

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

In the matter of:)	
)	OAH No. 08-0053-CSS
C. W. L.)	CSSD No. 001025028
_____)	

DECISION AND ORDER

I. Introduction

C. W. L. appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on January 30, 2008, increasing his support obligation from \$313 to \$827 per month effective June 1, 2007. The obligee child is Q. L., born 00/00/90. The custodial parent is S. A. S.

The hearing took place on February 26, 2008. David Peltier, Child Support Specialist, represented CSSD. Mr. L. appeared in person. Ms. S. participated by telephone. Following the hearing, the record remained open until March 4, 2008 so that CSSD could submit new calculations based on the 2007 income information that Mr. L. supplied. CSSD supplied the calculations later on February 26.

Mr. L. raises four issues in his appeal. First, he points out that the income figures assigned to him in the original order and in CSSD's pre-hearing brief were erroneous. Second, he questions the handling of military allowances in his child support calculation. Third, he questions the amount of credit given for insurance coverage he provides. Fourth, he questions whether child support should be calculated based on sole custody with Ms. S.

II. Facts

The relevant facts are not disputed. Mr. L. is a Master Sergeant in the United States Air Force. The modification order at issue grew out of a petition Ms. S. submitted to CSSD on May 11, 2007. It is agreed that Mr. L.'s income at that time is correctly set out in the Exhibit 1B that he submitted on February 22, 2008. All income figures below come from that exhibit.

In 2007, Mr. L. received the following amounts of compensation:

Base Pay	\$43,977.70
Basic Allowance for Subsistence (BAS)	3,358.56

Basic Allowance for Housing (BAH)	21,096.00
Cost of Living Allowance (COLA)	<u>6,706.32</u>
TOTAL	\$75,148.58

He had no other income. Through Mr. L.’s employment, Q. received and continues to receive comprehensive dental and medical coverage, as well as access to certain other benefits for military dependents such as commissary access. At least \$11.05 per month has been deducted from Mr. L.’s pay for the dental coverage. There are no deductions for the medical coverage or other benefits. Mr. L. has also paid \$780.26 per month into a Thrift Savings Plan under 5 U.S.C. § 8440, a type of tax-deferred retirement plan.

At all times relevant to this decision, Q. has spent more than 70 percent of his nights in Ms. S.’s home.

The Modified Administrative Child Support and Medical Support Order under appeal was made without the benefit of the above income figures and also suffered from a data entry error. It placed child support at \$827 per month. Prior to the hearing, CSSD corrected the data entry error and revised its calculation upward to \$1,152.¹ In a post-hearing submission using income figures agreed to at the hearing, CSSD asserted that child support should be \$1,015.

III. Discussion

A. Custody

The first step in determining child support is to ascertain whether custody is primarily with one parent or whether it is shared or divided in some way. Mr. L. notes that he and Ms. S. have shared legal custody of Q., and questions whether it is therefore correct to calculate support based on “sole” custody with Ms. S.

Legal custody is not the type of custody that determines child support obligations.² What is relevant for child support is the physical custody of the child, and if (as here) there is no court order apportioning physical custody, “the agency will base the support calculation on the actual custody arrangement.”³

Mr. L. concedes that Q. spends more than 70 percent of his nights with his mother (in fact, Q. appears to live with his mother full-time). Under the formula established by the Alaska

¹ CSSD Exhibit 8. The data entry error was an error in Mr. L.’s favor.

² Civil Rule 90.3 Commentary at V-A (“‘Shared custody’ as used in 90.3 has no relation to whether a court has awarded sole or joint legal custody”).

³ 15 AAC 125.070(d).

Supreme Court, this makes Ms. S. a person with “primary physical custody,”⁴ and child support must be calculated on that basis.

B. General Methodology

When one parent has primary custody of the children, the other parent’s presumptive child support obligation 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).”⁵ By “adjusted annual income” the rule means “the parent’s total income from all sources minus mandatory deductions ...” which include taxes and certain retirement contributions.⁶ Child support for one child is calculated at 20% of the resulting figure.⁷

Certain credits can be allowed against the child support amount this formula produces. The one that is relevant to this case is a credit ordinarily given for a parent’s payment of more than half the cost of providing health care coverage.⁸

C. Income

Mr. L. points out that BAS is money for his food alone, not for dependents; that most of his BAH is for his own housing, not for housing dependents; and that only \$35.75 of his monthly COLA is attributable to the fact that he has dependents. He questions whether allowances he receives for his own benefit, not on account of having dependents, should be counted as part of income.

