

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

IN THE MATTER OF: )  
 )  
R. E. S. )  
 )  
\_\_\_\_\_ ) OAH No. 07-0705-CSS  
 ) CSSD Case No. 001054752

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of R. E. S. for the support of S. S.-G. (DOB 00/00/95). The custodian of record is M. G..

The Child Support Services Division established a support obligation and set child support at the rate of \$219 per month in 1998. On October 17, 2007, the division issued an amended modified administrative support order in the amount of \$700 per month, also effective March 1, 2007. Mr. S. filed an appeal from the amended modified administrative support order.

The appeal was referred to the Office of Administrative Hearings and a hearing was conducted on January 8, 2008. Mr. S. and Ms. G. participated, and Andrew Rawls represented the division.

Based on the evidence and the testimony at the hearing, amended modified administrative support is set at \$670 per month, effective August 1, 2007.

**II. Facts**

R. E. S. is a sergeant in the United States Army. The Child Support Services Division established a support obligation and issued an administrative support order in the amount of \$219 per month on February 6, 1998.<sup>1</sup> While permanently stationed at Fort Lewis, Washington, Sgt. S. temporarily deployed to Iraq in August, 2004.<sup>2</sup> While Sgt. S. was in Iraq, in January, 2005, Sgt. S.'s family relocated to Texas, at which time

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<sup>1</sup> Exhibit 9, pp. 5-9.

<sup>2</sup> Exhibit 8, p. 3.

his wife contacted the division and verbally informed it of the move to Texas and of a current mailing address in Texas.<sup>3</sup>

In September, 2005, apparently after his return from Iraq, Sgt. S.'s permanent duty station was changed to Fort Bliss, Texas.<sup>4</sup> He redeployed to Iraq in January, 2007.<sup>5</sup> While there, Sgt. S. served as a combat medic, often under fire. In addition, he engaged in security and patrol duties under highly dangerous conditions.<sup>6</sup>

On February 1, 2007, the division notified Ms. G. that due to a change in income, it appeared the support order should be increased, and asked for authorization to conduct a modification review.<sup>7</sup> Ms. G. authorized the modification review<sup>8</sup> and the division issued a notice of the petition for modification dated February 13, 2007, which was mailed to Sgt. S. at his prior duty station address, Fort Lewis, Washington.<sup>9</sup> On May 6, 2007, the division issued a modified administrative child support order in the amount of \$513 per month, effective March 1, 2007. The division initiated withholding at the increased amount and in May, 2007, Sgt. S. objected to the increase in withholding.<sup>10</sup> On June 8, 2007, the military notified Sgt. S. of the modified income withholding order.<sup>11</sup> Later that month, Sgt. S. contacted the division by email and asked for information about the status of his case.<sup>12</sup>

On June 25, 2007, Sgt. S.'s wife, E. S., provided written notice to the division of Sgt. S.'s updated mailing address (Fort Bliss, Texas) and provided it a power of

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<sup>3</sup> November 22, 2007, letter at 2. AS 25.27.265(b) provides that in the event of a change of address, a party "shall immediately notify...the agency and provide updated information." The division's regulations do not specify any particular means by which notice of a change of address must be provided. There is no indication in the record that the division advised Ms. S. that written notice of change of address was required.

<sup>4</sup> Exhibit 8, p. 5.

<sup>5</sup> Exhibit 8, p. 10.

<sup>6</sup> Exhibit 9, pp. 1-2.

<sup>7</sup> Exhibit 8, p. 22. By law, the division is obliged to notify the parties of their right to review at least once every three years. AS 25.27.193; 15 AAC 125.311. A prior request for modification by one of the parties was denied on July 8, 2004. Exhibit 9, p. 10.

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

<sup>9</sup> Exhibit 8, p. 23.

<sup>10</sup> Exhibit 8, p. 12; *See* 45 C.F.R. 303.72.

<sup>11</sup> Exhibit 8, p. 13.

<sup>12</sup> Exhibit 8, p. 15 (email response dated June 27, 2007). It appears that Sgt. S. informed the division of his new mailing address by June 16, 2007. On that date, the division remailed a copy of the acknowledgement of his objection, presumably either because the original letter had been returned, or because it had been informed of the new address. *See* Exhibit 8, p.12.

attorney.<sup>13</sup> On June 28, 2007, she filed an appeal and requested a stay pursuant to the Soldiers and Sailors Act.<sup>14</sup> On July 11, 2007, the division referred the appeal to the Office of Administrative Hearings<sup>15</sup> and filed a motion to remand the case.<sup>16</sup> On July 16, 2007, the division responded to Sgt. S.'s earlier email, informing him of the current status of the case.<sup>17</sup> At a hearing on the motion on July 26, 2007, Sgt. S.'s wife appeared and consented to a remand.<sup>18</sup> That same day, the division notified Sgt. S., using his Fort Bliss address, that it would report a delinquency in child support payments to consumer reporting agencies, and provided 15 days for him to request an administrative review of that action.<sup>19</sup>

