

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 62

CHILD SUPPORT ENFORCEMENT SERVICES

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Subchapter 1

Child Support Guidelines

37.62.101 AUTHORITY, POLICY AND PURPOSE (1) These guidelines are promulgated under the authority of 40-5-209, MCA, for the purpose of establishing a standard to be used by the district courts, child support enforcement agencies, attorneys and parents in determining child support obligations.

(2) These guidelines are based on the principle that it is the first priority of parents to meet the needs of the child according to the financial ability of the parents. In a dissolution of marriage or when parents have never been married, a child's standard of living should not, to the degree possible, be adversely affected because a child's parents are not living in the same household.

(3) These guidelines are structured to determine child support on an annual basis. Payment will be made in equal monthly installments.

(4) As required by 40-4-204, 40-5-226 and 40-6-116, MCA, these guidelines apply to contested, non-contested and default proceedings to establish or modify support orders. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

37.62.102 REBUTTABLE PRESUMPTION (1) The guidelines create a presumption of the adequacy and reasonableness of child support awards. However, every case must be determined on its own merits and circumstances and the presumption may be rebutted by evidence that a child's needs are or are not being met.

(2) At the request of one of the parties and upon consideration of the factors set out in the guidelines and in 40-4-204, 40-4-208 and 40-6-116, MCA, the guidelines may be rebutted and a variance from the guidelines amount may be granted. Any consideration of a variance from the guidelines must take into account the best interests of the child.

(3) The support order may vary from the guidelines in a particular case only if the decree, separation order or support order contains a specific written finding showing justification that application of the guidelines would be unjust or inappropriate, based upon evidence sufficient to rebut the presumption.

(4) Findings that rebut and vary the guidelines must include a statement of the amount of support that would have been ordered under the guidelines without the variance.

(5) Child support may vary from the guidelines based on a stipulation or agreement of the parties only if the stipulation or agreement meets the following criteria:

(a) it is in writing executed by the parties or is entered by a court or administrative proceeding;

(b) the parties have signed the stipulation or agreement free of coercion;

(c) it contains specific justification as to why application of the guidelines is unjust or inappropriate; and

(d) it contains a statement of the amount of support that would have been appropriate under the guidelines without the variance.

(6) A support order granting a variance, based upon the existence of a condition or the performance of an act, must provide that, upon termination of the circumstances which justify the variance, the support immediately reverts to the amount which would have been ordered under the guidelines without the variance. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

37.62.103 DEFINITIONS For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Actual income" is defined in ARM 37.62.106.

(2) "CSED" means the child support enforcement division of the department of public health and human services.

(3) "Department" means the department of public health and human services.

(4) "Federal poverty index" means the minimum amount of income needed for subsistence. The amount is developed by the U.S. office of management and budget, revised annually in accordance with 42 USC 9902, and published annually in the federal register.

(5) "Guidelines" means the administrative rules for establishment of child support as provided in ARM Title 37, chapter 62, subchapter 1, as promulgated in 40-5-209, MCA.

(6) "Imputed income" is defined in ARM 37.62.106.

(7) "Legal dependent" means natural born and adopted minor children, spouses, special needs adult children, household members covered by a conservatorship or guardianship, and parent's parents living in the household who are claimed on tax returns as legal dependents.

(8) "Long distance parenting" is defined in ARM 37.62.130.

(9) "Other child" means a child whom a parent is legally obligated to support but who is not the subject of the child support calculation. A step-child is not considered an other child.

(10) "Personal allowance" is defined in ARM 37.62.114. (1 1) " P r e - existing support order" means an order entered by a tribunal of competent jurisdiction prior to the calculation or recalculation of support.

(12) "Primary child support allowance" is defined in ARM 37.62.121.

(13) "SOLA" means standard of living adjustment.

(14) "Standard of living" includes the necessities, comforts and luxuries enjoyed by either parent, the child or both parents and the child, which are needed to maintain them in customary or proper community status or circumstances.

(15) "Subsequent child" is defined in ARM 37.62.146.

(16) "Transfer payment" is defined in ARM 37.62.136. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rules 04 and 05 reserved

37.62.106 DETERMINATION OF INCOME FOR CHILD SUPPORT

(1) Income for child support includes actual income, imputed income, or any combination thereof which fairly reflects a parent's resources available for child support. Income can never be less than zero.

(2) Actual income includes:

(a) economic benefit from whatever source derived, except as excluded in (3) of this rule, and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, periodic distributions from retirement plans, draws or advances against earnings, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, earned income credit and all other government payments and benefits. A history of capital gains in excess of capital losses shall also be considered as income for child support.

(b) gross receipts minus reasonable ordinary and necessary expenses required for the production of income for those parents who receive income or benefits as the result of an ownership interest in a business or who are self-employed. Straight line depreciation for vehicles, machinery and other tangible assets may be deducted if the asset is required for the production of income. The party requesting such depreciation shall provide sufficient information to calculate the value and expected life of the asset. Internal revenue service rules apply to determine expected life of assets. Business expenses do not include deductions relating to personal expenses, or expenses not required for the production of income.

(c) the value of non-cash benefits such as in-kind compensation, personal use of vehicle, housing, payment of personal expenses, food, utilities, etc.

(d) grants, scholarships, third party contributions and earned income received by parents engaged in a plan of economic self-improvement, including students. Financial subsidies or other payments intended to subsidize the parent's living expenses and not required to be repaid at some later date must be included in income for child support.

(e) allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce receipts or other acceptable documentation. Reimbursements of actual employment expenses may not be considered income for purposes of these rules.

(3) Income for child support does not include benefits received from means-tested veteran's benefits and means-tested public assistance programs including but not limited to the former aid to families with dependent children (AFDC), cash assistance programs funded under the federal temporary assistance to needy families (TANF) block grant, supplemental security income (SSI), food stamps, general assistance and child support payments received from other sources.

(4) For lump sum social security payments, social security benefits received by a child of the calculation as the result of a parent's disability, refer to ARM 37.62.144.

(5) In determination of a parent's income for child support, income attributable to subsequent spouses, domestic associates and other persons who are part of the parent's household is not considered. If a person with a subsequent family has income from overtime or a second job, that income is presumed to be for the use of the subsequent family, and is not included in income for child support for the purposes of determining support for a prior family.

(6) "Imputed income" means income not actually earned by a parent, but which will be attributed to the parent based on:

- (a) the parent's earning potential if employed full-time;
- (b) the parent's recent work history;
- (c) occupational and professional qualifications;
- (d) prevailing job opportunities in the community and earning levels in the community.

(7) Income should be imputed whenever a parent:

- (a) is unemployed;
- (b) is underemployed;
- (c) fails to produce sufficient proof of income;
- (d) has an unknown employment status; or
- (e) is a full-time student whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is being determined, unless actual income is greater. If income to a student parent is imputed it should be determined at the parent's earning capacity based on a 40 hour work week for 13 weeks and a 20 hour work week for the remaining 39 weeks of a 12 month period. (This is an annual average of 25 hours per week.)

(8) When income is imputed to a parent, federal earned income credit (EIC) should not be added to income and child care expense should not be deducted from income when the effects are offsetting.

(9) Income should not be imputed if any of the following conditions exist:

- (9) Income should not be imputed if any of the following conditions exist:

- (a) the reasonable costs of child care for dependents in the parent's household would offset in whole or in substantial part, that parent's imputed income;
 - (b) a parent is physically or mentally disabled to the extent that the parent cannot earn income;
 - (c) unusual emotional and/or physical needs of a legal dependent require the parent's presence in the home.
 - (d) the parent has made diligent efforts to find and accept suitable work or to return to customary self-employment, to no avail; or
 - (e) the court or hearing officer makes a finding that other circumstances exist which make the imputation of income inequitable. However, the amount of imputed income shall be decreased only to the extent required to remove such inequity.
- (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 07 reserved

37.62.108 INCOME VERIFICATION/DETERMINING ANNUAL INCOME

- (1) A parent must swear to the accuracy and authenticity of all financial information submitted for the purpose of calculating child support.
- (2) Income of the parents must be documented. This may include pay stubs, employer statements, income tax returns, profit and loss statements.
- (3) To the extent possible, income for child support and expenses should be annualized to avoid the possibility of skewed application of the guidelines based on temporary or seasonal conditions. Income and expenses may be annualized using one of the two following methods:
 - (a) seasonal employment or fluctuating income may be averaged over a period sufficient to accurately reflect the parent's earning ability; or
 - (b) current income or expenses may be projected when a recent increase or decrease in income is expected to continue for the foreseeable future. For example, when a student graduates and obtains permanent employment, income should be projected at the new wage.
- (4) Income for child support may differ from a determination of income for tax purposes. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 09 reserved

37.62.110 ALLOWABLE DEDUCTIONS FROM INCOME

(1) Allowable deductions from income include:

(a) the amount of alimony or spousal maintenance which a parent is required to pay under a court or administrative order.

(b) an amount for the needs of all "other" children as defined in ARM 37.62.103(9), determined as follows:

(i) When establishing a child support obligation, deduct:

(A) the total of any pre-existing support orders for the other children; and

(B) an amount equal to one-half of the primary child support allowance as found in ARM 37.62.121 for the number of other children for whom no support order exists. These include children who reside with the parent as well as children who do not.

(ii) When modifying a current child support order, deduct the amount determined under ARM 37.62.146.

(c) the amount of any health insurance premium which either parent is required to pay under a court or administrative order for a child not of this calculation;

(d) the actual income tax liability based on tax returns. If no other information is available, use the tax tables which show the amount of withholding for a single person with one exemption;

(e) the actual social security (FICA plus medicare) paid;

(f) actual unreimbursed expenses incurred as a condition of employment such as uniforms, tools, safety equipment, union dues, license fees, business use of personal vehicle and other occupational and business expenses;

(g) actual mandatory contributions toward internal revenue service (IRS) approved retirement and deferred compensation plans. Mandatory contributions are fully deductible;

(h) one-half reasonable expenses for items such as child care or in-home nursing care for the parent's legal dependents other than those for whom support is being determined, which are actually incurred and which are necessary to allow the parent to work, less federal tax credits. Do not deduct imputed child care expenses when imputing income;

(i) extraordinary medical expenses incurred by a parent to maintain that parent's health or earning capacity which are not reimbursed by insurance, employer, or other entity; and

(j) court ordered payments except as excluded under ARM 37.62.111.