The question is a reasonable one, but it is one specifically governed by a regulation. Under the regulation at 15 AAC 125.030(a)(27), the income of an armed service member includes not only base pay but also the allowances for quarters (in this case, BAH), for rations (BAS), and for cost of living (COLA). The Department of Revenue and this tribunal are bound by the department’s own regulation. As explained to Mr. L. at the hearing, the rationale behind this regulation is that most wage-earners receive only a single paycheck to cover all expenses of every nature, including food, housing, and cost of living for both themselves and anyone they support. Armed services members receive a number of separate allowances for different components of their expenses. In order to treat them equally with ordinary wage-earners, one

⁴ Civil Rule 90.3 Commentary at V-A.

⁵ See Alaska R. Civ. P. 90.3(a).

⁶ Alaska R. Civ. P. 90.3(a)(1).

⁷ Alaska R. Civ. P. 90.3(a)(2)(A).

⁸ 15 AAC 125.432.

must gather all of these allowances together to calculate the same “total income” that, for most people, is found in their single lump-sum wage.

D. Adjusted Income

Mr. L. is entitled to deductions for his federal income taxes owed (\$436.10 per month) and social security tax (\$280.42 per month). In addition, he pays \$780.26 into a retirement fund of a type recognized as deductible under Alaska child support law.⁹ The limit on this deduction is 7.5 percent of his gross wages and self-employment income,¹⁰ which works out to \$469.68 per month. When these deductions are annualized and subtracted from Mr. L.’s gross income, the adjusted annual income is \$60,914.18.

E. Child Support Amount

The child support amount yielded by the regular methodology is twenty percent of the above figure. That is \$12,182.84 per year, or \$1,015 per month. CSSD’s Exhibit 9, page 1 correctly reflects this calculation.

F. Credits

Mr. L. correctly points out that because of his job, Q. receives excellent medical and dental coverage. With the exception of dental coverage addressed later in this section, this coverage is entirely employer-paid. In other words, medical coverage for Mr. L. and for Q. is a non-cash benefit that is part of Mr. L.’s compensation package. Alaska’s child support system essentially treats employer-paid insurance of this kind as a wash: the value of the coverage to all family members is not added to Mr. L.’s income¹¹ (and therefore does not increase the base figure from which child support is calculated), and the value of coverage to the obligee child alone is not credited against child support.

Where there is a cost paid *by a parent*, however, the cost of health coverage does affect child support. Each parent is responsible for an equal share of the cost of insuring the child. If one parent pays more than that share, child support is adjusted to compensate for the extra

⁹ See Civil Rule 90.3 Commentary at III-D.

¹⁰ *Id.*

¹¹ See Civil Rule 90.3 Commentary at III-A.

expense.¹² At all times relevant to this decision, Mr. L. has paid between \$11 and \$12 per month as the sole provider of dependent dental coverage to Q.¹³

Mr. L. is entitled to a credit against child support of one-half of this expense, corresponding to the extra cost he is paying over and above his equal share. With respect to months up to the time of the hearing, these payments have been established, and Mr. L.'s support obligation should be calculated with a \$6 credit. With respect to the future, however, Mr. L. will have to provide CSSD with proof from time to time that these payments continue to be made,¹⁴ and his caseworker will then apply the appropriate credit, which may rise or fall according to the cost of coverage.

IV. Conclusion

The standard child support calculation yields a monthly support amount of \$1,015. Credit for half the cost of dental insurance reduces the obligation for past months to \$1,009 and, if insurance continues at the present level, will similarly reduce Mr. L.'s future out-of-pocket obligation.

V. Amendment to Child Support Order

1. The Modified Administrative Child Support and Medical Support Order issued to C. W. L. on January 30, 2008 is amended as set forth below.
2. C. W. L. is liable for child support in the amount of \$1,015 per month effective June 1, 2007 and ongoing.
3. For the months of June 2007 through February 2008 CSSD shall apply a credit of \$6 per month against this child support obligation.
4. For the month of March 2008 and ongoing, CSSD shall administer credit for medical insurance paid on behalf of the obligee child in accordance with 15 AAC 125.432.
5. All other provisions of the Modified Administrative Child Support and Medical Support Order issued January 30, 2008 remain in full force and effect.

¹² See Civil Rule 90.3(d)(1); Civil Rule 90.3 Commentary at VII-A

¹³ L. Exhibits 1, 1A, 1B.

¹⁴ 15 AAC 125.432(c).

DATED this 27th day of February, 2008.

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 27th day of March, 2008.

By: Signed
Signature
Jerry Burnett
Name
Director, Admin Services
Title

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