BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

B[redacted] W[redacted], **Petitioner,** **v.** **DHS, DIVISION OF CHILD SUPPORT SERVICES,** **Respondent.**	**Docket No.: [redacted]-OSAH-CSS-GLS-29-Fry** **Agency Reference No.: [redacted]**
B[redacted] W[redacted], **Petitioner,** **v.** **DHS, DIVISION OF CHILD SUPPORT SERVICES,** **Respondent.**	**Docket No.: [redacted]-OSAH-CSS-GLS-29-Fry** **Agency Reference No.: [redacted]**
B[redacted] W[redacted] **Petitioner,** **v.** **DHS, DIVISION OF CHILD SUPPORT SERVICES,** **Respondent.**	**Docket No.: [redacted]-OSAH-CSS-GLS-29-Fry** **Agency Reference No.: [redacted]**

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OFFICE OF STATE ADMINISTRATIVE HEARINGS

FINAL DECISION

The Petitioner requested a hearing pursuant to O.C.G.A. § 19-11-9.3(h) in response to the Respondent's action seeking to suspend the Petitioner's Georgia license(s)[1] due to non-payment of child support. The hearing took place on March 29, 2023, before the undersigned administrative law judge. For the reason indicated below, the Respondent's action is **REVERSED**.

1 A license is "a certificate, permit, registration, or any other authorization issued by any licensing entity that allows an individual to operate a motor vehicle or to engage in a profession, business, or occupation." O.C.G.A. § 19-11-9.3(a)(7).

I. Findings of Fact

1. The Petitioner is obligated to pay child support pursuant to the terms of orders for child support entered in Superior Court of Walton County on July 12. 1993, in Superior Court of Walton County on September 1, 1998, and in Superior Court of Walton County also on September 1, 1998.[2] Each of these original orders have been superseded by subsequent orders entered on November 14, 2005, November 9, 2005, and November 9, 2005, respectively. Petitioner testified and produced documentation (a December 27, 2017 DFCS payment obligation acknowledgement form) to show that the total he is obligated to pay for all three cases is $200.00. The payments are broken down as follows: $40.00 per month for [redacted]00 and $80.00 per month for each of [redacted]67 and [redacted]013. Respondent also produced DFCS documents, dated February 1, 2018, addressed to Petitioner in [redacted]800 confirming the arrears payment amount of $40.00 and in [redacted]267 and [redacted]013, also dated February 1, 2018, confirming the arrears payment amount of $80.00 in each of those cases. Petitioner argued that these were the correct amounts he was obligated to pay.[3]

2. Respondent testified that as of the date of the hearing, the Petitioner has accumulated a total arrears balance of $2,388.23 in [redacted]800, $16,730.30 in [redacted]267, and $10,425.35 in [redacted]013 due to his failure to make payments toward his child support obligations.[4] Respondent testified that Petitioner's most recent payment in [redacted]800 was $42.00 on February 2, 2023, in [redacted]267 was $55.86 on March 3, 2023, and in [redacted]013 was $147.15 on March 3, 2023. The total of these payments is $244.01. Respondent produced documents dated August 16, 2017 in [redacted]800, October 28, 2022 in

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2 The 1993 Order pertains to child D[redacted] F[redacted]. It was assigned OSAH Docket number [redacted] and agency reference number [redacted]800. One of the 1998 orders pertains to B[redacted] W[redacted] and B[redacted] W[redacted]. It was assigned OSAH Docket number [redacted] and agency reference number [redacted]267. The second 1998 order pertains to C[redacted] W[redacted] and J[redacted] W[redacted]. It was assigned OSAH Docket number [redacted] and agency reference number [redacted]013.

3 Although Petitioner does not contest the obligation to pay $40.00, $80.00, and $80.00 in his three cases, the three November 2005 order provided by Respondent only prescribe an obligation to pay $35.00 per month in each of the three cases.

4 Respondent did not provide certified copies of the Arrears and Interest calculators as evidence of the amounts owed. While not necessary to the outcome of this case, Respondent's testimony concerning the amounts owed is hearsay.

[redacted] 267 and August 15, 2017 in [redacted] 013, purportedly providing notice, that his monthly arrears payment obligation was being increased to $100.00, $150.00 and $200.00 respectively.[5] This arrears balance is equal to or greater than sixty (60) calendar days' worth of support. At all times pertinent to this hearing the Petitioner's case is an arrears only case.

II. Conclusions of Law

1. The Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.
2. The Respondent may seek to have a child support obligor's license(s) withheld, restricted. Suspended, or revoked when the obligor accumulates an arrearage equal to or greater than sixty (60) days' worth of support. O.C.G.A. § 19-11-9.3(e); Ga. Comp. R. & Regs. 290-7-1-.12.
3. In the present case, the Respondent met its burden and proved the following:
   (a) The Petitioner is a child support obligor pursuant to an order for child support. O.C.G.A. § 19-11-9.3(h)(A), (B).