(k) cost of tuition, books and mandatory student fees for a parent who is a full-time student as anticipated under ARM 37.62.106(7)(e).

(2) Allowable deductions from income for child support differ from allowable deductions for tax purposes. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2598, Eff. 11/1/98.)

37.62.111 NON-ALLOWABLE DEDUCTIONS FROM INCOME

(1) Deductions which are not allowable under these rules include:

- (a) payroll deductions for the convenience of the parent, such as credit union payments and savings;
- (b) a net loss in the operation of a business or farm used to offset other income;
- (c) investment losses outside the normal course of business;
- (d) expenses incurred for the support of a spouse capable of self-support;
- (e) payments for satisfaction of judgments against a parent related to the purchase of property for the parent's personal use;
- (f) bankruptcy payments except to the extent that they represent debts for expenses which would otherwise be deductible; or
- (g) a stepchild and associated costs. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rules 12 and 13 reserved

37.62.114 PERSONAL ALLOWANCE (1) Personal allowance is an amount which reflects 1.3 multiplied by the federal poverty index guideline for a one person household. This amount is deducted when determining child support. Personal allowance is a contribution toward, but is not intended to meet the subsistence needs of parents.

(2) Adjustments for the needs of other legal dependents of a parent are limited to those provided for in ARM 37.62.110. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 15 reserved

37.62.116 INCOME AVAILABLE FOR CHILD SUPPORT (1) Income available for support is determined by subtracting from each parent's income, the deductions allowed under ARM 37.62.110 and the amount of personal allowance determined under ARM 37.62.114. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 17 reserved

37.62.118 TOTAL INCOME AVAILABLE/PARENTAL SHARE (1) The parents' incomes available for child support are combined to determine the total income available for child support. Each income is divided by the total. The resulting factor determines each parent's share of the primary child support allowance under ARM 37.62.121 and supplements under ARM 37.62.123.

(2) For any parent whose support obligation is determined according to the provisions of ARM 37.62.126(1)(a) and (1)(b), the amount of the minimum contribution is substituted for that parent's total income available for child support for the purpose of determining each parent's share of the primary child support allowance and supplements. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rules 19 and 20 reserved

37.62.121 PRIMARY CHILD SUPPORT ALLOWANCE (1) Primary child support allowance is a standard amount to be applied toward a child's food, shelter, clothing and related needs and is not intended to meet the needs of a particular child. This allowance is .30 multiplied by the personal allowance found at ARM 37.62.114 for the first child. For the second and third children, the personal allowance is multiplied by .20 and added for each child. For four or more children, the personal allowance is multiplied by .10 and added for each additional child. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 22 reserved

37.62.123 SUPPLEMENTS TO PRIMARY CHILD SUPPORT ALLOWANCE

(1) The primary child support allowance is supplemented by:

(a) reasonable child care costs incurred by a parent for children of the calculation as a prerequisite to employment. The child care expense is reduced by the federal dependent care tax credit;

(b) costs required for health insurance coverage for the children of the calculation. Include only those amounts which reflect the actual costs of covering the children; and

(c) other needs of the child as determined by the circumstances of the case, including other health related costs.

(2) The total supplemental needs of the child are divided proportionately between the parents according to the parental share determined under ARM 37.62.118.

(3) Each parent will receive credit for the amount of the supplemental needs paid by that parent. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rules 24 and 25 reserved

37.62.126 MINIMUM SUPPORT OBLIGATION (1) A specific minimum contribution toward child support should be ordered in all cases when the parent's income is insufficient to meet the parent's personal allowance or the parent's child support obligation is less than 12% of that parent's income after deductions.

(a) For parents whose income as defined in ARM 37.62.106 after deductions, as defined in ARM 37.62.110 is insufficient to meet the parent's personal allowance, the minimum contribution is a portion of the income after deductions and is determined by applying the table in (3) as follows:

(i) divide the income after deductions by the personal allowance as defined in ARM 37.62.114 to determine the income ratio;

(ii) find the income ratio in Column A;

(iii) locate the corresponding minimum contribution multiplier in Column B; and

(iv) multiply the income after deductions by the minimum contribution multiplier. The result is the parent's minimum contribution.

(b) For parents whose income after deductions exceeds the personal allowance, the parent's minimum contribution is the greater of:

(i) the difference between income after deductions and the parent's personal allowance; or

(ii) 12% of income after deductions.

(2) The minimum contributions under this rule are presumptive and may be rebutted by the circumstances of a particular case, provided there is an appropriate finding on the record.

(3) The table for determining the minimum support obligation of a parent whose income after deductions is insufficient to meet the parent's personal allowance is as follows:

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	<u>Column A</u> <u>"Income Ratio"</u>	<u>Column B</u> <u>"Minimum Contribution</u> <u>Multiplier"</u>
over	.00 to .25	.00
	.25 to .31	.01
	.31 to .37	.02
	.37 to .43	.03
	.43 to .50	.04
	.50 to .56	.05
	.56 to .62	.06
	.62 to .68	.07
	.68 to .75	.08
	.75 to .81	.09
	.81 to .87	.10
	.87 to .93	.11
	.93 to 1.00	.12

(History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 27 reserved

37.62.128 INCOME AVAILABLE FOR STANDARD OF LIVING ADJUSTMENT (SOLA) (1) The purpose of SOLA is to ensure that the child enjoys, to the extent possible, the standard of living commensurate with the parent's income. If a parent has income available after deducting the personal allowance and the parent's share of the child support allowance as supplemented, the remaining income is subject to SOLA.

(2) SOLA is calculated by subtracting from the parent's income available for support, as provided in ARM 37.62.116 the parent's share of the primary child support allowance under ARM 37.62.121 and supplements as provided in ARM 37.62.123.

(3) If income is available for SOLA, multiply the income by the SOLA factor from the following table which corresponds to the number of children for whom support is being determined.

<u>Number of Children</u>	<u>SOLA Factor</u>
1	.14
2	.21
3	.27
4	.31
5	.35
6	.39
7	.43
8 or more	.47

(4) Income available for SOLA may not be less than zero. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 29 reserved

37.62.130 LONG DISTANCE PARENTING ADJUSTMENT (1) Long distance parenting is any travel by a parent or child to attain the goals of the parenting plan. A long distance parenting adjustment is allowed when travel by a parent or child exceeds 2,000 miles in a calendar year.

(2) The amount of income available for SOLA is reduced to the extent the actual annual expense of transportation for long distance parenting exceeds 2,000 miles multiplied by the current IRS business mileage rate (standard expense). The reduction is determined separately for each parent.

(3) The reduction is calculated as follows:

(a) multiply the parent's annual mileage driven to exercise long-distance parenting by the current IRS business mileage rate;

(b) add the annual cost of transportation by means other than automobile;

(c) subtract the standard expense from the total of (3) (a) and (b) above; and

(d) subtract any difference greater than zero from the parent's income available for SOLA.

(4) Expenses are limited to costs of transportation and do not include meals, lodging, or other costs.

(5) A long distance parenting adjustment may not reduce income available for SOLA below zero. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rules 31 through 33 reserved

37.62.134 TOTAL MONTHLY SUPPORT AMOUNT (1) The total monthly support amount consists of:

(a) the primary child support allowance, with supplemental needs, if any, plus the standard of living adjustment; or

(b) the minimum support obligation determined under ARM 37.62.126.

(2) In setting the amount of order per child, the total monthly support should be divided equally among the children, except when it is allocated according to supplemental needs as provided in ARM 37.62.138. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 35 reserved

37.62.136 TRANSFER PAYMENT (1) Applying ARM 37.62.101 through 37.62.134 results in a child support obligation for each parent. If all the children of the calculation spend 110 days or less with a parent, all of that parent's obligation is due and payable to the other parent. This is the transfer payment, which may be adjusted in accordance with ARM 37.62.138. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 37 reserved

37.62.138 PAYMENT OF MONTHLY SUPPORT AMOUNT IN COMBINATION PARENTING ARRANGEMENTS (1) If any child of a calculation spends more than 110 days with both parents, there will be an adjustment to the portion of the obligation due and payable from one parent to the other.

(2) The adjusted transfer payment is determined as follows:

(a) recalculate the needs of each child separately;

(b) allocate each parent's obligation to each child based upon that child's proportionate need;

(c) adjust the obligation of each parent proportionately for each child who spends between 110 and 183 days with both parents;

(d) total each parent's obligation for all children; and (e) offset the transfer payments. The parent owing the higher transfer payment pays the difference between the two transfer payments to the other parent.

(3) For the purposes of this rule, a day is when a child spends the majority of a 24 hour calendar day with or under the control of a parent. This assumes that there is a correlation between time spent and resources expended for the care of the child. Reference can be made to the residential schedule in the parenting plan ordered under 40-4-234, MCA. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 39 reserved

37.62.140 ANTICIPATED CHANGES (1) When child support is determined, if any material change is anticipated within 18 months, separate child support calculations should be completed.

(2) In the initial calculation, present circumstances should be included. In the subsequent calculation(s), appropriate anticipated changes should be calculated. The child support order should provide that the amount(s) from the subsequent calculations will take effect the month following the anticipated changes. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 41 reserved

37.62.142 SUPPORT PAYABLE IN DOLLARS (1) The child support order is to be paid in U.S. dollars.

(2) Gifts, clothing, food, payment of expenses, etc., in lieu of dollars will not be allowed as a credit for payment of a child support obligation except by court or administrative order.

