

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

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|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| H P. Q |) | OAH No. 17-0783-CSS |
| <hr style="width:40%; margin-left:0"/> |) | Agency No. 001211646 |

DECISION AND ORDER

I. Introduction

C Q appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division reducing H Q’s child support obligation for his daughters L and J from \$1,555 to \$545 a month. The modified order calculated Mr. Q’s support obligation based on his disability pay from the Veterans’ Administration. Mrs. Q argued that Mr. Q had additional income and was voluntarily underemployed.

Based on the evidence presented at the hearing, Mr. Q is not voluntarily and unreasonably unemployed, and the division’s calculations reflect his current income. Therefore, the division’s modified order should be upheld.

III. Facts

H Q retired from the Army in January 2017. He was placed on the temporary disability retired list based on a 90% disability rating.¹ He is in the process of seeking a 100% disability rating.² While serving, Mr. Q had annual employer reported income of approximately \$74,000.³ However, after retirement, his income dropped to \$2,021 a month in disability payments.⁴

After he retired, Mr. Q briefly enrolled in school using his GI bill benefits beginning in May 2017. However, he withdrew in June 2017. While he was in school, he received \$671 a month in the form of a basic allowance for housing (BAH).⁵

Mr. Q’s child support obligation was set in June 2016 at \$1,555 for two children. In March 2017, Mr. Q requested a modification of his child support.⁶ The division notified both

¹ Exhibit 2 at 7.
² Testimony of Q.
³ Exhibit 6 at 1.
⁴ Exhibit 2 at 10.
⁵ Testimony of Mr. Q.
⁶ Exhibit 2 at 1.

parents of the request on March 28, 2017.⁷ In May 2017, the division lowered Mr. Q's child support obligation effective April 1, 2017 to \$545 a month based on his military disability payments. Mrs. Q appealed.

A telephonic hearing was held on August 10, 2017. Mr. Q and Mrs. Q participated. Child Support Specialist Brandi Estes presented the division's case. The record closed on August 10, 2017.

III. Discussion

Alaska Rule of Civil Procedure Rule 90.3 governs the calculation of child support. Civil Rule 90.3 sets child support as a percentage of the obligor parent's adjusted annual income. For two children, the obligation is 27 percent of adjusted income.⁸ Because Mrs. Q requested the hearing in this matter, Mrs. Q has the burden of proving that the division's modified order is incorrect.⁹

Mrs. Q argued that Mr. Q had more income than was reflected in the division's calculations. Specifically, she noted that Mr. Q had been receiving the \$671 monthly BAH payment. However, because Mr. Q first began receiving the BAH after the division issued the modified order, the fact that the calculations did not include the BAH does not show that the division's calculations were incorrect. Also, Mrs. Q argued that Mr. Q must have more income than he had disclosed to the division, because she is receiving \$78 a month that is being garnished from Mr. Q. At the hearing, the division indicated that it was aware of the garnishment, and maintained that its calculation of Mr. Q's income was correct.

Finally, Mrs. Q argued that Mr. Q was voluntarily unemployed. Under Civil Rule 90.3(a)(4), child support may be calculated based on the potential income of a parent who is voluntarily and unreasonably unemployed. However, the division may not impute income to a parent who is physically or mentally incapacitated. Before determining potential income, the division must consider the totality of the circumstances.¹⁰ Relevant circumstances include the parent's education, training, occupation, health, and employment opportunities.¹¹

Mr. Q served in the Army for over ten years before the Veterans Administration concluded that he had a service connected disability, citing posttraumatic stress disorder with

⁷ Exhibit 3.

⁸ Alaska Rule of Civil Procedure 90.3(a)(1) and (2).

⁹ 15 AAC 05.030(h).

¹⁰ Civil Rule 90.3 Commentary at III.C; *Reilly v. Northrop*, 314 P.3d 1206, 1213 (Alaska 2013).

¹¹ 15 AAC 125.060.

traumatic brain injury.¹² As evidence of voluntary unemployment, Mrs. Q cited Mr. Q's arrest in June, and statements he had made to her about turning down job offers that he did not feel were good enough for him.¹³ Mr. Q admitted having been arrested, but denied having turned down any job offers. He said his disability, addiction, PTSD, and criminal record made it difficult to find work in the No Name area. He stated that he is working with the behavioral health unit at the Veterans Administration, and seeking a 100% disability rating. Mr. Q's work experience is in the military, and he testified that he would love to go back into the military or to work at something similar to the military. Because Mr. Q recently received a 90% disability finding, Mr. Q's disability finding was relatively recent, Mr. Q was seeking reevaluation and a 100% rating, and that Mr. Q was still struggling with the issues that led to the rating, the decision was correct not to make a finding of voluntary unemployment in this case.

Ms. Q did not prove that Mr. Q had additional income not considered by the division when it calculated his child support obligation. Furthermore, the division did not err when it declined to find Mr. Q voluntarily and unreasonably unemployed. For these reasons, the division's Modified Child Support and Medical Support Order should be upheld.

IV. Conclusion

The division correctly modified Mr. Q's child support obligation in this case. The child support amount in this order was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

The division's Modified Child Support and Medical Support Order issued on May 31, 2017 is affirmed.

Dated: August 21, 2017.

Signed

Kathryn L. Kurtz
Administrative Law Judge

¹² Exhibit 2 at 3, 5.
¹³ Testimony of Mrs. Q.

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 within 30 days after the date of this decision.

DATED this 6th day of September, 2017.

By: Signed
Signature
Kathryn L. Kurtz
Name
Administrative Law Judge
Title

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