

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

In the Matter of:)	
)	OAH No. 08-0208-CSS
J. L. C.)	CSSD No. 001104106
_____)	

DECISION AND ORDER

I. Introduction

T. L. M., the custodial parent, appealed a Denial of Modification Review that the Child Support Services Division (CSSD) issued on April 17, 2008, refusing to modify child support set by the undersigned at \$693 per month by Decision and Order adopted May 18, 2006. The obligee children are T. J. M., born 00/00/00, and Z. J. M., born 00/00/04. The obligor parent is J. L. C.

A formal hearing took place on May 23, 2008. David Peltier, Child Support Specialist, represented CSSD. Mr. C. appeared in person. Ms. M. participated by telephone. Following the hearing, the record remained open so that CSSD could submit new calculations based on the income information that Mr. C. had provided. CSSD supplied the calculations on May 27, 2008.

Ms. M. asserts that Mr. C.'s income has increased greatly, yielding a child support amount more than fifteen percent above the level set in 2006 and justifying a modification. In its post-hearing submission, CSSD advocated reversal of its denial of modification of the support amount, recommending an increase in support to \$1,816 per month. After careful consideration, the administrative law judge finds that modification is appropriate and the correct support amount is \$1,453 per month.

II. Facts

Ms. M. petitioned for modification of Mr. C.'s child support order on January 9, 2008.¹ Notice of the petition was distributed on January 22, 2008.²

When Mr. C.'s child support was last adjusted in 2006, he held a single full-time job as an emergency room technician at Providence Alaska Medical Center (PAMC).³ In recent months and at the time of the hearing, he has held two jobs.

¹ Exh. 2.

² Exh. 3 at pg. 2.

At PAMC, he continues to work as an emergency room technician. Since March of 2006 (shortly after his Army Guard job, discussed below, became full-time), his work at PAMC has been irregular, assigned through the hospital registry.⁴ As a registry worker Mr. C. has earned an average gross of \$217.40 per week.⁵ Multiplying by 50 yields a current annual PAMC income rate of \$10,870 (the multiplier is only 50, rather than 52, to allow for 2 weeks of vacation or sick time; registry positions do not have paid time off).

Mr. C. is also a full-time recruiter in the Army National Guard. His current grade is E5. He is eligible for, but not certain to receive, a promotion to E6 in the near future. On the other hand, future funding for his position is not entirely certain after this fiscal year ends on September 30, 2008. Currently, Mr. C. receives the following amounts of compensation in his Army Guard job:

Base Pay	\$30,848.40 ⁶
Basic Allowance for Subsistence (BAS)	3,534.48 ⁷
Basic Allowance for Housing (BAH)	19,908.00 ⁸
Cost of Living Allowance (COLA)	<u>6,073.20⁹</u>
TOTAL	\$60,364.08

He is also eligible for a permanent fund dividend. He is presently receiving total income from all sources at an annual rate of \$72,888.¹⁰

Mr. C. pays federal income tax and FICA, as well as unemployment insurance, at apparently standard rates. He pays nothing into the military Thrift Savings Plan (TSP) and has no other allowable deductions.

At all times relevant to this decision, T. and Z. have been and remain in the primary physical custody of Ms. M.

³ Exh. 1 (*In re C.*, OAH No. 06-0011-CSS, Decision and Order adopted May 18, 2006).

⁴ Testimony of Mr. C. Because of this change in status and attendant loss of hours, to calculate Mr. C.'s PAMC earnings simply by taking his year-to-date earnings as of late April and dividing by four to yield a monthly income, as CSSD has done in its post-hearing brief, would result in an overstated current income. To estimate current and future income accurately, only the income stream after the change to registry can be considered.

⁵ Exh. 9 (This is calculated by taking gross income from a four-week span in April and dividing by four).

⁶ Exh. 8 (\$1285.35 in semi-monthly gross pay, times 24).

⁷ Exh. 8 (\$147.21 in semi-monthly BAS, times 24).

⁸ Exh. 8 (\$829.50 in semi-monthly BAH, times 24).

⁹ Exh. 8 (\$506.10 in monthly COLA, times 12).

¹⁰ \$60,364 + \$10,870 + \$1654 (most recent PFD).

The original decision to deny modification was made without the benefit of the above income figures. After the hearing, CSSD revised its support calculation and asserted that child support should be \$1,816.¹¹

III. Discussion

A. 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)."¹² 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.¹³ Child support for one child is calculated at 20% of the resulting figure; for two children it is 27%.¹⁴

Mr. C. points out that Ms. M. works two jobs, suggesting that she has a substantial income of her own. However, the child support is based on the income of the supporting parent. Where the child is in the primary custody of one parent so that only the other parent has a support obligation, the law establishes child support based on the other parent's income.¹⁵

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.¹⁶

B. Income

Mr. C. points out that his BAH is for his own housing, not for housing dependents, and that he claims no dependents for purposes of his military allowances. 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

¹¹ Exh. 10. The CSSD calculation was based on an income of \$96,799, which is too high; CSSD had not noted the reduction in PAMC work to accommodate the increase in Guard work to full time.

¹² See Civil Rule 90.3 (a).

¹³ Civil Rule 90.3(a)(1).

¹⁴ Civil Rule 90.3(a)(2)(A).

¹⁵ Civil Rule 90.3.

¹⁶ 15 AAC 125.432.

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. 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 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.

Mr. C. is entitled to deductions for his federal income taxes owed (\$412.45 per month), social security tax (\$265.96 per month), and unemployment insurance (\$13.04 per month). When these deductions are annualized and subtracted from Mr. C.'s gross income, the adjusted annual income is \$64,590.68.

C. Child Support Amount

For two children, the child support amount yielded by the regular methodology is 27 percent of the above figure. That is \$17,439.48 per year, or \$1,453 per month. A work sheet showing this calculation is attached to this decision.

D. Credits

Each parent is responsible for an equal share of the cost of insuring a child and paying medical expenses over and above insurance. If one parent pays more than that share, child support is adjusted to compensate for the extra expense.¹⁷ Mr. C. has provided funds from a health care reimbursement account for his children's medical care.

Mr. C. is entitled to credits or debits against child support corresponding to the amount he is paying for insurance and care over or under his equal share. Mr. C. will have to provide CSSD with proof from time to time of the payments he makes,¹⁸ and his caseworker will then apply the appropriate credit, which may rise or fall according to the cost of coverage and care.

¹⁷ See Civil Rule 90.3(d)(1); Civil Rule 90.3, Commentary VII.A.

¹⁸ 15 AAC 125.432(c).

IV. Conclusion

The standard child support calculation yields a monthly support amount of \$1,453. Because this amount is more than 15 percent higher than the support order presently in effect,¹⁹ the Petition for Modification must be granted and the support obligation raised. Adjustments for payment of medical expenses will be administered by the caseworker.

V. Amendment to Child Support Order

1. The Denial of Modification Review issued on April 17, 2008 is reversed.
2. The Petition for Modification of Administrative Support Order is granted.
3. J. L. C. is liable for modified child support in the amount of \$1,453 per month for two children, effective February 1, 2008 and ongoing.
4. All other provisions of the Modified Administrative Child Support and Medical Support Order issued November 16, 2005, as amended May 18, 2006, remain in full force and effect.

DATED this 21st day of July, 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁹ See Civil Rule 90.3(h)(1).

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 25th day of August, 2008.

By: Signed
Signature
Jerry Burnett
Name
Acting Deputy Commissioner
Title

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