(3) Direct payments to the child, the parent or a third party will not be allowed as credit for payment of a child support obligation payable through the clerk of court, the child support enforcement division or other entity specified in the court or administrative order. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 43 reserved

37.62.144 SOCIAL SECURITY BENEFITS (1) Social security benefits which are based on the earning record of either parent shall be considered in establishing new support orders or modification of existing orders under the following conditions:

(a) benefits received by the parent on behalf of the minor child are not to be included in that parent's gross income;

(b) the parent's obligation is satisfied if the amount of the child's benefit received for a given month as a result of that parent's earning record is equal to or greater than the parent's child support obligation. Any benefit received by the child for a given month in excess of the child support obligation is not treated as an arrearage payment or as future support;

(c) the parent must pay the difference if the amount of the child's benefit for a given month is less than the parent's child support obligation. This amount is presumed to be paid if the child resides with that parent a majority of the time; and

(d) whenever either parent receives for the benefit of the child, a lump sum payment which represents an accumulation of monthly benefits:

(i) the lump sum payment should not be treated as income of the parent; and

(ii) the lump sum should be credited to that parent's child support obligation for each month a payment accumulated for the child's benefit. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 45 reserved

37.62.146 MODIFICATIONS OF CHILD SUPPORT ORDERS

(1) Subsequent child is a parent's natural or adopted child, not the subject of the order being modified who:

(a) is not the subject of a support order and was born after entry of the support order being modified; or

(b) is the subject of another support order entered after entry of the support order being modified.

(2) Any other child must be considered in accordance with ARM 37.62.110(1)(b).

(3) In a proceeding to modify an existing order, the support obligation of each parent is calculated considering all children, prior and subsequent, of each parent. Then the support obligation of each parent is calculated considering no subsequent children of either parent.

(a) If both calculations result in a decrease in the transfer payment due and payable from the obligated parent, the lesser of the decreases in the transfer payment is granted.

(b) If both calculations result in an increase in the transfer payment due and payable from the obligated parent, the lesser of the increases in the transfer payment is granted.

(c) If the first calculation results in a decrease and the second calculation results in an increase, or if the reverse is true, no modification is granted. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Rule 47 reserved

37.62.148 SUPPORT GUIDELINES TABLES/FORMS (1) The child support enforcement division (CSED) has developed a child support determination worksheet. Copies of this worksheet may be obtained from the Department of Public Health and Human Services, Child Support Enforcement Division, P.O. Box 202943, Helena, MT 59620 or any regional office.

(2) Included for use with the worksheet are a financial affidavit, necessary tables and information for completion of the guidelines calculation. To assure that these tables are current, the child support enforcement division will republish the worksheet with tables annually as soon as practical after release of information upon which tables are based. The worksheet with tables will be identified by the year of publication or republication.

(3) The child support guidelines worksheets, or a replica of those forms with a similar format and containing the same information, must be used in all child support determinations under the guidelines and a copy must be attached to the support order. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

Subchapter 2 reserved

Subchapter 3

General Provisions

37.62.301 APPLICABILITY OF RULES (1) The provisions of this chapter set forth the rules pertaining to administrative actions by the child support enforcement division (CSED) under Title IV-D of the Social Security Act, Title 40, chapter 5, MCA, and the applicable provisions of 17-4-105, MCA. Unless specifically provided, other department rules do not apply to CSED actions, notwithstanding any statements of general applicability contained in the rules. The provisions of this chapter do not apply to actions by the department under other chapters. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA;

IMP, Sec. 17-4-105, 40-5-201, 40-5-202, 40-5-203, 40-5-205, 40-5-206, 40-5-207, 40-5-208, 40-5-209, 40-5-210, 40-5-213, 40-5-214, 40-5-221, 40-5-222, 40-5-224, 40-5-225, 40-5-226, 40-5-227, 40-5-231, 40-5-232, 40-5-233, 40-5-234, 40-5-235, 40-5-236, 40-5-237, 40-5-238, 40-5-242, 40-5-243, 40-5-244, 40-5-247, 40-5-248, 40-5-251, 40-5-252, 40-5-253, 40-5-254, 40-5-255, 40-5-256, 40-5-257, 40-5-261, 40-5-262, 40-5-263, 40-5-264, 40-5-271, 40-5-272, 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, 40-5-443, 40-5-701, 40-5-702, 40-5-703, 40-5-704, 40-5-709, 40-5-710, 40-5-711, 40-5-712, 40-5-713, 40-5-801, 40-5-802, 40-5-803, 40-5-804, 40-5-805, 40-5-806, 40-5-807, 40-5-808, 40-5-809, 40-5-810, 40-5-811, 40-5-812, 40-5-813, 40-5-814, 40-5-815, 40-5-816, 40-5-817, 40-5-818, 40-5-819, 40-5-820, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-825, 40-5-901, 40-5-906, 40-5-907, 40-5-908, 40-5-909, 40-5-910, 40-5-911, 40-5-921, 40-5-922, 40-5-923 and 40-5-924, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 02 reserved

37.62.303 DEFINITIONS For the purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) Insofar as they are not inconsistent with, or clarified by, the more specific definitions set forth in this chapter, the definitions set forth in 40-5-201, 40-5-403, 40-5-701, 40-5-801 and 40-5-901, MCA are adopted and incorporated herein by reference. Copies of 40-5-201, 40-5-403, 40-5-701, 40-5-801 and 40-5-901, MCA may be obtained from the Department of Public Health and Human Services, Child Support Enforcement Division, P.O. Box 202943, Helena, MT 59620-2943.

(2) "ALJ" means a CSED administrative law judge whose duties are defined in ARM 37.62.901.

(3) "Caseworker" means an employee of the CSED who is authorized to initiate and participate in a contested case as provided in these rules and by CSED policy and procedures.

(4) "Child support guidelines" means the administrative rules used to determine child support obligations as provided in ARM Title 37, chapter 62, subchapter 1.

(5) "Contested case" means a proceeding subsequent to service of a contested case notice under the Montana Administrative Procedure Act, the Uniform Interstate Family Support Act and the applicable provisions of Title 40, chapter 5, MCA and 17-4-105, MCA in which a determination of legal rights, duties and responsibilities is to be made after opportunity for hearing. This definition is not intended to include investigations made to determine if formal "contested case" proceedings should be instituted nor does it include proceedings related to the enforcement of support orders unless a statute provides for a hearing before the enforcement action may be taken.

(6) "Contested case notice" means a notice that initiates a contested case under the applicable sections of Title 40, chapter 5, MCA and 17-4-105, MCA and the Montana Administrative Procedure Act. Until a contested case notice is served on a party, there is no contested case and no corresponding right to an administrative hearing. Contested case notice does not apply to procedural notices such as a notice of hearing.

(7) "CSED" means the child support enforcement division, an agency within the department of public health and human services charged with the responsibility of providing support enforcement services under Title IV-D of the Social Security Act.

(8) "Guidelines" means the child support guidelines defined at (4) of this rule.

(9) "OALJ" means the CSED's office of the administrative law judge as described in ARM 37.62.901.

(10) "Party" is defined in ARM 37.62.913.

(11) "Presiding ALJ" means the ALJ assigned to a contested case when a party requests a hearing. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-201, 40-5-202, 40-5-203, 40-5-205, 40-5-206, 40-5-207, 40-5-208, 40-5-209, 40-5-210, 40-5-213, 40-5-214, 40-5-221, 40-5-222, 40-5-224, 40-5-225, 40-5-226, 40-5-227, 40-5-231, 40-5-232, 40-5-233, 40-5-234, 40-5-235, 40-5-236, 40-5-237, 40-5-238, 40-5-242, 40-5-243, 40-5-244, 40-5-247, 40-5-248, 40-5-251, 40-5-252, 40-5-253, 40-5-254, 40-5-255, 40-5-256, 40-5-257, 40-5-261, 40-5-262, 40-5-263, 40-5-264, 40-5-271, 40-5-272, 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, 40-5-443, 40-5-701, 40-5-702, 40-5-703, 40-5-704, 40-5-709, 40-5-710, 40-5-711, 40-5-712, 40-5-713, 40-5-801, 40-5-802, 40-5-803, 40-5-804, 40-5-805, 40-5-806, 40-5-807, 40-5-808, 40-5-809, 40-5-810, 40-5-811, 40-5-812, 40-5-813, 40-5-814, 40-5-815, 40-5-816, 40-5-817, 40-5-818, 40-5-819, 40-5-820, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-825, 40-5-901, 40-5-906, 40-5-907, 40-5-908, 40-5-909, 40-5-910, 40-5-911, 40-5-921, 40-5-922, 40-5-923 and 40-5-924, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 04 reserved

37.62.305 TELEPHONE COMMUNICATIONS (1) Due to the need for maintaining confidentiality of records, it is essential that the CSED confirm the identity of persons to whom information is provided. Because a telephone caller's identity cannot be verified, no telephone inquiries concerning confidential information will be accepted by the CSED. (History: Sec. 40-5-202, MCA; IMP, Sec. 40-5-203, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 06 reserved

37.62.307 DISTRIBUTION OF COLLECTIONS (1) Except as provided in (2) and (6), collections of support from all sources including but not limited to the proceeds from writs of execution, support liens, state tax offsets, and lump sum settlements will be distributed, to the extent the collection is sufficient, in the following sequence:

(a) to pay the current support obligation for the month in which the collection is made if current support has not previously been paid for that month to the obligee. However, if the obligee is a recipient of public assistance including Title IV-E foster care services, collections of current support shall be retained by the CSED for subsequent allocation according to applicable state and federal statutes and regulations;

(b) to satisfy any arrears owed to the obligee, except when the obligee is a recipient of public assistance, including IV-E foster care services. When the obligee is a public assistance recipient, or if no arrears are owed to the obligee, collections in excess of current support shall first be applied to arrears owed to the state of Montana under 40-5-202, 50-5-221 and 53-2-613, MCA, before any funds are distributed to the obligee.

