

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

TIMOTHY TODD HOOGSTAD,
Petitioner,

v.

**DHS, DIVISION OF CHILD SUPPORT
SERVICES,**
Respondent.

:
:
: **Docket No.**
: **OSAH-CSS-GLS-1343995-93-KENNEDY**
:
:
: **Agency Reference No. 280024379**
:
:



AUG 7 2013

Hazel Jackson
Hazel Jackson, Legal Assistant

INITIAL DECISION

Petitioner requested an administrative hearing in response to notice of Respondent's proposed suspension of his driver's license for non-payment of child support arrears. The hearing was held on July 19, 2013, before the undersigned administrative law judge of the Office of State Administrative Hearings. After considering all of the admissible evidence, Respondent's action is hereby **REVERSED**.

I. Findings of Fact

1.

Pursuant to the terms of a Final Judgment and Decree of Divorce entered in the Superior Court of Lumpkin County, Georgia, on February 28, 2013, Petitioner is obligated to pay \$2,250.00 per month, as support for his two minor children. (Exhibit R-1.)

2.

Prior to the divorce, and for two months following the divorce, Petitioner paid child support directly to his former spouse. (Exhibit R-5.)

3.

On April 2, 2013, Petitioner's former spouse applied for services through Respondent. At that time, Petitioner's former spouse indicated that Petitioner had paid her \$2,250.00 in October, November and December 2012. She further indicated that he had paid her \$2,000.00 in January 2013, and \$2,250.00 in February and March 2013. (Exhibit R-5.)

4.

In addition to the above payments, Petitioner made a payment of \$500.00 in April 2013, directly to his former spouse. However, he made no payments in May or June 2013. Thus, Petitioner has accrued child support arrears totaling \$6,250.00 as of June 30, 2013. (Exhibit R-6.)

5.

On April 4, 2013, Petitioner filed a Child Support Modification action in Bibb County Superior Court asserting that he has experienced a significant decline in income. (Exhibit P-3.)

6.

Petitioner filed the modification action because his income dropped significantly as of April 1, 2013. Petitioner was self-employed and earning \$16,200.00 per month at the time he agreed to the terms of the Settlement Agreement and when the divorce was finalized.¹ However, Petitioner's most lucrative client, Georgia Power, chose not to renew its contract with Petitioner's business beyond March 31, 2013. The loss of Georgia Power as a client adversely affected Petitioner's business and personal income.² In April, May and June 2013, Petitioner's average monthly earnings decreased from \$16,200.00 to \$1,868.31. (Exhibits P-2, P-5.)

7.

Petitioner has worked diligently to reduce his expenses since April 1, 2013, when his business declined and his personal income decreased significantly. Petitioner has laid off employees, sought lower cost housing, attempted to sell personal and business assets, and taken other similar measures to adjust to the significant decrease in his income. (Testimony of Petitioner; Exhibit P-4.)

8.

Petitioner is willing to support his children. They have resided with him since the time when school ended. (Testimony of Petitioner.)

9.

Petitioner believes, based on the various measures he has taken to stabilize his financial situation since the significant reduction in personal income in April 2013, that beginning next month he may be able to pay \$600.00 per month to support his children. According to Petitioner, \$600.00 is the presumptive child support obligation indicated on the Child Support Worksheet that Petitioner submitted with his modification action based on his reduced income. (Testimony of Petitioner.)

10.

Petitioner appealed Respondent's notice of suspension because the income he currently receives is derived from completing courier deliveries. If Petitioner's license is suspended, he will be unable to continue making the deliveries and will lose the income he is currently receiving. Additionally, Petitioner is seeking employment with Microsoft, which requires that he hold a passport. Petitioner hopes that his license and passport will not be suspended and that no other action will be taken until his child support modification action can be heard and completed in Bibb County. (Testimony of Petitioner; Exhibit P-1.)

¹ Petitioner owns a business that provides pick-up and delivery services. (Testimony of Petitioner.)

² Petitioner's business income was reduced from \$50,000 per month to \$5,340 per month. (Testimony of Petitioner; Exhibit P-1.)

II. Conclusions of Law

1.

Respondent is authorized to suspend the license of delinquent obligors. O.C.G.A. 19-11-9.3.

2.

A “delinquent obligor” is “any obligor who is not in compliance with an order for child support and who appears on the agency's certified list.”³ O.C.G.A. § 19-11-9.3(a)(5). An obligor is “not in compliance” if his arrears balance is equal to or greater than an amount equal to two months of his current support obligation. O.C.G.A. 19-11-9.3(a)(4).

3.

“License” refers to “a certificate, permit, registration, or any other authorization issued by any licensing entity that allows a person to operate a motor vehicle or to engage in a profession, business, or occupation.” O.C.G.A. § 19-11-9.3(a)(7).

4.

While an obligor may request a hearing regarding a proposed suspension, the only issues at the hearing will be the following:

- (1) Whether there is an order for child support being enforced pursuant to this article;
- (2) Whether the licensee or applicant is the obligor covered by that order;
- (3) Whether the support obligor is or is not in compliance with the order for child support;
- (4) Whether the support obligor shall be entitled to pay past due child support in periodic payments; and
- (5) Whether the support obligor has been able and willing to comply with such order for support.

O.C.G.A. § 19-11-9.3(h). The statute further provides:

[E]vidence relating to the ability and willingness of an obligor to comply with such order for support shall be considered in making the decision to either suspend a license or deny the issuance or renewal of a license under this Code section. The administrative law judge shall be authorized to enter into an agreement or enter an order requiring such periodic payments and, in each event, the administrative law judge shall be authorized to issue a release for the obligor to obtain each license or licenses. Such an agreement will not act to modify an existing child support order, but rather only affects the payment of the arrearage.

O.C.G.A. § 19-11-9.3(h).

³ Respondent’s policy provides that a license suspension is authorized when the balance of the arrears account is equal to or greater than two times the current support obligation plus two times the repay obligation, and the Petitioner has not paid his full obligation owed for the previous 60 days. (Exhibit R-1.)

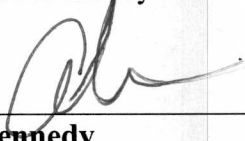
5.

There is no dispute that Petitioner is an obligor of a child support order being enforced by Respondent. There also is no dispute that Petitioner is not currently in compliance with that order. However, Petitioner consistently made payments toward his child support obligation prior to the significant decrease in his business and personal income that occurred effective April 1, 2013. Based on the record as a whole, the court concludes that Petitioner is willing to comply with the court order, but is financially incapable of doing so at this time. Moreover, Petitioner filed a Modification action shortly after the significant decrease in his income occurred, which action is still pending. It is in the best interests of the children in question to allow the superior court action to be completed to determine if the obligation should be modified prior to suspended Petitioner's license and effectively terminating his ability to continue the work he is doing now.

III. Decision

After considering all of the admissible evidence, Respondent's action is hereby **REVERSED**.

SO ORDERED, this 6th day of August, 2013.



Ana Kennedy
Administrative Law Judge