordered to pay support through CSSD, the obligor must show by clear and convincing evidence that both parties intended the payments to be for child support.<sup>14</sup>

Before a parent may claim a credit that parent must provide evidence that the direct payments were intended to be in lieu of child support. Evidence may include copies of cancelled checks and money orders; bank statements or electronic transfers; receipts signed by the custodian; or a notarized statement by a party or a witness to the direct payments. Mr. D was provided an opportunity to submit evidence sufficient to meet his burden of proof. He failed to supplement the record and therefore, failed to establish any entitlement to a direct credit against support owing.

## **V. Conclusion**

The value of Mr. D's employer-provided housing on base is determined by identifying the market value of comparable housing off base. Travel expenses are not considered when awarding child support.<sup>15</sup> Mr. D failed to provide sufficient evidence in support of his claim for a direct credit for items purchased for D. As demonstrated at Exhibits 15 and 16 Mr. D's ongoing support in the amount of \$696 per month for one child effective June 1, 2015. Mr. D owes arrears from July 2013 through May 2015 in the amount of \$14,927.

## **VI. Child Support Order**

1. D M. D is liable for child support in the amount of \$649 per month for one child effective July 1, 2013 through May 31, 2015 and \$696 effective June 1, 2015 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated June 12, 2014 remain in full force and effect.

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.

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<sup>13</sup> AS 25.27.020(b).

<sup>14</sup> 15 AAC 125.465(a).

<sup>15</sup> Civil Rule 90.3(g).

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 within 30 days after the date of this decision.

DATED this 6<sup>th</sup> day of April, 2016.

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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

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D. *Basic Allowance for Housing*

Mr. D lives on base in military housing. His living arrangement provides for a room, utilities, shared shower, and common room. Mr. D compared his living situation to a dormitory with no privacy.<sup>16</sup>

If he lived off base he would receive a Basic Allowance for Housing, which would be identified as a line-item on his Leave and Earnings Statement (LES) and included as income for child support. Because the military provides his housing, there is no BAH on his LES. Therefore, the value of the BAH received can be found by locating comparable living arrangements in the community.

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E. *Travel Expenses*

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The housing provided by CSSD included both shared and private rooms, as well as shared and private bathrooms. These appear to be comparable to the rooms described by Mr. D. Averaging the market value of these rooms is market value of Mr. D's employer provided housing. Therefore, his income for purposes of child support should include BAH in the amount of \$692.50 per month.

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#### **IV. Conclusion**

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4. All other terms of the Modified Administrative Child Support and Medical Support Order dated June 12, 2014 remain in full force and effect.

Dated: September 30, 2015

*Signed*  
\_\_\_\_\_  
Rebecca L. Pauli  
Administrative Law Judge

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

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<sup>29</sup> Civil Rule 90.3(g).