(c) to satisfy fees awarded under 40-5-210, MCA which are owed by the obligor; and

(d) to satisfy fines awarded under 40-5-208 or 40-5-226, MCA which are owed by the obligor.

(2) When the CSED is collecting support arrears only, amounts shall be distributed to open CSED cases according to (1)(b) through (1)(d).

(3) After a distribution of support collections to the obligee is determined appropriate but before actual distribution is made, the CSED may intercept a portion of the collections, as authorized by ARM 37.62.501, to be applied towards recoupment of over-payments previously made to the obligee.

(4) When the CSED is providing services to two or more obligees of the same obligor:

(a) a distribution of current support under (1)(a) which is less than the amount of current support due to all the obligees shall be prorated among the obligees based on the amount of current support due to each obligee;

(b) a collection of support arrears owed under (1)(b) shall be distributed equally among the obligor's cases, provided however, that the amount distributed shall not exceed the arrears owed; and

(c) until current support and arrears owed by an obligor under a support order are satisfied, there shall be no distribution made to an obligee in a case where there is no support order.

(5) Notwithstanding the provisions of (4) above:

(a) if a particular support collection is made through an order to withhold income, any amount distributed from that collection must be distributed only to the obligor's cases that currently have an order to withhold income in place;

(b) a support payment by personal check, money order or like form of payment which is made payable only to a particular obligee, will be distributed only to that obligee's case;

(c) a support collection resulting from a writ of execution or similar case-specific remedy must be distributed to the specific obligee's case;

(d) a support payment received by an obligee directly from the obligor and turned over to the CSED for distribution under this section will not be distributed to any other obligee's case; and

(e) support collections made through a clerk of court or other public or private child support enforcement authority, who forwards the collection to the CSED, shall be distributed only to the obligor's case designated by the clerk of court or other authority. If the forwarded collection fails to include a designated specific case, the distribution provisions of (4) will apply.

(6) Support collections resulting from federal tax offsets will be distributed only to those arrears certified to the tax authorities as past due. These collections shall be distributed, to the extent they are sufficient, first to satisfy any arrears owing to the state of Montana under 40-5-202, 40-5-221 and 53-2-613, MCA. If there is no past due support owed to the state of Montana, or if the collection exceeds the amount owed to the state of Montana, the collection shall be distributed to arrears owed to the obligee. If arrears are owed in more than one case, the collection shall be distributed equally among the obligor's cases, provided that the amount distributed shall not exceed the arrears owed.

(7) Except as provided in (9) below, the CSED shall not distribute collections or any part of collections towards future support, even though the obligor may so direct, until all appropriate distributions under (1) and, if appropriate, (4) are made first.

(8) In the absence of a support order, voluntary payments of support made by an obligor shall be distributed as follows:

(a) Whenever there is a written or oral agreement and the agreement specifies a support amount and the frequency of payment, payments shall be distributed as provided in (1); or

(b) If there is no agreement, the total amount received in a given month will be counted as that month's current support obligation.

(9) For purposes of determining distribution under this rule, the effective date of a support collection shall be known as the date of collection.

(a) For collections made under an order to withhold income, the date of collection is the day the CSED receives the payment. However, if the support is withheld by the payor in a month when the payment is due, but the payment is received by the CSED in a month other than the month when due, the date of withholding is the date specifically reported by the payor in documentation accompanying the payment;

(b) Except as provided in (9)(c), when a collection is received in the mail directly from the obligor, the date of collection is the date that the CSED receives the payment;

(c) If a collection is received in the form of a post-dated check, the date of collection shall be the date of the check;

(d) In all other cases, the date of collection shall be the day the CSED receives the collection;

(10) Under this rule, collections characteristic of past due support may be distributed the same as collections identified as current support. However, for purposes other than distribution, these collections will be accounted for as past due support.

(11) For the purposes of determining statutes of limitations, arrears, interest on arrears, collection remedies and similar uses, all support collections, without regard to date of distribution, will be applied to satisfy the oldest unpaid installment of support due under the support order. (History: Sec. 40-5-202, MCA; IMP, Sec. 17-4-105 and 40-5-202, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; AMD, 1996 MAR p. 1714, Eff. 6/21/96; AMD, 1998 MAR p. 2496, Eff. 10/1/98; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 08 reserved

37.62.309 INDEPENDENT SUPPORT ENFORCEMENT CONTRACTOR

(1) The CSED as provided in 40-5-264, MCA, is authorized to enter into cooperative agreements with any person, firm, corporation, association, political subdivision or other department of the state for the purpose of carrying out its duties under state law and Title IV-D of the Social Security Act. Under such agreements the CSED may designate independent support enforcement contractors whose powers and duties are defined by the terms of the contract.

(2) An independent support enforcement contractor shall be accountable publicly and to the CSED, and shall comply with the terms and conditions of the contract, as well as with all applicable federal and state laws, regulations and rules, including policies and procedures of the CSED for processing casework.

(3) The jurisdiction and authority of an independent support enforcement contractor shall be limited to the terms of the contract and in no event may such jurisdiction and authority exceed that of the CSED unless otherwise provided by law.

(4) In any action taken by an independent support enforcement contractor under the contract, the independent support enforcement contractor will inform all parties, their counsel or other representative, and the court or administrative hearing officer that such action is being undertaken as an independent support enforcement contractor. On all documents and forms bearing the name of the CSED the independent support enforcement contractor shall include a statement in bold type of the status of independent support enforcement contractor as an independent contractor. (History: Sec. 40-5-202, MCA; IMP, Sec. 40-5-264, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Subchapter 4 reserved

Subchapter 5

Non-Public Assistance Services

37.62.501 TERMS AND CONDITIONS (1) Under 40-5-203, MCA, the CSED will provide services to any obligee or obligor who files an application for services with the CSED. If public assistance was previously paid to an obligee, the CSED will continue to provide services to the obligee without need for an application. However, if the obligee refused or terminated continued services following the last payment of public assistance, the obligee must file an application. An application for services or an obligee's acceptance of continued services after termination of public assistance shall constitute the applicant's or obligee's agreement to the following terms and conditions.

(2) For the purposes of this rule, "customer" means any person or entity who applies for CSED services or who is receiving CSED services.

(3) To receive and to continue to receive CSED services under 40-5-205, MCA, a customer must:

(a) pay any application fee and any other fee which may be charged under 40-5-210, MCA;

(b) provide original certified copies of all child support orders, modifications of child support orders, whether issued by a Montana court or agency or by an out-of-state court or agency;

(c) provide certified copies of all payment records if support was ordered to be paid through the clerk of court, central registry or other public entity. If support was ordered to be paid directly to the obligee, provide any records, receipts or other materials which document payments made or received;

(d) upon request of the CSED, promptly provide any information, documents, statements, exhibits and other materials which the CSED, in its judgment, may determine relevant to the case or which the CSED finds is a necessary predicate to taking any action in the case. The customer must promptly advise the CSED of any later changes or additions to the information and materials previously provided to the CSED;

(e) promptly advise the CSED in writing of any change of address or status, or any new information about the customer or other parties in the case, including changes in physical custody of the child, or of any adoption proceedings;

(f) cooperate with the CSED by appearing at the time and place requested for interviews, hearings, depositions, blood draws, and other called for appearances where the presence of the customer is necessary for preparing testimony and evidence, providing information, testifying as witness and similar case pertinent activities;

(g) to ensure accurate payment records, if the obligee is the customer, the customer must promptly turn over to the CSED all child support payments received from the obligor. If the obligor is the customer, the customer must pay child support through the CSED for subsequent distribution to the obligee;

(h) let the CSED know immediately if the customer or any other party initiates any action, whether judicial, administrative or private, which competes with, is an alternative to, is inconsistent with, or which may in any way affect the action the CSED is taking in the case;

(i) except for the information available through the CSED's voice response unit (VRU) or the CSED's customer services unit, submit all requests for specific case information in writing to the CSED. In making any request for information, the customer must provide sufficient information to identify the customer as the person or entity entitled to receive the information.

(4) The CSED may collect any fees incurred and owing by a customer under 40-5-210, MCA, by offsetting the fees against any funds which may be distributable to the customer. However, if the amount being distributed is a current support payment, the offset will not exceed 10% of the payment.

(5) In some instances when the customer is the obligee, the customer may receive money to which the customer is not entitled. The CSED may make a written demand for repayment of the money from the customer. The customer's silence or failure to respond to the written repayment demand within 10 days of the demand shall be considered the customer's consent to recoupment of the money from any child support collection made on the customer's behalf. Recoupment shall be made by offsetting 10% of any current child support collection and by offsetting any additional child support collection made in excess of the current support obligation. If a customer contests the repayment demand, the CSED may file an action in the district court to establish and collect the amount.

(6) Because support orders are often expressed in terms other than in monthly payments and because they often provide for varying and inconsistent payment due dates, to simplify monitoring of payments and payment accounting, the CSED may elect to annualize the obligations. When the obligation is annualized, the total support payments due for a 1 year period are divided into 12 equal monthly installments.

(7) Except as provided in (9) of this rule, a customer cannot specify which of the CSED services that customer may want to receive. The CSED will determine which services are appropriate and the timing and duration of those services in accordance with Title IV-D of the Social Security Act, and the regulations promulgated thereunder.

(8) CSED staff attorneys assigned to a case represent the CSED and no attorney-client relationship exists between the customer and the CSED attorney. At any hearing or in any action undertaken by the CSED, the customer may appear and be represented by independent counsel of the customer's own choice.

(9) When there are multiple or concurrent procedures and remedies, whether judicial or administrative, criminal or civil, federal or state, which may be applicable to the customer's case, the CSED, at its sole discretion, will determine which procedure and remedy to apply, including the sequence and timing of concurrent or consecutive actions.

