

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

In the Matter of:	)	
	)	OAH No. 19-0222-CSS
N J. D	)	CSSD No. 001204723
_____	)	

**DECISION AND ORDER**

**I. Introduction**

N D appeals the Decision on Request for Modification Review issued by the Child Support Services Division (CSSD) on February 21, 2019. CSSD denied his modification request. Mr. D contends his income was inaccurately calculated, CSSD did not include deductions for prior children, and he was not given credit for medical coverage he provides.<sup>1</sup>

This decision finds that while Mr. D provided evidence of a slight difference in his taxable income, it is not significant enough to establish a material change, so CSSD’s denial of the modification is affirmed.

**II. Facts**

N D and L J are the biological parents of D J (DOB 00/00/14). Mr. D is also the father to R D (DOB 00/00/00), U D (DOB 00/00/01), N D (DOB 00/00/10), and E D (DOB unknown).<sup>2</sup> Mr. D provided no information regarding E’s age or if he is paying support for him. R is 19 and U turns 18 in July. Mr. D serves in the military and currently resides in Indianapolis, Indiana.<sup>3</sup> D lives with Ms. J in City A, Alaska.

CSSD issued a child support order establishing Mr. D’s support obligation for D at \$933.00 per month, effective April 1, 2015.<sup>4</sup> Mr. D requested a modification of his obligation on October 29, 2018.<sup>5</sup> CSSD determined his military base pay, or gross taxable income, was \$64,483.20.<sup>6</sup> His non-taxable military pay was \$21,100.68.<sup>7</sup> After allowable deductions,

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<sup>1</sup> Any issue regarding medical coverage is outside the scope of this proceeding, but can be resolved separately with the CSSD caseworker.

<sup>2</sup> Exhibit 3.

<sup>3</sup> Mr. D said he would be stationed overseas soon.

<sup>4</sup> Exhibit 1.

<sup>5</sup> Exhibit 3.

<sup>6</sup> Exhibit 5, p. 3.

<sup>7</sup> Exhibit 5 p. 3.

including a \$1651 monthly deduction for Mr. D's support obligations to his older children, his adjusted annual income came to \$53,478.12.<sup>8</sup> This resulted in a monthly support amount of \$891 for D, which is a 4.5% change from the prior obligation.<sup>9</sup>

On February 21, 2019 CSSD issued a Decision on Request for Modified Review, denying the requested modification.<sup>10</sup> CSSD denied the request for modification because there was no material change in circumstance. Mr. D submitted an Appeal of Action by CSSD regarding the Modification Decision on March 5, 2019.<sup>11</sup>

On April 2, 2019, a telephonic hearing began. Mr. D testified on his own behalf. Ms. J was present but did not testify or provide evidence. Brandi Estes, Child Support Specialist for CSSD, presented CSSD's position. CSSD's pretrial brief and Exhibits 1-7 were admitted without objection.

Mr. D disputed his income calculation. Following testimony, the parents were given until April 8, to provide documentation to support their testimony. Mr. D provided his 2018 W-2, which was marked and admitted as Exhibit A. Mr. D's 2018 W-2 shows he earned \$62,848.80 in taxable income, which is slightly less than CSSD had calculated.<sup>12</sup> His earned non-nontaxable income remained \$21,100.68.<sup>13</sup> With the change in taxable income, his actual total gross income is \$83,949.48. As described below with more specify, he did not dispute \$1651.00 as the amount of allowable deduction for child support, or \$21,100.68 as the amount of Military non-income.<sup>14</sup> Therefore, his adjusted annual income is \$51,843.72.

The Division filed a Submission on the Record on April 11, 2012. The record closed April 12, 2019.

### **III. Discussion**

As the person who filed this appeal, Mr. D has the burden of proving by a preponderance of the evidence that CSSD erred when it denied his modification request.<sup>15</sup>

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<sup>8</sup> Exhibit 5 p. 3.  
<sup>9</sup>  $(\$933 - \$891)/\$933 = .045$ .  
<sup>10</sup> Exhibit 4.  
<sup>11</sup> Exhibit 5.  
<sup>12</sup> Exhibit A.  
<sup>13</sup> Exhibit 5 p. 3; Exhibit 1 p. 8.  
<sup>14</sup> Exhibit 5 p. 3.  
<sup>15</sup> 15 AAC 05.030(h).

