SUPREME COURT OF THE STATE OF MONTANA

Shelhamer v. Hodges DPHHS

382 Mont. 187 (2016) · No. DA 15-0420 · Decided February 9, 2016

SUMMARY

The Montana Supreme Court affirmed the inclusion of a parent's military basic housing allowance and basic subsistence allowance in actual income for calculating child support. The court held that these allowances were economic benefits available for unrestricted use and were not offset by actual employment expenses under Montana's child support guidelines. The court also rejected the argument that excluding the allowances would be appropriate because the parent incurred ordinary housing and food expenses.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	James Jeremiah Shea; Mike McGrath; Beth Baker; Patricia Cotter; Jim Rice
JURISDICTION	Montana
DECIDED	February 9, 2016
DOCKET	DA 15-0420
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a district court order affirming an administrative child-support modification order issued by the Montana Department of Public Health and Human Services, Child Support Enforcement Division.
STANDARD OF REVIEW	The Court applies the same standards used by district courts reviewing agency decisions: whether the agency interpreted the law correctly and whether its factual findings were clearly erroneous. An agency's interpretation of its own rule receives great weight and is upheld unless plainly inconsistent with the rule's spirit or outside the range of reasonable interpretations permitted by the rule's wording.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Samuel T. Shelhamer v. Tamara Hodges, Montana Department of Public Health and Human Services, Child Support Enforcement Division

TOPICS

child support | judicial review of agency action | administrative law | standard of review | appellate procedure

PRACTICE AREAS

family law | administrative law | military law

QUESTIONS PRESENTED

1. Whether a parent's military basic housing allowance and basic subsistence allowance constitute actual income under Montana's child-support guidelines when calculating the parent's child-support obligation.
2. Whether the allowances are excluded from actual income as expense payments offset by actual expenses under Admin. R. M. 37.62.105(2)(e).

HOLDINGS

1. A parent's military basic housing allowance and basic subsistence allowance are included in actual income when calculating child-support obligations because they provide an unrestricted economic benefit.
2. Ordinary mortgage, rent, grocery, and similar personal living expenses do not constitute the actual expenses that offset the inclusion of the allowances in actual income.

KEY QUOTATIONS

> *"“Actual income” is broadly defined by Admin. R. M. 37.62.105 (2012), and, among other things, includes: (a) economic benefit from whatever source derived . . . and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends . . . earned income credit and all other government payments and benefits."* (¶ 10)

> *"Read in the proper context of the entire rule, the “actual expenses” that offset the inclusion of such an allowance or per diem into actual income are additional expenses incurred because of the parent’s work, not the regular mortgage or rent payments and grocery bills that would otherwise have to be paid from any parent’s regular source of income."* (¶ 13)

FACTUAL BACKGROUND

Samuel T. Shelhamer and Tamara Hodges are the natural parents of A.S. Shelhamer is a United States Marine Corps warrant officer receiving $53,309 in annual base pay, a $25,776 nontaxable basic housing allowance, and a $2,955 nontaxable basic subsistence allowance. In modifying his child-support obligation, CSED treated all three amounts as actual income, resulting in a monthly obligation of $935. Shelhamer argued that the housing and subsistence allowances were expense payments offset by his actual housing and food expenses.

PROCEDURAL HISTORY

CSED modified Shelhamer's child-support obligation from $74 to $935 per month after including his military basic housing allowance and basic subsistence allowance in his income. After an administrative hearing, Shelhamer sought judicial review. The First Judicial District Court affirmed CSED's final order, and Shelhamer appealed to the Montana Supreme Court.

DISPOSITION

affirmed

CASES CITED

- Arlington v. Miller's Trucking, Inc., 2015 MT 68, 378 Mont. 324, 343 P.3d 1222
- Knowles v. State ex rel. Lindeen, 2009 MT 415, 353 Mont. 507, 222 P.3d 595
- In re Marriage of Stokes, 228 P.3d 701 (Or. Ct. App. 2010)