(a) In determining which procedure or remedy to apply to an individual case, the discretion of the CSED will be guided by the totality of circumstances including the time and effort required, the resources of the CSED, the interest of the public at large and the needs of the child.

(10) Unless the customer is an obligee whose child is receiving medicaid benefits or is covered by the medicaid program, the CSED shall, upon receipt of a written request from the customer, refrain from the establishment or enforcement of health insurance orders.

(11) The CSED may terminate services:

(a) upon the request of the customer unless the customer is an obligee and the child is receiving public assistance benefits;

(b) when the CSED is unable to locate the customer within a 30 calendar day period despite attempts to make contact by phone and at least one certified letter to the customer's last known address;

(c) when the customer fails to provide any information, documents or other materials requested under (2) of this rule and the CSED cannot take the next step in the case without the information, documents or materials;

(d) when the customer fails to cooperate with the CSED and the customer's cooperation is necessary to the action initiated by the CSED; and

(e) for any other reason consistent with Title IV-D of the Social Security Act and the federal regulations promulgated thereunder.

(12) The CSED will notify the customer in writing 60 calendar days prior to termination of services under (8)(b) through (e) of this rule, of the CSED's intent to terminate services. The CSED will not terminate services if the customer, within the notice period, reestablishes contact with the CSED, supplies the requested information, documents or materials or begins to cooperate with the CSED, whichever is appropriate. The CSED's decision to terminate services is final and not subject to protest except as may otherwise be provided by law.

(a) If CSED services are terminated and if there is a change in circumstances which would permit the CSED to reactivate prior terminated services or initiate new or additional services, the former customer can reinstate services by filing a subsequent application with the CSED.

(13) The CSED does not guarantee or warrant the results of services. (History: Sec. 40-5-202, MCA; IMP, Sec. 40-5-203, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; AMD, 1996 MAR p. 1714, Eff. 6/21/96; TRANS, from SRS, 2000 MAR p. 3551.)

Subchapter 6 reserved

Subchapter 7

Fee Schedule

Rules 01 through 04 reserved

37.62.705 FEE SCHEDULE (1) As authorized by 40-5-210, MCA, the CSED adopts the following schedule:

(a) for each person, including the child, submitted or resubmitted for paternity blood testing, a standardized fee of \$81.00;

(b) for mileage, each way and for each mile, when using a personal or state owned automobile to travel for in-person appearances at judicial or administrative hearings or trials as witness, hearing officer, CSED attorney or other CSED representative, a mileage allowance at a rate equal to the mileage allotment allowed by the United States internal revenue service for the preceding year;

(c) for meals and lodging associated with travel for inperson appearances at judicial or administrative hearings or trials as witness, hearing officer, CSED attorney or other case prosecutor, a meal and lodging allowance as provided in 2-18-501, MCA;

(d) for time, effort and expenses in responding to petitions for judicial review including making typed transcriptions of hearing record and preparing briefs, a standardized fee of \$250.00;

(e) for deposing or taking the deposition, including stenographic recording, and the taking of audio visual depositions, of a witness who resides more than 100 miles from the place of administrative hearing or who is unable to personally attend an administrative hearing because of age, illness, infirmity or imprisonment, a fee equal to actual cost incurred;

(f) for subpoena of a witness to personally appear at an administrative hearing, a fee equal to the actual amount paid to the witness as provided in 2-4-104, MCA, and recoverable under 25-10-201, MCA;

(g) for each hour in taking a responsive or corrective action in an existing judicial proceeding or in commencing an independent judicial action to set aside, declare void or vacate any order, decree or judgment in which the CSED is not a party or is not joined as a party to the action as provided by the rules of civil procedure and which purports to affect, expressly or implicitly, any right or interest of the CSED, a standardized fee of \$75.00 for each CSED attorney and a standardized fee of \$50.00 for each CSED investigator; and

(h) for other actual costs and actual expenses incurred by the CSED.

(i) for each payment of support distributed to an obligee, whether by warrant, electronic funds transfer, direct deposit in a financial institution or by any other means a fee may be assessed. For each distribution, the fee shall be no greater than \$7.00, or 10% of the distribution, whichever is less. This fee may be assessed against the individual or entity receiving CSED services. If the obligee or another state is receiving CSED services, the fee may be deducted from the support collection, before distribution. The total fee incurred against an individual or entity for payment distribution alone shall not exceed \$364.00 per year, per case. The payment distribution fee may be assessed over and above any other fee permitted by this rule. However, the payment distribution fee only applies to distributions made in cases being enforced by the CSED under Title IV-D of the Federal Social Security Act.

(j) a fee for each application for non-assistance related services. This fee shall be collected from the applicant at the time of application in the form of a cashier's check or money order. If the appropriate fee is not included with the application, the CSED will not open or reopen the case until such fee is paid. The fee shall be \$25.00 for an individual whose annual household income is at least \$20,000. The fee shall be \$15.00 for an individual whose annual household income is at least \$10,000, but less than \$20,000. The fee shall be \$5.00 for an individual whose annual household income is less than \$10,000. If the applicant misrepresents or errs in reporting annual household income, the CSED may assess an additional application fee against the applicant at any time. The additional fee shall be the difference between the amount which was paid at the time of application, and the amount that would have paid for the application if there had been no misrepresentation or error of annual household income.

(2) The fees in (1)(a) shall be assessed to the parent, whether the alleged father or the mother, whose denial of paternity necessitates the taking of paternity blood tests.

(3) Whenever the CSED is the prevailing party in an action or whenever the CSED is not a party to an action but incurs expenses and costs related to an action maintained by any other party, the fees in (1)(b) through (h) shall be assessed to the party whose act, failure to act, negligence or omission caused the CSED to incur the costs and expenses which are the basis for these fees.

(4) In addition to the fees charged in (1), the CSED will charge fees to review and modify child support orders as follows:

(a) for a determination that a review is not appropriate or modification consent order entered prior to a review hearing, no fee; or

(b) for entry of a modification order resulting from a stipulated agreement obtained during review hearing, a fee of \$200.00 assessed to the party or parties requesting the review hearing; or

(c) if the parties are unable to agree following a review hearing and the matter is submitted for arbitration, for entry of a modification order based on the arbitrator's recommendation, a fee of \$550.00 assessed to the party or parties who failed to stipulate to a negotiated support order during the review hearing; or

(d) if the arbitrator's recommendation is disputed and a modification hearing is requested, for entry of a modification order subsequent to the modification hearing, a fee of \$750.00 to be assessed against the party or parties requesting the hearing; and

(e) if a fee under (4)(b) through (d) is assessed to more than one party, the fee shall be apportioned equally between those parties; and

(f) for each party who requests a review hearing, arbitration or modification hearing and then withdraws from the requested proceeding after the CSED has prepared documents necessary to initiate the proceeding, a handling fee of \$50.00.

(5) Under some circumstances, fees assessed to a party with low income under (4)(b) through (e) may be reduced. To determine if a reduction is appropriate, the CSED will refer to the child support determination worksheet (form CS-404A) prepared as part of the review and modification process. The CSED will then divide the figure shown on the worksheet for income available for children by the personal allowance. If the resultant number is greater or equal to 50%, no reduction of the fee is appropriate. If the resultant number is less than 50%, it shall be doubled and multiplied by the amount of the fee. The number determined by this process is the reduced fee amount to be assessed to the low income party.

(6) Other fees assessed to the party or entity requesting the service are:

(a) for parent locate services, a fee of \$10.00 if the social security number of the person to be located is provided to the CSED, and \$14.00 if the social security number of the person to be located is not provided;

(b) for each intercept of federal or state payments, a standardized fee of \$25.00 or actual costs if less than the standardized fee; federal or state payments include, but are not limited to, income tax refunds; and

(c) for photocopies of CSED files, records and other materials, for each page, a fee of \$.25.

(7) In no case may a fee authorized under this rule be charged to or collected from a person while that person is a recipient of public assistance in Montana unless federal regulations pertaining to operation of the IV-D program allow the charging or collection of that fee. Fees will not be charged to individuals receiving a FAIM financial assistance cash grant under the federal TANF (Temporary Assistance to Needy Families) Block Grant in Montana.

(8) In no case may a fee authorized under this rule be charged to or collected from a foreign reciprocating country, or an obligee residing in a foreign country.

(9) Any fee provided for under this rule may be assessed in addition to any other fee allowed by the rule which may be applicable to the case. (History: Sec. 40-5-202 and 40-5-210, MCA; IMP, Sec. 40-5-210, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; AMD, 1996 MAR p. 1714, Eff. 6/21/96; AMD, 1998 MAR p. 1777, Eff. 6/26/98; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 06 reserved

37.62.707 WAIVER OR DEFERENCE OF FEES (1) The CSED may not waive or defer any of the foregoing fees except to encourage expedient, informal dispositions. (History: Sec. 40-5-202 and 40-5-210, MCA; IMP, Sec. 40-5-210, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Subchapter 8 reserved

Subchapter 9

Hearing Procedures

37.62.901 ORGANIZATIONAL STRUCTURE (1) Within the CSED there is an independent hearings bureau. For the convenient classification and division of business, the hearings bureau is divided into two administrative units consisting of the administrative law judges (ALJs) and the office of the administrative law judge (OALJ).

(2) The ALJs are responsible for and preside over all hearings in CSED contested cases.

(a) In addition to the powers and duties set forth in 2-4-611(3), MCA an ALJ has the power and duty to carry out, undertake or perform any task or action expressly or implicitly required of an ALJ under these rules including the general authority to regulate the conduct and course of contested cases.

