

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

In the Matter of: )

H L. X, JR. )

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) OAH No. 16-0350-CSS

) CSSD No. 001110905

**DECISION AND ORDER**

**I. Introduction**

H X, Jr. appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 16, 2016. The modification increased Mr. X's support obligation from \$203.31 to \$2000 per month. Based on the evidence and after careful consideration, Mr. X's child support is adjusted to \$1184 per month, effective December 1, 2015.

**II. Facts**

*A. Procedural Background*

Mr. X and custodial parent U S are the parents of N, who was born in 2001. N currently lives with Ms. S.

Mr. X is a commercial fisherman. In 2002, his child support obligation for N was set at \$203.31 per month.<sup>1</sup> In late October 2015, Ms. S requested a modification review.<sup>2</sup> CSSD served the parties with a Notice of Petition for Modification of Administrative Support Order on November 16, 2015.<sup>3</sup> Mr. X did not respond to the notice.<sup>4</sup> However, CSSD received a Fish Ticket Data Report for Mr. X from the Alaska Department of Fish & Game. The report provided information regarding the total value of commercial fish harvests under Mr. X's permits for 2013 through 2015.<sup>5</sup>

On February 16, 2016, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. X's ongoing child support at \$2000 per month, effective December 1, 2015.<sup>6</sup> The modified order was based on 2015 income of \$231,501.61, the reported

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<sup>1</sup> Ex. 1.

<sup>2</sup> Ex. 2.

<sup>3</sup> Ex. 3.

<sup>4</sup> CSSD Pre-Hearing Brief at 1.

<sup>5</sup> Ex. 5.

<sup>6</sup> Ex. 6.

value of fish harvested under Mr. X's permits in 2015, plus \$2072 for his 2015 Alaska PFD. Mr. X appealed and asserted that the modification was not based on accurate financial information.<sup>7</sup>

The hearing was held by telephone on April 26, 2016. Mr. X represented himself. Joseph West, Child Support Specialist, represented CSSD. Ms. S did not participate. The hearing was recorded. The record remained open for additional evidence of Mr. X's income after the hearing; it closed on May 6, 2016.

*B. Material Facts*

Mr. X works as a boat captain in various commercial fisheries in Alaska. As captain, he owns the permits and leads the crew, but he does not own the boat used in the fishery. When the boat delivers fish to a processor, information about the catch is recorded under Mr. X's permit, including the gross amount paid. However, that sum is not Mr. X's income. It gets divided up and distributed according to a predetermined contractual formula between the boat owner, the captain, and the rest of the crew. Therefore, Mr. X's income is only one part of the total value recorded on the Fish Ticket Data Report for his permits.

For this reason, Mr. X established that the data on which CSSD relied to calculate his modified support obligation is incorrect. He testified that his annual income fluctuates from year to year, since there are many variables involved in commercial fishing. After the hearing, he provided his 2012-2014 tax returns to show his actual earnings.<sup>8</sup> He did not provide 2015 income information because, as of the time of the hearing, he had not prepared his 2015 tax return. Therefore, he indicated that he did not yet have that information. For the years 2012 through 2014 and after deductions for allowable expenses, his tax returns show that his net income was \$98,187 in 2012, \$84,667 in 2013 and \$86,512 in 2014.

After the hearing, CSSD submitted a revised child support calculation based on Mr. X's 2012-2014 actual income. It averaged his net profit over this three year period, which resulted in an average income of \$89,788 per year. It added his 2015 PFD to calculate total income of \$91,860.<sup>9</sup> After allowable deductions, this income resulted in a modified support obligation of \$1184 per month. Mr. X did not comment on CSSD's revised calculation.

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<sup>7</sup> Ex. 7.  
<sup>8</sup> Ex. 10.  
<sup>9</sup> Ex. 11.

### III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>10</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established and the order may be modified. Mr. X’s child support has been \$203.31 per month since 2001. Thus, a child support calculation of \$233.80 or more would be sufficient to warrant modification in this case.<sup>11</sup> A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of December 1, 2015.<sup>12</sup>

As the person who filed the appeal in this case, Mr. X has the burden of proving by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect.<sup>13</sup> He met that burden.

Civil Rule 90.3(a)(1) provides that an obligor’s child support amount is to be calculated from his or her “total income from all sources,” minus mandatory deductions for items such as taxes and Social Security. Where, as here, the obligor’s income is variable from year to year, it is appropriate to calculate child support based on average income over a several year period. This is because a single year’s income may not be a reliable indicator of future earning potential.<sup>14</sup>

In this case, it is reasonable to average Mr. X’s income over three years. Since he did not yet have his income information for 2015, it is also reasonable to rely on his income from 2012-2014 for this calculation. That income results in average net profit of \$89,788. After including Mr. X’s PFD and deducting self-employment and other taxes, CSSD calculated a modified support obligation of \$1184 per month, which should be adopted.

### IV. Conclusion

Mr. X met his burden of proving by a preponderance of the evidence that the modified support obligation set out in the Modified Administrative Child Support and Medical Support Order, dated February 16, 2016, was incorrect. CSSD’s revised calculation is based on an

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<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> \$203.31 x 115% = \$233.80.

<sup>12</sup> 15 AAC 125.321(d).

<sup>13</sup> 15 AAC 05.030(h); 2 AAC 64.290(e).

<sup>14</sup> Civil Rule 90.3, Commentary III.E; *Yerrington v. Yerrington*, 933 P.2<sup>nd</sup> 555 (Alaska 1997).

average of Mr. X's actual income over the three years from 2012 through 2014. Under Civil Rule 90.3(a), this income results in a modified child support amount of \$1184 per month, effective December 1, 2015 and ongoing. No variance under Civil Rule 90.3(c) was requested or granted.

**V. Child Support Order**

- Mr. X's child support for N is adjusted to \$1184 per month, effective December 1, 2015, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated February 16, 2016 remain in full force and effect.

DATED this 9<sup>th</sup> day of May, 2016.

*Signed*  
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Kathryn A. Swiderski  
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 24<sup>th</sup> day of May, 2016.

By: *Signed*  
\_\_\_\_\_  
Signature  
Lawrence A. Pederson  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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