   (b) Due to non-compliance with the order for child support, the Petitioner has accumulated an arrears balance that is equal to or greater than sixty (60) calendar days' worth of support. O.C.G.A. § 19-11-9.3(h)(C).

Respondent argued that Petitioner's arrears repayment obligation was $100.00, $150.00, and $200.00 per month on accounts [redacted] 800, [redacted] 267, and [redacted] 013, respectively, based on Respondent's acceleration of the arears and resetting of the monthly amount due for failure to make timely payments. This is an increase from the $40.00, $80.00, and $80.00 specified in the February 1, 2018 letters from Respondent. Respondent's argument fails for multiple reasons.

First, the only court order in any of the three cases that includes an acceleration clause is the July 12, 1993 Consent Order in case [redacted] 800. An acceleration clause is a form of a penalty and as such must be narrowly construed. Also, it is available only as a

5 The notice states the recipient (the Petitioner here) may only disagree with the increase on the following grounds:
1. Mistake of fact regarding the amount of support owed based on a support order
2. The amount of arrears owed based on the same support order
3. There is a mistake as to the identity of the Non-Custodial Parent ordered to pay child support

remedy in a court action for breach of the underlying obligation. *Cf. Southeastern Land Fund, Inc. v. Real Estate World, Inc.,* 237 Ga. 227, 228-30 (1976); *Peterson v. P. C. Towers*, 206 Ga. App. 591, 52-93 (1992). The clause in the 1993 Order does not include self-executing language that gives the Department authority to unilaterally accelerate the amount due without a court order granting the remedy in response to proof of a breach.[6]

Second, the acceleration clause can be invoked only in the event of a failure to make "support payments." Paragraphs 2 and 3 of the 1993 Order distinguish between support payments in paragraph 2 and reimbursement payments to the Department in paragraph 3. The latter of which are not fairly characterized as "support" payments. Thus, Petitioner's failure to make arrears payments is not grounds to accelerate the arrearage under the 1993 Order, because there was no evidence of a failure to make support payments.

Third, the 1993 Order has been superseded by a November 14, 2005 Order which does not include an acceleration clause. The acceleration clause in the 1993 Order does not survive entry of the 2005 Order absent an explicit survival of terms provision, which the 2005 Order does not have. The Court concludes that 1993 Order provides no legitimate basis for the Department to increase the prescribed amount to pay towards the arrears balance.

Fourth, the clause in paragraph 5 of the 2005 Order in [redacted]800 noted by respondent stands for no principle other than the obligation to pay arrears survives the obligation to pay child support should the child support portion of the obligation cease according to the terms of the Order. It is not an acceleration clause and does not give the Department the authority to modify the Court imposed amount of the Petitioner's arrears payment. The Orders in effect in case numbers [redacted]267 and [redacted]013, both of which were entered on November 9, 2005 are substantially the same as the November 14, 2005 Order and similarly do not include an acceleration clause. Respondent failed to identify any statute, regulation or policy reference that authorizes the Department, upon notice, to unilaterally accelerate the arrears payment obligation prescribed in a court order. Further, Respondent has cited no statutory, regulatory, policy or case law authority that gives the Department authority to override a court order and impose its arbitrarily selected repayment amount with no more due process than is listed in the notices

6 The Department argued that the right to accelerate the full amount due gives it the right to increase the monthly payment amount. The theory being that if it can force payment of all, it can prescribe periodic payments of an increased amount.

as set forth in note 3, *supra*. Respondent's acceleration and increase of the amount of the monthly arrears payments in these cases is **HEREBY REVERSED**.

Further, in the cases of [redacted]800 and [redacted]013, the notices of the monthly increase, dated August 16, 2017 and August 15, 2017, are **followed by** subsequent notices dated February 1, 2018 that the $40.00 and $80.00 amounts are what Petitioner is obligated to pay. Additionally, the acknowledgement of his payment obligations signed on December 27, 2017, which also follows the August 2017 notices also confirms those amounts. On these separate and independent grounds, the acceleration of payments in case numbers [redacted]800 and [redacted]013 is **HEREBY REVERSED**.

4. Further, having considered evidence related to the Petitioner's ability and willingness to comply with the order for child support, the undersigned concludes that:

☒ The Petitioner has complied with the orders for child support. Therefore, the undersigned is authorized to order the release of the Petitioner's license(s) provided he makes periodic payments $200.00 per month or more in cases [redacted]800, [redacted]267, and [redacted]013, respectively toward his past due child support. O.C.G.A. § 19-11-9.3(h)(2).

III. Decision

Based on the foregoing Findings of Fact and Conclusions of Law, the Respondent's action is: **REVERSED** and Respondent is **HEREBY ORDERED** to direct the release of Petitioner's license.

SO ORDERED, this 8th day of May 2023.

John Fry
Administrative Law Judge