(3) The OALJ is responsible for providing administrative and clerical support to the ALJs:

(a) maintaining all contested case hearing records;

(b) calendaring contested cases for hearing;

(c) assigning cases to respective ALJs;

(d) setting hearing dates;

(e) tracking the progress of a case through the hearing process; and

(f) similar other activities. (History: Sec. 2-4-201, 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 02 reserved

37.62.903 ASSIGNMENT OF CASES TO ALJ, DISQUALIFICATION AND SUBSTITUTION (1) When a hearing is requested by a party to a contested case, the OALJ will allocate the case file to an ALJ. Except as provided in this rule, once a case is assigned to an ALJ, the case shall be the continuing responsibility of that ALJ until a final decision and order is entered and the time for judicial review has expired. If judicial review is filed, the ALJ will lose jurisdiction over the case and will regain jurisdiction only if the district court remands the case to the CSED for further proceedings.

(2) The duties of an ALJ are interchangeable among the judges during the absence or disability of the presiding ALJ. An ALJ making an order for the presiding ALJ will be presumed to have acted with the consent of the presiding ALJ.

(3) A presiding ALJ may transfer a case to another ALJ who will then become the presiding ALJ. Notice of the transfer shall be provided to all parties if the transfer is made subsequent to an assignment notice filed under (5). As an exception to (6)(a), the substitute ALJ shall give the parties reasonable time, determined according to the circumstances of the case, to submit a motion for disqualification.

(4) For the purposes of (6), when a contested case is assigned to a presiding ALJ for hearing, the OALJ will notify the parties of the assignment. This notice will be included as part of the order setting a hearing date.

(5) An ALJ may make an order or give notice of recusal or self-disqualification at any time.

(6) A party may submit a motion for disqualification of a presiding ALJ as provided by 2-4-611(4), MCA. The motion shall be heard and determined by an ALJ other than the one named in the motion.

(a) Motions for disqualification of a presiding ALJ must be filed with the OALJ within 10 calendar days of the effective date of service of the order setting the matter for hearing. If the ALJ fails to rule on the motion before the day set for the hearing, or if the motion is not timely filed, the motion shall be considered denied.

(b) Except as may be provided by 2-4-701, MCA determinations of motions for disqualification are not subject to judicial review but may be considered as part of a judicial review of the final decision and order in a contested case. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 04 reserved

37.62.905 UNIFORMITY, CONSISTENCY AND INDEPENDENCE

(1) To achieve and maintain uniformity and consistency in determining contested cases, contested case decisions shall be guided by:

- (a) applicable sections of the Montana Code Annotated;
- (b) case law decisions of the Montana supreme court;
- (c) the administrative rules, procedures and policies set out in this chapter;
- (d) precedent created by other ALJ final decisions and orders in contested cases where the facts are essentially the same; and

(e) to determine the nature, extent, amount or duration of a support order issued by a tribunal of another state, the statutory and case law of the issuing state and the federal Full Faith and Credit for Child Support Orders Act (28 USC 1738 B).

(2) When there is no statute, case law or administrative rule directly pertinent to a particular contested issue, or when the law is unsettled, and to the extent the following are of general applicability and do not conflict with the rules for ex parte communication, the ALJ's discretion shall be guided by:

- (a) written CSED policy directives; and
- (b) the CSED policy and procedures manual.

(3) Notwithstanding (2), each ALJ has independent authority to hear and decide contested cases. Under the unique circumstances of a particular case and upon a showing of facts or law sufficient to rebut application of a particular policy, an ALJ may depart from established CSED policy. Any departure shall be supported by reasoned explanation.

(4) An ALJ presiding over a contested case does not have general powers of equity similar to those of the district courts. Consequently, except in those specific circumstances allowing such equitable relief as is defined by statute or case law, an ALJ may not depart from applicable law and rule to grant equitable relief to a party even when such relief may appear proper under the circumstances.

(5) During the course of a hearing, if a particular policy applicable under (2) will affect a certain matter at issue and if that issue is disputed, the ALJ will give the parties an opportunity to show cause why the policy is not applicable under the circumstances of that case. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 06 reserved

37.62.907 EX PARTE COMMUNICATIONS (1) Except as provided in (3), or unless expressly authorized by any rule under this chapter, a presiding ALJ shall not initiate or participate in ex parte communications, directly or indirectly, with any party or with any person who has a direct or indirect interest in the outcome of the case.

(2) For the purpose of this rule, a prohibited ex parte communication is any oral or written information that could intentionally or unintentionally influence any issue in a pending case or that directly or indirectly furnishes, diminishes or modifies any evidence in the case without notice and opportunity for all parties to participate in the communication.

(3) A presiding ALJ may consult with and receive aid from OALJ staff or another ALJ concerning the merits of a contested case if those persons do not receive ex parte communications of a type that the presiding ALJ would be prohibited from receiving.

(4) A presiding ALJ may engage in communications concerning administrative or procedural matters when the communication is necessary under the circumstances and does not affect the substantive rights of a party.

(5) If the presiding ALJ receives an improper ex parte communication, any decision and order entered in that case must include the ALJ's reason for concluding that the communication did not prejudice the substantial rights of any party. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 08 reserved

37.62.909 CONTESTED CASE PROCEEDINGS, ANSWER OR RESPONSE AND REQUEST FOR HEARING (1) Contested cases are initiated by service of a notice as provided in the Montana Administrative Procedure Act, applicable sections of Title 40, chapter 5, MCA and 17-4-105, MCA. Absent service of such notice there is no contested case, no jurisdiction and no corresponding right to an administrative hearing.

(2) A person served with a contested case notice may request an administrative hearing as provided in (5). Except as provided in (3) and (4), no additional answer or responsive pleading to any contested case notice is required.

(3) When the contested case notice is to initiate income withholding proceedings under 40-5-412 and 40-5-414, MCA, any request for hearing must allege a mistake of fact. If a mistake of fact is not alleged, the request for hearing may be denied. Notwithstanding the omission of a mistake of fact, a person may be entitled to a hearing for the purpose of contesting the jurisdiction of the CSED to withhold the person's income.

(4) When requesting a hearing, the person must include with the request a brief statement of any affirmative defense the party may have to the contested case notice.

(5) To request a hearing, the person must:

(a) make the request in writing; and

(b) within the time permitted by statute or these rules for requesting the hearing, file the request with the OALJ as provided in ARM 37.62.911.

(6) In addition to the provisions of (4) through (5)(b), the written request must include the name, mailing address and telephone number at which the person requesting the hearing can be reached for service of subsequent documents and orders.

(7) The CSED will make hearing request forms consistent with this rule available for use by persons requesting a hearing. Except for a request for hearing that omits a mistake of fact required by (3), a timely request for hearing that is generally in compliance with this rule shall not be dismissed solely for failure to strictly satisfy the requirements of this rule.

(8) A request for hearing is not deemed made until a written request is actually received by the OALJ. The OALJ shall deny untimely requests for hearing.

(9) Informal contact with the CSED or OALJ, whether written or oral, will not constitute a hearing request, and will not extend the time in which a hearing must be requested.

(10) The CSED, as the party initiating a contested case proceeding, does not need to request a hearing. If no other party requests a hearing, a default decision and order may be entered. However, if no other party requests a hearing, the CSED may at its discretion request a hearing. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 10 reserved

37.62.911 FILING AND PROOF OF SERVICE (1) Whenever a rule or statute requires or permits a request for hearing, motion, brief, responsive answer or other document relating to the hearing to be filed with the department or the CSED, the place of filing shall be the OALJ. The location, mailing address and fax number of the OALJ shall be provided on the contested case notice and on each order, subsequent notice or other document mailed by the OALJ to a party. Excluding legal holidays, the hours for filing papers are between 8:00 a.m. and 5:00 p.m., Monday through Friday. Any papers presented or delivered after 5:00 p.m. shall be stamped the next business day. All original papers shall be filed with the OALJ and not the ALJ.

(2) Facsimile (fax) filings may be accepted. If the fax copy is offered to prove a fact, the fax copy will be stamped "received" by the OALJ and the original document must be filed with the OALJ within 5 business days in order to be filed as of the received date of the fax copy. The fax copy and the original document must be identical, or the filing is void. If the original is not timely filed, the received fax copy shall be void.

(3) Filing with the OALJ is effective upon actual receipt at the OALJ and not upon mailing. Filing with the OALJ does not constitute service on the CSED and service on the CSED does not constitute a filing with the OALJ.

(4) Whenever service of a document is required by ARM 37.62.917, an original certificate of service shall be attached to each document filed under this rule including fax filings. The copies served on other parties or entities entitled to service shall also attach certificates of service. Certificates of service shall be affixed to the document and shall include the date the document was served, and the name of each party and entity served.

(5) Failure to provide a certificate of service does not affect the validity of service provided that service can be substantiated by other proof, if necessary.

(6) If the document presented for filing was prepared by an attorney representing a party, the attorney's name, complete mailing address and telephone number shall appear at the top, left-hand corner on the document's first page. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 12 reserved

37.62.913 PARTIES (1) Except as provided in (3), a party includes any person served with a CSED contested case notice.

(2) As the entity initiating the proceedings, the CSED is automatically a party in all contested case proceedings. However, the CSED, at its discretion, may limit its participation in the case. When the CSED does participate as a party, it will do so through a CSED caseworker or CSED attorney as provided in ARM 37.62.915.

(3) An interested person who receives an informational copy of the contested case notice is not a party. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 14 reserved

37.62.915 REPRESENTATION (1) Any person appearing in a CSED proceeding may, at the person's own expense, be accompanied, represented and advised by an attorney.

(a) To represent a party in a contested case, the attorney must be licensed to practice law in this state or be admitted pro hac vice.

(b) If the attorney files a notice of appearance or signs and files a request for hearing or other responsive pleading with the OALJ in that contested case action, the attorney shall be designated as the attorney of record and all further communication, mailings and notices made in that contested case action will be directed to the attorney. However, the OALJ will mail or deliver copies of all decisions and orders to both the party and the party's attorney. If there is no attorney of record, the OALJ, CSED and other parties will make all communications directly to the party.

(c) An attorney of record may withdraw from a pending case, however the attorney shall give notice of the withdrawal to the OALJ, the CSED and all other parties. Upon receipt of notice the OALJ, the CSED and all other parties will redirect all subsequent communications to the party formerly represented by the attorney.