The motion for remand was granted, and following the remand, on October 17, 2007, the division issued an amended modified support order in the amount of \$700 per month, effective March 1, 2007.<sup>20</sup>

Sgt. S.'s pay grade is E-6.<sup>21</sup> His annual income for child support purposes at that pay grade is \$47,795, and his adjusted annual income is \$40,229.<sup>22</sup> The division's most recent calculation of his support obligation is \$670 per month.<sup>23</sup>

## **II. Discussion**

In this case, it is undisputed that Sgt. S.'s income has increased and that a modification of the support order based on his current income figures is appropriate. The division's post-hearing calculation provides all appropriate credits and an increase in the child support order to \$670 per month is therefore warranted. Neither party objected to entry of an order in that amount. The only issue to be decided is the effective date of the modification.

Generally a modification order is effective on the first day of the month after service of the petition for modification.<sup>24</sup> However, the effective date may be advanced

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<sup>13</sup> Exhibit 8, p. 14. *See* Exhibit 9, pp. 3-4 (Durable General Power of Attorney).

<sup>14</sup> Exhibit 5, p. 1; Exhibit 8, p. 1. *See* 50 U.S.C. App. §522.

<sup>15</sup> Exhibit 8, p. 18.

<sup>16</sup> Exhibit 8, pp. 20-21.

<sup>17</sup> Exhibit 5, p. 41.

<sup>18</sup> *In Re S.*, OAH No. 07-408-CSS (July 26, 2007) [Exhibit 5, pp. 39-40].

<sup>19</sup> Exhibit 5, p. 42. *See* 15 AAC 125.418.

<sup>20</sup> Exhibit 7.

<sup>21</sup> Exhibit 9.

<sup>22</sup> Exhibit 5, p. 49; Exhibit 10.

<sup>23</sup> Exhibit 10. The reduction is the result of a credit for Sgt. S.'s contributions to a retirement fund.

<sup>24</sup> 15 AAC 125.321(d).

upon a showing of good cause.<sup>25</sup> In this case, because notice of the petition for modification was not sent to Sgt. S.'s current address, it appears that he did not receive actual notice of the petition to modify until after it had occurred, and that the effective date of March 1, 2007, is prior to the date he was served.<sup>26</sup> Furthermore, the modification will nearly triple Sgt. S.'s support obligation, and in light of his pre-existing financial obligations immediate imposition of the increased amount would cause undue financial hardship. For these reasons, there is good cause to advance the effective date of the modification order to August 1, 2007, the first day of the month after the initial hearing in this matter. By that date, both Sgt. S. and his wife had been aware of the request for modification for about two months and had been informed of the new amount owed, and would have had the opportunity to make any necessary financial adjustments. Because Sgt. S.'s income has been attached at a higher level for several months prior to August 1, 2007, that effective date will result in a credit to his account that will reduce or eliminate arrears and avoid ongoing hardship resulting from the collection of both ongoing support and arrears. Both parties agreed that a delayed effective date of August 1, 2007, is appropriate under the circumstances of this case.<sup>27</sup>

#### **IV. Conclusion**

There has been a material change of circumstances and the prior support order should be modified to reflect Sgt. S.'s current income.

#### **CHILD SUPPORT ORDER**

The Modified Administrative Child Support and Medical Support Order dated October 17, 2007, is AMENDED as follows; in all other respects, the Modified Administrative Child Support and Medical Support Order dated October 17, 2007, is AFFIRMED:

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<sup>25</sup> State, Child Support Enforcement Division v. Dillon, 977 P.2d 118 (Alaska 1999); Boone v. Boone, 960 P.2d 1579 (Alaska 1998).

<sup>26</sup> The division had been verbally informed of Sgt. S.'s new address two years before the notice of modification was sent to him. See note 3, *supra*. The modification request was addressed to Sgt. S., and there is no evidence in the record of the date that either Sgt. S. or his wife received a copy of the notice of modification. It appears, based on Sgt. S.'s objection to the new withholding amount, that he did not have actual notice of the request until May, 2007, two months after the effective date of the modification.

<sup>27</sup> Sgt. S. asked that the support order be adjusted in light of the cost of visitation, citing to Civil Rule 90.3(g). Civil Rule 90.3(g) governs proceedings in the superior court, which has authority to award travel costs independently of child support. Mr. S. may address the question of allocation of the costs of travel in conjunction with superior court proceedings regarding visitation.

1. Modified ongoing child support is set at the amount of \$670 per month, effective August 1, 2007.

DATED: January 25, 2008.

Signed  
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Andrew M. Hemenway  
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 14th day of February, 2008.

By: Signed \_\_\_\_\_  
Andrew M. Hemenway  
Administrative Law Judge

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