

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

IN THE MATTER OF:)	
)	OAH No. 09-0490-CSS
T. M. B.)	CSSD No. 001150709
_____)	

DECISION AND ORDER

I. Introduction

This matter involves the Obligor T. M. B.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 13, 2009. The Obligee child is X., who is 2 years old.

The formal hearing was held on October 6, 2009. Both Mr. B. and the custodian, J. P. C., appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 22, 2009.

Based on the record as a whole and after careful consideration, CSSD's Amended Administrative Child Support and Medical Support Order is adjusted as discussed below.

II. Facts

A. History

In an application received on October 22, 2007, Ms. C.'s state of residence requested child support services on behalf of X. as of August 2007.¹ CSSD proceeded with paternity establishment² and on February 11, 2008, the Superior Court issued an order adjudicating Mr. B. as X.'s father.³ On February 6, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. B.⁴ He requested an administrative review and provided income information.⁵ On August 13, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. B.'s ongoing child support at \$797 per month, with arrears of

1 Exhs. 1 & 2.
2 Exhs. 3 & 4.
3 Exh. 5.
4 Exh. 7.
5 Exhs. 6 & 10.

16,234 for the period from August 2007 through August 2009.⁶ Mr. B. appealed on September 1, 2009, asserting that the income information CSSD used in the calculation was not correct.⁷

B. Material Facts

Mr. B. and Ms. C. are the parents of X., who is 2 years of age. Mr. B. is in the military. Currently he is assigned to Ft. Wainwright, Alaska, but as of December 2009 he will be assigned to Ft. Sill, Oklahoma. Ms. C., who is also in the military, has custody of X. on a full-time basis.

Mr. B. made direct payments to Ms. C. on the X.'s behalf in the total amount of \$1,600 during the period from September 2007 through March 2008. Specifically, he made payments of \$200 for each of these months, with the exception of January 2008, when he made a payment of \$400.⁸

Mr. B. lives in the barracks on base. For 2007, he had taxable income of \$19,750.49, and nontaxable income (in-kind) of \$15,087.32, for total income from all sources in the amount of \$34,837.81.⁹ This total annual income, when inserted into CSSD's online child support calculator, results in a support obligation of \$514 per month.¹⁰

For 2008, Mr. B. had taxable income of \$21,736.80, and nontaxable income of \$19,501.20, for total income from all sources in the amount of \$41,238.¹¹ When inserted into CSSD's online child support calculator, this total annual income figure results in a child support obligation of \$619 per month.¹²

For 2009, the obligor had taxable income of \$24,300, and nontaxable income of \$23,208.89, for total income of \$47,508.89.¹³ When inserted into CSSD's online child support calculator, this total annual income figure results in a child support amount of \$720 per month.¹⁴

Mr. B. will be leaving Alaska at the end of November 2009, and as of December 2009, will be stationed at Ft. Sill, Oklahoma. His taxable earnings is estimated to be equal to that figure for 2009, but his Basic Allowance for Housing (BAH), according to the military

⁶ Exh. 11.

⁷ Exh. 12.

⁸ Exh. 11 at pg. 10. Mr. B. also made payments to Ms. C. by personal check totaling \$2,400 during the period from November 2008 through April 2009, but on June 4, 2009, CSSD credited him with this amount in an Administrative Review Decision on Direct Payment Credit. Exh. 14. Thus, those payments are not at issue here.

⁹ Exh. 16 at pg. 2. Mr. B. is not an Alaska resident, so his income does not include the Permanent Fund dividend.

¹⁰ Exh. 16 at pg. 1.

¹¹ Exh. 17 at pg. 2.

¹² Exh. 17 at pg. 1.

¹³ Exh. 18 at pg. 2.

information online, will be \$635 per month. As a result, Mr. B.'s child support obligation beginning in December 2009 should be adjusted to reflect the lower nontaxable portion of his income. Thus, for 2010, Mr. B.'s total income is expected to consist of taxable income of \$24,300, nontaxable income of \$11,506.44, for total income from all sources of \$35,806.44.¹⁵ When inserted into CSSD's online child support calculator, this total income figure yields a child support amount of \$525 per month.¹⁶

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁷ This obligation begins when the child is born.¹⁸ By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren), up to six years prior to service on the obligor of notice of his or her support obligation.¹⁹ The person who filed the appeal, in this case, Mr. B., has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.²⁰

Mr. B.'s first issue concerns credit for direct payments he asserts he made to Ms. C. during the period from September 2007 through March 2008 in the total amount of \$1,600. CSSD does not object to the credits and has included them in its Summary of Support Obligation that accompanied the amended child support order.²¹ These credits will be included in the Order section of this decision.

Mr. B.'s second issue addresses the calculation of his total income. He is contesting CSSD's inclusion in his income the amount of his non-pay benefits, specifically, the BAH, or Basic Allowance for Housing.

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."²² The base pay figure is put into the calculation in the taxable income

¹⁴ Exh. 18 at pg. 1.

¹⁵ Exh. 19 at pg. 2.

¹⁶ Exh. 19 at pg. 1.

¹⁷ *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁸ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹⁹ 15 AAC 125.105(a)(1)-(2).