(d) Unless the attorney sooner withdraws and gives notice thereof, an attorney of record will continue as the attorney of record until the final decision and order is entered in the case.

(2) A party to a contested case may be accompanied, assisted and advised by a person who is not an attorney or who is an attorney not admitted to practice law in this state; however, that person may not represent the party during the hearing or give statements or make arguments on the party's behalf. The OALJ will direct all communications to the party.

(3) A party who chooses not to be represented by counsel and who represents himself or herself must substantially comply with the provisions of these rules. An ALJ may modify the strict application of these rules to an unrepresented party to the extent that strict application is not necessary to assure a fair hearing, and the modification does not affect the substantive rights of any other party.

(4) Through the use of pre-approved legal forms and written CSED policies and procedures, and under the ultimate direction of and in consultation with a CSED attorney, and consistent with rules 5.3 and 5.5 of the Montana Rules of Professional Conduct, a CSED caseworker may initiate, appear in and participate in a contested case. A caseworker's assertion in a contested case notice is sufficient to constitute the caseworker's authority to participate in the case. When in a particular case a mailing, service, or other communication with the CSED is required by these rules, the mailing, service or other communication must be directed to the participating caseworker.

(5) At the discretion of the CSED, a CSED attorney may personally appear and take an active role in a contested case at any phase in the proceedings. The CSED attorney may also cease taking an active role at any time. When a CSED attorney does appear in the case, the attorney will not need to file a notice of appearance or sign any pleading as provided in (1)(b). The CSED attorney's appearance is sufficient to establish the attorney's authority to provide counsel and representation. When requested by a CSED attorney appearing in the case, all other parties shall direct all further communication, mailings and notices made in that case to the attorney. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 16 reserved

37.62.917 SERVICE OF SUBSEQUENT NOTICE, MOTIONS, BRIEFS, AND OTHER PAPERS (1) After service of a contested case notice, all subsequent notices including amendments to a contested case notice, motions, briefs and other papers pertaining to a pending administrative action must be served on all parties. Service may be made by regular U.S. mail, postage prepaid, addressed to each party at:

(a) the mailing address provided by the party in the request for hearing or a subsequent mailing address provided by the party;

(b) the party's last known mailing address if no request for hearing was made, or if the request for hearing failed to include an address; or

(c) the address of the place where service of the original contested case notice was achieved, if the party's mailing address is not known to the CSED.

(2) Proof of service must be attached to each document as provided by ARM 37.62.911.

(3) When the requirements of this rule are met, service by mail is complete upon mailing.

(4) Service on the CSED does not constitute a filing with the OALJ and filing with the OALJ does not constitute service on the CSED. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 18 reserved

37.62.919 NOTICE OF HEARING, SCHEDULING ORDER AND LOCATION OF HEARING (1) If a request for hearing is timely and properly filed according to these rules, the OALJ shall assign the case to an ALJ and schedule a time, date and place for the conduct of the hearing. The OALJ shall serve a notice of hearing and scheduling order on all parties. In support enforcement, paternity establishment, and support order establishment cases where the obligee is not a party, the OALJ shall also send a copy of the notice of hearing to the obligee. In those instances, the obligee is not a party to those proceedings but may attend as a nonparty observer or witness.

(2) The notice of hearing and scheduling order shall:

(a) set the date, time and place for the hearing;

(b) set the date by which the witness and exhibit list must be filed with the OALJ and by which a copy of the list must be served on all other parties;

(c) set the date by which exhibits must be exchanged with other parties if exhibits are not served as attachments to the witness and exhibit list;

(d) set the date by which a party must request discovery or request subpoenas for the attendance of witnesses or the production of documents;

(e) inform the party that the hearing will initially be held by telephone conference;

(f) if the hearing is by telephone conference, inform the party that before the hearing record is closed, the party will have an opportunity, at the party's request or upon a showing that a party's case was prejudiced by the lack of an in-person hearing, to request a de novo in-person hearing;

(g) give the party directions for the conduct of telephone hearings;

(h) direct the party to provide a telephone number at which the party will be available for the hearing and further direct that if the party does not provide the number or fails to be at the number when called for the hearing, the ALJ may either enter the party's default or proceed with the hearing in absentia; and

(i) inform the party that if the party does not have a telephone available for a telephone hearing, at the party's request, a telephone will be made available to the party at the nearest regional CSED office or at the public assistance office in the county where the party resides.

(3) The time of the hearing will be during the CSED's regular business hours. The place of the hearing may be:

(a) for a telephone hearing, at the location of the telephone number provided by each party and, if applicable, the obligee; or

(b) for an in-person hearing, as provided in 40-5-231(3), MCA.

(4) The parties may agree to an in-person hearing in another location which is mutually convenient to all the parties and the CSED. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 20 reserved

37.62.921 MOTIONS (1) Prior to entry of an order resolving a contested case notice, a party may seek relief in that case by means of an appropriate motion. Appropriate motions may include motions to dismiss, motions for summary judgment, motions for continuance and similar other motions.

(2) Motions shall state:

- (a) the relief sought by the party;
- (b) the grounds and authority supporting the motion; and
- (c) any prejudice which could result if the motion is not granted.

(3) All motions which assert factual matters not of record must be accompanied by affidavits or exhibits which show the facts that are the grounds for the proposed relief. The failure to provide affidavits or exhibits shall be deemed an admission that the asserted facts do not exist.

(4) Each motion must also be accompanied by a brief or memorandum of law showing the moving party's entitlement to relief.

(5) Upon receipt of a filed motion the ALJ will set a schedule for the other parties to file responses to the motion and to file answer or reply briefs or memorandums of law.

(6) The failure of a party to file a brief or memorandum of law may subject the motion to summary ruling, and failure of a moving party to file a brief in support of the motion may be treated as an admission the motion is without merit. The failure to file an answer brief may be treated as an admission the motion is well taken and should be granted. The filing of a reply brief by the moving party is optional.

(7) If the moving party wants the ALJ to take immediate action on a motion, the motion should state that opposing parties have been contacted and have no objection to the motion; the moving party should advise the OALJ of the contact and non-objection when filing the motion, so the motion can be immediately brought to the attention of the ALJ. All uncontested motions should be accompanied by a proposed order with sufficient copies for the OALJ to mail to all other parties. If another party objects to the motion or if there is no indication whether another party objects, the motion will be decided as provided in (5), (6) and (8).

(8) Unless the ALJ determines that oral argument would be beneficial to determination of the motion, oral arguments will not be permitted. Motions will be decided on the briefs and other papers submitted in support of the motion. Motions will be deemed submitted at the time set for filing the final brief.

(9) If the ALJ does not render a decision with regard to the motion before entering an order resolving the contested case notice, the motion shall be deemed denied.

(10) Nothing in this rule shall be construed to preclude the oral presentation of motions or objections related to evidence, motions for summary judgment or other matters arising at the hearing. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 22 reserved

37.62.923 EXTENSIONS OF TIME AND CONTINUANCES

(1) Because CSED contested cases must proceed on an expedited basis, requests for extensions of time and continuances are disfavored and shall not be routinely granted. Extensions of time and continuances will be granted only upon a showing of extraordinary circumstances beyond the party's control which will cause substantial prejudice to the party if the extension or continuance is not granted.

(2) A request for an extension of time may be filed with the OALJ at any time prior to the day an activity or time frame is set by order, rule or statute for completion. The request shall contain:

(a) a statement of the reason for the extension of time;

(b) a statement showing extraordinary circumstances beyond the party's control which will cause substantial prejudice to the party if the extension or continuance is not granted; and

(c) a statement indicating the positions of every other party regarding the request for an extension of time.

(3) Uncontested requests for extensions of time or continuances which include the above statements may be granted by the OALJ. If the request is contested for any reason the request will be submitted to the ALJ for determination as if the request were a motion under ARM 37.62.919. If the ALJ does not render a decision on the request by the day the activity or time frame is due to be completed, the request shall be deemed denied.

(4) All uncontested requests for extensions of time or continuances must be accompanied by an appropriate proposed order with sufficient copies for the OALJ to mail to all parties.

(5) An order for extension of time to file papers, briefs and other materials will include a provision for extending the time for other parties to file and serve opposing briefs and reply briefs and other responding materials. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 24 reserved

37.62.925 AMENDMENTS (1) A contested case notice may be amended by the CSED at any time before an order is issued resolving the notice. Except when the notice is amended during hearing, the amended notice shall be served on all parties in accordance with ARM 37.62.917.

(a) Except as provided in (1)(c), a party who has responded to the contested case notice as provided in ARM 37.62.909 does not need to respond to or request a hearing on the amended notice.

(b) If a party did not respond to the original notice as provided in ARM 37.62.909, the party may respond to the amended notice within the time frames provided in the amended notice.

(c) If a party did respond to the original notice and the party's request for hearing was denied for any reason, the party may respond to the amended notice as provided in ARM 37.62.909 and request a new hearing with regard to the issues claimed in the amended notice.

(d) The response time shall be the same number of days as allowed by statute or rule for requesting a hearing on the original notice. The time for responding to an amended notice begins on the day after the amended notice is served.

(2) During a hearing a party may seek to offer evidence relating to new issues not raised in the contested case notice or in the party's response to the notice. With the express or implied consent of the parties, the contested case notice or response may be deemed amended to conform to evidence which is relevant and material to issues within the scope of the CSED's authority.

