

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

**GEORGIA DEPARTMENT OF HUMAN
SERVICES, DIVISION OF CHILD
SUPPORT SERVICES, ex rel. C [REDACTED]**

D [REDACTED],

Petitioner,

v.

H [REDACTED] D [REDACTED], OBLIGOR, and C [REDACTED]

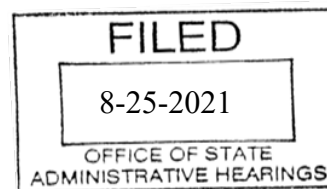
G [REDACTED], OBLIGEE,

Respondents.

Docket No.: [REDACTED]

[REDACTED]-OSAH-CSS-RM-44-Woodard

Agency Reference No.: [REDACTED]



**FINAL DECISION AND ORDER DENYING PETITION FOR MODIFICATION
OF FINAL ORDER FOR PATERNITY AND CHILD SUPPORT**

I. INTRODUCTION

The Division of Child Support Services of the Georgia Department of Human Services (“DCSS”) filed a Petition for Review and Modification of the administrative order for child support entered by Administrative Law Judge (ALJ) Carol Walker-Russell of the Office of State Administrative Hearings (OSAH) on November 22, 2016, in Docket No.: [REDACTED]-OSAH-CSS-44-CWR. In that order, Respondent-Obligor H [REDACTED] D [REDACTED] was required to pay \$1,227.00 per month in current support for his child C [REDACTED] E [REDACTED] D [REDACTED], born 2014.

In its Petition, DCSS requested that D [REDACTED]’ obligation be reduced to \$384.00 due to a significant change in his financial circumstances. An objection to the requested modification was filed by C [REDACTED] G [REDACTED], C [REDACTED]’s biological mother and the Respondent-Obligee in the above-docketed case. An evidentiary hearing to address the proposed modification was held before the undersigned administrative law judge on May 20, 2021, in Atlanta, Georgia.

For the reasons set forth below, the Petition for Modification of Judge Walker-Russell’s previous administrative order is DENIED, and the child support obligation of Respondent-Obligor H [REDACTED] D [REDACTED] remains unchanged at \$1,227.00 per month.

II FINDINGS OF FACT

1.

H ■ D ■ was laid-off by IBM in 2020 and has not secured new employment as of the hearing date. He requested that Petitioner seek modification of his child support obligation, as he was not able to continue paying \$1,227.00 each month. He initially reported to DCSS that his only source of income was Unemployment Compensation Benefits (UCB) of \$1,587.75 per month, and DCSS recommended a downward modification to \$384.00 per month.

2.

The evidence presented at the hearing was that D ■ actually received \$2,800.00 per month in UCB, which included a federal COVID-19 supplement. DCSS recalculated D ■' child support obligation using the correct UCB figures, and at the conclusion of the hearing presented the court with a proposed amended Final Modified Child Support Order reducing D ■' support obligation to \$606.00 per month. There was testimony that the COVID-19 supplement might end shortly after the hearing, but there was no anticipated date for termination of this benefit. ¹

3.

On cross-examination, D ■ admitted that he has access to retirement funds in a 401(k) and has withdrawn more than \$138,000 from that account to pay off or substantially reduce his household debts. He admitted that he wanted to attain a more "favorable" debt-to-income ratio while he was still unemployed. He further admitted that he has not used the funds in the 401(k) to pay child support, and DCSS' records indicate he has not made a single support payment since June 2020. As of May 20, 2021, the balance in D ■' 401(k) was \$1,106,332.06. His past-due child support debt has grown to at least \$5,130.14 as of December 31, 2020.

II. CONCLUSIONS OF LAW

1.

An administrative law judge with OSAH has the authority under O.C.G.A. § 19-11-12(4)(A) to increase, decrease, or determine that no change be made to a prior order for child support entered by any OSAH ALJ. The reviewing ALJ follows the same guidelines found in O.C.G.A. § 19-6-15 as the ALJ who rendered the prior decision. These include the analysis of the parents' income, assets,

¹ The federal supplement, called "Pandemic Unemployment Assistance," or "PUA," ended in Georgia on June 27, 2021. This did not affect individuals eligibility for "Regular" Unemployment Compensation Benefits through the Georgia Department of Labor. See <https://dol.georgia.gov/gdol-covid-19-information>.

other child support orders, other children living in a parent's home for whom that parent is legally and financially responsible, and other factors.

2.

O.C.G.A. § 19-6-15(f) states that the “[gross] income of each parent shall be determined in the process of setting the presumptive amount of child support and shall include all income from any source....” Among the types of income listed in this code section are “(vii) Recurring income from pensions or retirement plans including, but not limited to, United States Department of Veterans Affairs, Railroad Retirement Board, Keoghs, and individual retirement accounts....” O.C.G.A. § 19-6-15(f)(A)(vii). Though D [REDACTED]’ withdrawals from his 401(k) account may not be “recurring” in that he has not received a predetermined periodic payment, it is clear that retirement income can be considered in determining the proper child support payment.

4.

O.C.G.A. § 19-6-15(f)(1)(A)(xxii) states that “Assets which are used for the support of the family” can be used by the court to determine the proper support obligation. D [REDACTED]’ 401(k) certainly is an “asset” that can be used for the support of his child.

5.

The Court concludes that reducing D [REDACTED]’ child support from the current \$1,227.00 per month to only \$606.00 per month is not supported by a preponderance of the evidence. Obligor has significant assets that can be used to pay child support until he secures another job, at which time he can stop or substantially reduce the withdrawals from his 401(k) account. The court concludes further that D [REDACTED] owed at least \$5,130.14 in delinquent child support as of December 31, 2020, and that his obligation must be increased to amortize his debt for unpaid support.

II. DISPOSITION

Based on the foregoing factors, it is **ORDERED** that the Petition to Modify Child Support is **DENIED**, and the current support order shall remain the same. The Respondent Obligor shall continue to pay \$1,227.00 per month as current support.

IT IS FURTHER ORDERED that Respondent Obligor shall pay an additional \$100.00 per month to amortize his debt for unpaid child support, which was \$5,130.14 as of December 31, 2020. The income deduction order contained in Judge Walker-Russell’s Order in Docket Number [REDACTED] - OSAH-CSS-EST-44-CWR shall remain in effect for current support and is hereby amended to include the \$100.00 arrearage payment on the unpaid balance of \$5,130.14.

SO ORDERED, this 25th day of August, 2021.



M. Patrick Woodard
Administrative Law Judge