²⁰ 15 AAC 05.030(h).

²¹ *See* Exh. 11 at pg. 10.

²² Civil Rule 90.3, Commentary III.A.29.

column.²³ The other benefits go into the nontaxable income column.²⁴ If the soldier lives off base, the BAH benefit used is the actual monetary amount included in the soldier's pay and reflected in the Leave and Earnings Statement (LES). If the soldier lives on base in housing provided by the military, CSSD treats the housing benefit as an in-kind contribution, and its value, for child support purposes, is considered to be the same amount the soldier would receive for BAH while living off base.²⁵

Mr. B. is challenging the inclusion of the with-dependants BAH figure in his income. He claims that since Ms. C. is also in the military and receives BAH on X.'s behalf for their housing, CSSD should not be charging him the with-dependents rate because he would not receive the total even if he lived off base and were entitled to it. CSSD now agrees with Mr. B. and submitted calculations after the hearing that utilize only the without-dependents rate.²⁶ For 2007, the without-dependents rate was \$793 per month;²⁷ for 2008 and 2009, it was \$1,150 per month;²⁸ and for 2010, it is \$635 per month in Mr. B.'s next duty station at Ft. Sill, Oklahoma.²⁹

CSSD's agreement does not resolve the BAH issue because there is a second level of challenge from Mr. B. He argues the value of the housing the military provides for him does not equal even the without-dependents rate. In the case of *Beard v. Morris*,³⁰ the Alaska Supreme Court indicated a court, or, in this case, an administrative tribunal, may make findings relating to the value of a Coast Guard parent's employer-provided housing in the barracks on base.³¹ That case was remanded to the lower court for specific findings on the housing issue, so it is not known how the Superior Court ruled on that issue. But the significance of the *Beard* case in Mr. B.'s appeal is the confirmation that the administrative law judge may, if necessary, consider and rule on the value of a soldier's employer-provided housing on base.

In order to determine the relative value of base housing, it is necessary to have evidence in the record regarding the actual cost of renting and living in comparable housing off base in the local community. Without information regarding the cost of off-base housing that is subject to

²³ See Exh. 10 at pg. 2.

²⁴ *Id.*

²⁵ See Civil Rule 90.3, Commentary III.A.19.

²⁶ See Exhs. 16-19.

²⁷ Exh. 16 at pg. 3.

²⁸ Exh. 17 at pg. 3; Exh. 18 at pg. 3.

²⁹ Exh. 19 at pg. 3.

³⁰ 956 P.2d 418 (Alaska 1998).

³¹ *Id.*

local market forces and economic conditions, it is difficult, if not impossible, to determine the relative value of similar housing on base, be it barracks or a multiple-bedroom residence.

Mr. B.'s barracks manager, E. L., testified that Mr. B.'s housing consists of a traditional barracks room equivalent to a studio apartment, with a shared common area and kitchen. He submitted a drawing that indicates Mr. B.'s quarters consist of a private bedroom measuring 143 square feet, and that he shares a storage area and bathroom measuring 51 square feet total, and a common area and kitchen that measure a total of 100 square feet.³² Mr. B. testified that his private bedroom is furnished with a bed, closet, desk and upper section shelving, chair, and TV stand.

Mr. B. also submitted an insert from the classified section of the Fairbanks Daily News-Miner dated October 10, 2009. In section #80, designated as "Furnished Apartments," there are listings for apartments with one bedroom for \$700-\$995 per month, including utilities.³³ In section #88, the "Rooms for Rent" category, rentals range from \$400 per month up to \$900 per month.³⁴ Other than listing a bedroom, none of the ads indicate the relative size of the apartment or specifically what furnishings are included. Obviously, one must visit and inspect a potential rental in order to determine whether it would be an appropriate value for the money.

Although he did submit ads from the classified section of the newspaper, Mr. B. did not provide evidence sufficient to determine whether the cost of housing in the local community is commensurate with his housing on base. Without more information, making a determination that his housing is less valuable than one bedroom apartments in the local community would simply be a guess.

IV. Conclusion

Mr. B. did not prove by a preponderance of the evidence that the BAH figures CSSD used were an excessive amount to use as the value of his employer-provided housing. More likely than not the without-dependents rate is a reasonable measure of the value of Mr. B.'s employer-provided housing on base. Therefore, CSSD's calculations of Mr. B.'s child support amounts for 2007 through 2010 are correct and should be adopted.

V. Child Support Order

- Mr. B. is liable for child support for X. in the amount of \$514 per month for the

³² Exh. 20 at pg. 2.

³³ Exh. 20 at pgs. 8 & 11.

³⁴ Exh. 20 at pg. 3.

period from August 2007 through December 2007; \$619 per month for 2008; \$720 per month for January 2009 through November 2009; and \$525 per month, effective December 2009 ongoing;

- Mr. B. is entitled to a credit for direct child support paid to the custodian in the total amount of \$1,600 for the period from September 2007 through March 2008;
- All other provisions of the August 13, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 12th day of November, 2009.

By: Signed
Kay L. Howard
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 20th day of November, 2009.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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