A parent is obligated both by statute and at common law to support his or her children.<sup>16</sup> Typically, a noncustodial parent's support amount is calculated under Civil Rule 90.3(a) based on that parent's annual adjusted income.

Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>17</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "material change in circumstances" has been established and the order may be modified.

Mr. D argues that CSSD miscalculated his income, so a reduction in his obligation is appropriate. 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>18</sup>

Mr. D believes that the Basic Allowance for Quarters (BAQ) and Basic Allowance for Subsistence (BAS) were included as taxable income in his W-2, rather than being a military non-income pay that needed to be added to taxable income to determine his total gross income. Mr. D did not contest he received \$21, 100.68 for BAQ/BAS, but he simply believed it was included in his taxable gross income. CSSD's calculation correctly identified his taxable base pay and separately accounted for his nontaxed BAH/BAS.

The evidence does not support Mr. D's claim. On an annualized basis, the taxable base pay shown in his Military Leave and Earnings Statements totals \$62,848.80. While Mr. D showed that his taxable income is slightly less than CSSD determined, CSSD correctly accounted for his nontaxable income (BAS/BAQ) of \$21,100.68 in its calculation.<sup>19</sup>

Mr. D asserted that his child support obligations for prior children were not accounted for. CSSD allowed a deduction of \$1,651.00 per month for Mr. D's support of his older children. Mr. D did not provide any evidence showing that this number is incorrect.<sup>20</sup> CSSD

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<sup>16</sup> AS 25.20.030; *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987).

<sup>17</sup> AS 25.27.190(e).

<sup>18</sup> Civil Rule 90.3, Commentary III.A.28; 15 AAC 125.030(27). *See also In re D.K.*, (OAH No. 14-0556-CSS) (Dep't of Revenue August 2014) available at <https://aws.state.ak.us/OAH/Decision/Display?rec=1703>

<sup>19</sup> CSSD Submission to Record

<sup>20</sup> Exhibit 5 p. 3.

found Mr. D's adjusted annual income was \$53,478.12. This resulted in a monthly obligation of \$891.00. This is not at least a 15% difference from his current obligation of \$933.00, which would require a modification, so it is in CSSD's discretion whether to modify the obligation.

Mr. D showed through his 2018 W-2 that his gross taxable income figure is slightly less than CSSD determined. The W-2 forms submitted by Mr. D reflects \$62,848.80 as his taxable income, which differs from \$64,483.20, the taxable income used by CSSD. The difference is \$1,634.40.<sup>21</sup> Therefore Mr. D's adjusted annual income is \$51,834.72. But Mr. D must show not only that the taxable income was incorrect, but that the lower taxable income results in at least a 15% change in obligation to require CSSD to modify his obligation. A 15% reduction from the original obligation is \$793.05. However, Mr. D's obligation under Civil Rule 90.3 (a), with an adjusted annual income of \$51,834.72, would result in a monthly obligation of \$863.91. This is still less than a 15% difference, so it is not material change and the denial by CSSD to modify his obligation is within its discretion.<sup>22</sup>

CSSD is not required to grant a modification review when there is less than at 15% difference. However, 15 AAC 125.321(b)(2) gives CSSD the discretion to modify an order even when there is less than a 15% change, if more than 3 years have passed since it was issued or last modified. Since this was last modified in 2015, CSSD could have modified it even without a 15% change in obligation. However, because it is not required, it is in CSSD's discretion to opt not to modify. Mr. D did not present any evidence to show that CSSD was in error in opting not to modify the request. This in no way affects his future right to request a modification.

#### **IV. Conclusion**

Mr. D did not prove by a preponderance of the evidence that CSSD erred when it concluded there was no material change of circumstance and denied his request to reduce his child support amount for D. CSSD's Decision on Request for Modification Review is affirmed.

#### **V. Child Support Order**

- CSSD's February 21, 2019 Decision on Request for Modification Review is affirmed;

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<sup>21</sup> Exhibit A.

<sup>22</sup> 15% of Mr. D's current obligation is \$793.05.

- Mr. D remains liable for child support in the amount of \$933.00 per month for D, as set in the Administrative Child Support and Medical Support Order dated March 16, 2015.

DATED April 25<sup>th</sup> 2019.

*Signed* \_\_\_\_\_  
Hanna Sebold  
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 10<sup>th</sup> day of June, 2019.

By: *Signed* \_\_\_\_\_  
Signature  
Hanna Sebold \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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