

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

LORENZO E. VARNER, :  
Petitioner, : Docket No.: OSAH-CSS-GLS-1412254-60-  
v. : Malihi / Woodard  
DEPARTMENT OF HUMAN SERVICES, :  
DIVISION OF CHILD SUPPORT : Agency Reference No.: 500006706  
SERVICES, :  
Respondent. :



DEC 23 2013

FINAL DECISION

I. Introduction

*Valerie Ruff*

Valerie Ruff, Legal Assistant

In response to Respondent's action to suspend Petitioner's license(s) in Georgia for the non-payment of child support arrears, Petitioner requested a hearing. A full evidentiary hearing was held at the Office of State Administrative Hearings (OSAH), Atlanta, Georgia. The record was held open for 14 days to allow Petitioner to provide proof that he was involved in the Fatherhood Program, and that he made in-kind payments that should be considered child support. Respondent verified to the judge's assistant that Petitioner is not active in the Fatherhood Program, and thus cannot claim exemption from suspension of his license or licenses based on such participation. Further, Petitioner failed to provide any documentation that he made in-kind payments on his minor child's behalf. The hearing record was closed on November 22, 2013.

For the reasons indicated, Respondent's action is **AFFIRMED, with instructions as stated below.**

II. Findings of Fact

1.

Petitioner is an obligor whose name appears on the agency's certified list of delinquent obligors. Per the terms of an Order issued by Fulton County Superior Court in the cases docketed as *Civil Action 1999-CV-03927, as modified in Civil Action 2006-CV-122281*, Petitioner is required to pay \$158.00 per month in ongoing support and \$34 per month to repay an arrearage. Respondent collects any payments made by Petitioner, and forwards them to the custodian.

2.

Petitioner has not made a voluntary child support payment since 2009. The most recent payment was an involuntary tax intercept in the amount of \$321.56 taken on May 22, 2009. Respondent calculated his arrearage at \$12,122.84 as of October 31, 2013.

3.

Petitioner agrees that he has not complied with the child support orders handed down by Fulton County Superior Court. He claims, however, that he had physical custody of his child for approximately 2 years, and that no support payments were required of him during that time period. He did not ask Superior Court to modify the support order while he had actual custody of the child,

and there is no evidence that he notified Respondent of any change in the informal custody arrangement with the child's mother. Petitioner admitted that during 2011 and 2012 his child stayed with him for only about 5 weeks per year, and that he lived with the mother the rest of the time. The child has not resided with Petitioner at any time during 2013.

### III. Conclusions of Law

1.

Respondent has the burdens of persuasion and going forward with the evidence. OSAH Rule 616-1-2-.07(1). The standard of proof is preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

2.

"Delinquent obligor" means any obligor who is not in compliance with an order for child support and who appears on the agency's certified list. O.C.G.A. § 19-11-9.3 (a)(5). "License" means 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) 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)."

An ALJ may consider evidence relating to a delinquent obligor's ability and willingness to comply with such order for support in making the decision to either suspend a license or deny the issuance or renewal of a license under this Code section. Further, an ALJ is authorized to enter into an agreement or enter an order requiring such periodic payments and issue a release for the obligor to obtain each license or licenses; however, such an agreement will not act to modify an existing child support order, but rather only affects the payment of arrears which have accrued subsequent to any prior order. *Id.*

3.

In this case, Respondent has met all the requirements for suspension of all of Petitioner's state-issued licenses in Georgia under O.C.G.A. § 19-11-9.3(h)(1-4). Petitioner has not provided credible proof that he is able and willing to comply with the child support orders issued by Fulton County Superior Court. He provided no admissible proof that he made any voluntary payments to the custodial parent since 2009, or that he has complied with the Fatherhood Program and can claim exemption from license suspension. The administrative law judge

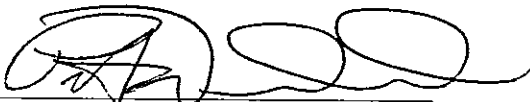
concludes that in order to retain his licenses (which includes a state-issued driver's license), Petitioner must make a purge payment, and begin meeting his regular monthly support and repayment obligations.

#### IV. Decision

Respondent's action is **AFFIRMED** and Respondent is authorized to suspend Petitioner's license or licenses in the State of Georgia unless Petitioner takes the following actions:

1. Petitioner shall pay \$2,400.00 to Respondent by no later than March 1, 2014. This represents approximately 20% of the total arrears owed as of the hearing date. If this payment is not received, Petitioner's license will be suspended.
2. Petitioner shall make the support payments of \$158.00 per month as ordered by Fulton County Superior Court.
3. Petitioner shall also make the payments to repay his arrearage of \$34.00 per month as ordered by Fulton County Superior Court.
4. Nothing in this Decision shall prohibit Petitioner from making additional payments to accomplish an earlier payoff of his arrearage.
5. The provisions of this Decision are self-executing; CSS shall not be required to seek further judicial approval to suspend Petitioner's Georgia license or licenses if he fails to comply with the terms stated herein.

SO ORDERED, this 23 day of December, 2013

  
M. PATRICK WOODARD JR.  
Administrative Law Judge