

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

In the matter of:)	
)	OAH No. 06-0463-CSS
C. T. T.)	CSSD No. 001141578
_____)	

DECISION AND ORDER

Warrant Officer C. T. appealed an Amended Administrative Child and Medical Support Order and Administrative Review Decision that the Child Support Services Division (CSSD) issued on June 12, 2006, setting a child support obligation of \$1,713 beginning February 1, 2006. The obligee children, all with the last name T., are J., born 00/00/92, A., born 00/00/96, M., born 00/00/01, and K., born 00/00/02. The custodial parent is S. L. T.

The hearing in this matter was delayed several times by agreement to allow a Superior Court divorce proceeding to reach final judgment. The Superior Court entered a decree on October 3, 2006 awarding primary physical custody to Ms. T. and setting child support at \$2038 per month effective June 1, 2006. The order mooted this appeal as to child support after that effective date. However, the court left child support for February, March, April, and May, 2006 to be resolved in this forum.

The formal hearing convened on November 13, 2006, with both parents attending in person. Maurice Ellis appeared for and represented Mr. T. No attorney appeared on behalf of Ms. T. David Peltier, Child Support Specialist, represented CSSD. Exhibits 1-6 and A-C became part of the record at the hearing. The hearing was recorded.

Because new information at the hearing altered Mr. T.'s income and showed that he was entitled to certain credits, the support amount set in CSSD's June 12 order will be revised.

I. Facts

Unless otherwise noted, the facts recorded below are drawn from the testimony at the hearing. The only witnesses were Mr. and Ms. T., with total testimony of less than an hour.

During the four months covered by this order, it is undisputed that S. T. had primary physical custody of the four children.

During the period at issue, Mr. T. had base pay of \$3376.80 per month, or \$40,521.60 per year.¹ He was not entitled to, and did not receive, a permanent fund dividend in 2006. He received a BAS payment of \$187.49 per month, or \$2,249.88 per year.² He received a cost of living allowance of \$23.59 per day, or \$8,610.35 per year.³

In April and May of 2006, he received a base housing allowance of \$1688 per month. In March of 2005, he received only a partial base housing allowance, and in February he received no base housing allowance. This is because he had on-base family housing assigned to him through March 7, 2006.⁴ Up to March 7, instead of the cash allowance, he received a benefit, which may fairly be valued at the amount of the cash payment the military offers as a substitute.

Mr. T. did not live in the family housing during the period covered by this order. Instead, he lived off base, but retained the family housing up to March 7 for the benefit of his children, who needed housing until they and Ms. T. could arrange to move elsewhere.

During February and March, the T. children attended work-related day care at the Family Child Development Center on Fort Richardson while both parents worked. Each parent paid half, which worked out to about \$534.50 each per month. There is no evidence that Mr. T. paid child care after March of 2006. Mr. and Ms. T. disagree as to whether the child care contributions by Mr. T. were supposed to be payments in lieu of child support. Mr. T. has no written agreement to that effect, and on balance he has failed to prove that there was a clear understanding between the parties that these were payments in lieu of child support.

During the February through May period, Mr. T. paid \$337.68 into a retirement fund.

It is undisputed that Mr. T. made the following direct, monetary child support payments to Ms. T. during the four months covered by this order:

¹ Ex. B (LES).

² *Id.*

³ *Id.*; Ex. 4, p. 21 (Overseas Cost of Living Allowance). Since this is a daily allowance, the monthly payment shown on the LES varies.

⁴ Ex. 6, p. 5 (Termination of Assignment for Family Housing).

Feb. 9	\$750.00
Mar. 6	512.50
Mar. 8	148.50
Mar. 31	<u>1,153.57</u>
Total	\$2564.57

It should be noted that CSSD has already credited Mr. T. with all but the Feb. 9 payment.⁵

On May 1, 2006, Mr. T. made a child support payment of \$1,153.73 to CSSD, for which a receipt appears in Exhibit A. At the time of the Administrative Review Decision, that payment apparently had not yet been credited.

II. Discussion

When one parent has primary custody of the children, the other parent’s child support obligation ordinarily is “calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in [Civil Rule 90.3](a)(2).”⁶ By “adjusted annual income” the rule means “the parent’s total income from all sources minus mandatory deductions ...” which include the basic taxes, retirement contributions up to a maximum not at issue in this case, and work-related child care.⁷ Child support for four children is calculated at 36% of the resulting figure.⁸

In this case, Mr. T.’s income as used in the Administrative Review Decision must be recalculated to exclude the PFD. For the months of February and March, there is also a deduction for work-related child care.⁹ The recalculated child support amount for February and March is \$1,605, as shown in attachment A to this order. The recalculated child support amount for April and May is \$1,797 as shown in attachment B to this order. In both of these calculations Mr. T. has been credited with income of \$1,688 per month for housing, since he either received this amount in cash or as an in-kind benefit in every month.

Mr. T. provided housing for his children, with a value of \$1,688 per month, through March 7, 2006. He did not live in the housing. Since the value of this housing has been assigned

⁵ Ex. 5, p. 9 (ledger showing credited payments totaling \$1,814.17).

⁶ See Alaska R. Civ. P. 90.3(a).

⁷ Alaska R. Civ. P. 90.3(a)(1).

⁸ Alaska R. Civ. P. 90.3(a)(2)(D).

⁹ Since the child care payments were not payments in lieu of child support, they are appropriately handled as deductions. CSSD does not object to this treatment.

to him as income, and he passed all of that value on to the other family members and retained none for himself, it is appropriate to credit the value of the housing (\$1,688 in February, a pro-rated figure of \$337.60 in March) as payments in lieu of child support. No party has objected to this approach.

Accordingly, Mr. T. is entitled to the following credits against his child support obligation for the period from February 1 through May 31, 2006:

Feb. housing	\$1,688.00
Feb. 9 cash pmt.	750.00
March housing	337.60
Mar. 6 cash pmt.	512.50
Mar. 8 cash pmt.	148.50
Mar. 31 cash pmt.	<u>1,153.57</u>
Total	\$4,590.17

The total child support obligation for the four months covered by this order was \$6,804. Mr. T. paid \$4,590.17 against that obligation prior to May 31, 2006 by means of payments or benefits delivered to the custodian. Mr. T. made an additional payment of \$1,153.73 to CSSD during the period.

III. Child Support Order

1. The Amended Administrative Child and Medical Support Order of June 12, 2006 is vacated.
2. C. T. T. is liable for child support in the amount of \$1,605 per month beginning February 1, 2006 and ending March 31, 2006.
3. C. T. T. is liable for child support in the amount of \$1,797 per month beginning April 1, 2006 and ending May 31, 2006.
4. C. T. T. is entitled to credit for \$4,590.17 in support provided directly to the custodian between February 1, 2006 and May 31, 2006. This amount is in addition to funds paid to CSSD.

5. Beginning June 1, 2006, C. T. T.'s child support obligation is under the jurisdiction of the Superior Court.

DATED this 15th day of November, 2006.

By: Signed
Christopher Kennedy
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 within 30 days after the date of this decision.

DATED this 1st day of December, 2006.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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