(3) If a party objects to evidence offered at a hearing on grounds that the evidence is not within the issues raised by the contested case notice or the response to the notice, the ALJ may allow the notice or response to be amended upon a showing that the evidence is relevant and material to issues within the scope of the CSED's authority. If the amendment causes a surprise element to be introduced during a hearing, the ALJ may recess or adjourn the hearing to enable the objecting party to meet, refute, or rebut such evidence and may also order the exchange of additional relevant information or exhibits. The hearing record shall remain open and the ALJ shall set a specific time and date for the hearing to be reconvened. When a hearing is reconvened, it will be for the limited purpose of allowing the objecting party to meet, refute or rebut the evidence submitted by surprise in the prior hearing. This remedy may be had in addition to, or in conjunction with, any other remedy provided by these rules. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 26 reserved

37.62.927 EVIDENCE (1) The evidence received and considered in CSED contested cases shall conform to the common law, the statutory rules of evidence and the provisions of 2-4-612, MCA.

(2) A presiding ALJ may receive any evidence offered by a party without ruling on its admissibility at the time it is offered. After the matter is submitted for decision, the ALJ will then consider and determine the admissibility and sufficiency of the evidence, giving due regard to its materiality, relevance, and trustworthiness. Evidence may be excluded even though no objection was raised at hearing. If the ALJ takes evidence under advisement and rules on its admissibility later, a party may object to the inclusion or exclusion of evidence under this rule by filing a motion to review the proposed order as provided for in ARM 37.62.951.

(3) This rule shall not be construed to prevent the ALJ from limiting cumulative, irrelevant or other inadmissible testimony or evidence during the hearing. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 28 reserved

37.62.929 OFFICIAL NOTICE (1) Official notice may be taken of:

(a) federal law, including the constitution of the United States, congressional acts, resolutions, records, journals, and committee reports, the decisions of federal courts and administrative agencies, executive orders and proclamations, and all rules, orders and notices published in the federal register;

(b) state law, including the constitution, acts of the legislature, resolutions, records, journals and committee reports, decisions of the administrative agencies of the state of Montana, executive orders and proclamations by the governor, and all rules, orders and notices published in the Montana administrative register;

(c) department and CSED organization, including administration, officers, personnel, official publications and official acts of the department and the CSED;

(d) any fact that could be judicially noticed in the district courts including generally recognized technical and scientific facts obtained from treatises of learned scholars and public documents to the extent allowed by the rules of evidence;

(e) the records of other CSED proceedings;

(g) codes, regulations, standards, action transmittals, policy interpretation questions and information transmittals issued or adopted by a federal agency pursuant to Title IV-D of the Social Security Act;

(h) written CSED policy directives;

(i) the CSED policy and procedures manual;

(j) records, reports, statements, and data compilations in any form of a clerk of court, public office or state agency of this or any other state or federal agency which are part of the regularly conducted activities of that clerk of court, public office or state agency;

(k) payment histories originated by the CSED or obtained from clerks of court, the child support agencies of other states or other public records sources, and CSED-prepared abstracts of those histories including computerized data compilations; and

(l) child support guidelines worksheets and similar documents, completed CSED case related forms, and other papers within the scope of the CSED's technical knowledge as a body of experts and within the scope of its duties, responsibilities and jurisdiction.

(2) Officially noticed law may be admitted during a hearing without the necessity of foundation testimony or formal proof of the existence of the law. Officially noticed facts, if relevant to a determination of the matter at issue, may be admitted as evidence without the necessity of foundation testimony. A party is entitled upon timely request to an opportunity to rebut any facts officially noticed or to contest the application of an officially noticed law before the matter is resolved by a final decision or order of the ALJ. If official notice is taken during a hearing without prior notice, the request for opportunity to rebut or contest must be presented during that hearing. If official notice of facts or law is taken in a proposed written hearing decision and order without prior mention during the hearing or otherwise, the request for an opportunity to rebut or contest must be made within 20 days after the proposed decision is first issued as provided for in ARM 37.62.951. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 30 reserved

37.62.931 PRESUMPTIONS (1) The ALJ may apply the following presumptions when consistent with all surrounding facts and circumstances:

(a) the presumptions both conclusive and rebuttable which are set forth in Title 26, chapter 1, part 6, MCA and 40-5-234, 40-6-105 and 40-6-201, MCA and any other presumption created by law;

(b) that mail or other communications properly addressed and transmitted to the post office or other common carrier with all postage, tolls or charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business; and

(c) that a person who receives or received public assistance is eligible or was eligible for such assistance. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 32 reserved

37.62.933 INVESTIGATIVE SUBPOENA (1) The CSED may issue an investigative subpoena whenever the CSED has a right or duty to investigate any matter relating to the location of an obligor, the establishment of paternity and support orders, and the enforcement or modification of a support order. A contested case as defined in ARM 37.62.303 need not be initiated before an investigative subpoena is issued.

(2) The investigative subpoena is used to obtain information leading to the determination of an obligor or obligee's:

- (a) prior and current residential and mailing addresses;
- (b) social security number;
- (c) past and present employment and dates of employment; and
- (d) real or personal property, including but not limited to, wages, salaries, earnings, tips, bonuses, profits, draws and advances against earnings, severance pay, trust income, pensions, workers compensation benefits, unemployment benefits, commissions, disability payments, distributions from retirement plans, alimony or spousal maintenance, contract proceeds, rents received, interest earned, royalties, dividends, accounts as defined by 40-5-924, MCA, loan applications made, and any other similar information, regardless of source, related to the obligor's or obligee's assets and liabilities as may be contained in the records and files of the subpoenaed person or entity.

(3) The investigative subpoena may be directed to, but not limited to, public utility companies, financial institutions as defined by 40-5-904, MCA, accountants and bookkeepers, cable television providers, unions, and payors as defined by 40-5-403, MCA.

(4) In addition to (3), when a person with a support order requests the CSED to review that order for a possible modification, the CSED may direct an investigative subpoena to a parent for the purpose of determining during the review process whether there is a sufficient change of circumstances to warrant commencement of formal modification proceedings.

(5) The investigative subpoena shall order the subpoenaed person or representative of the subpoenaed entity to appear before the CSED at a set time and produce the requested information and, if necessary, to permit the pertinent parts of the record and files to be inspected and copied. By mutual agreement between the CSED and the subpoenaed person or entity, the time, place and method for production of the information may be modified.

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(6) The CSED shall issue an investigative subpoena only when the person who is the subject of the investigation fails to voluntarily provide the information and the information is otherwise unavailable to the CSED through less intrusive means.

(7) If the person or entity to whom an investigative subpoena is directed objects to the subpoena before the time specified for compliance with the subpoena, that person or entity may contact the OALJ in writing concerning the objection. The OALJ will refer the matter to an ALJ for resolution. After providing the parties with an opportunity to present argument, the ALJ may, in writing or at a hearing:

(a) sustain the subpoena;

(b) quash or modify the subpoena if it is unreasonable, or unduly burdensome; or

(c) impose additional conditions as may be just and reasonable.

(8) Investigative subpoenas issued under this rule may be enforced as provided by 2-4-102(2) and 40-5-226(13), MCA. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 34 reserved

37.62.935 HEARING SUBPOENA AND SUBPOENA DUCES TECUM

(1) A hearing subpoena is issued in a contested case and directs a person to appear at a particular time and place to testify as a witness. A subpoena duces tecum may also require the person to produce any records, books, documents, or other materials under the person's control which may be relevant to facts at issue in the pending case.

(2) Any party to a contested case may request a hearing subpoena or subpoena duces tecum. Except as provided in (7), a request for a subpoena must be made in writing to the OALJ. Such a request must be made within the time set by the ARM 37.62.919 scheduling order.

(3) A request for a subpoena must be accompanied by an affidavit which includes:

(a) the name and address of the witness or the person or entity having control over the material to be subpoenaed;

(b) a brief statement as to why the testimony of the witness or production of the subpoenaed material is reasonable, necessary and relevant to an issue of fact; and

(c) if the request is for a subpoena duces tecum, the affidavit must also include:

(i) a short, plain statement identifying or specifying the information requested by the subpoena; and

(ii) a statement as to why the information cannot be reasonably obtained by other less intrusive means.

(4) A request for subpoena under this rule that is not timely or not accompanied by a supporting affidavit shall be denied by the OALJ.

(5) Upon receipt of a request meeting the requirements of this rule, the OALJ shall issue the subpoena and deliver it to the requesting party. The requesting party is responsible for having the subpoena served on the witness or the person or entity having control of the subpoenaed material. The requesting party is also responsible for the costs of service, the costs of witness fees and mileage if requested by the witness, and the costs of preparing, copying and transmitting documentary materials. The method of service of subpoenas and the provisions for witness fees and mileage shall be the same as required in district court civil actions.

(6) If the person to whom a subpoena is directed objects to the subpoena before the time specified for compliance with the subpoena, that person may contact the OALJ in writing concerning the objection. The OALJ will refer the matter to the presiding ALJ. After providing the parties with an opportunity to present argument, the ALJ may:

(a) sustain the subpoena;

(b) quash or modify the subpoena if it is unreasonable or requires evidence not relevant or material to any matter in issue; or

(c) impose additional conditions as may be just and reasonable.

(7) Subpoenas issued under this rule may be enforced as provided by 2-4-102(2) and 40-5-226(13), MCA.

(8) An order denying, quashing or modifying a subpoena is not a final agency decision for purposes of the judicial review but may be considered as part of the judicial review of the final decision and order in the contested case.

(9) Except for the enforcement provisions of (7), this rule does not apply to genetic testing subpoenas issued under 40-5-233, MCA. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 36 reserved

37.62.937 OTHER DISCOVERY (1) In addition to subpoenas, other methods of discovery shall be available to the parties prior to a contested case hearing. Discovery other than by subpoena is referred to in this rule as "other discovery". Parties may obtain other discovery by one or more of the following methods:

- (a) depositions upon oral examination or written questions;
- (b) interrogatories;
- (c) request for production of documents and other written materials; and
- (d) request for admissions.

(2) Because CSED contested case proceedings are heard on an expedited basis, other discovery may unreasonably delay the hearing. For this reason other discovery may not be had except upon request. A request for other discovery must be made according to and within the time set by the ARM 37.62.919 scheduling order. When other discovery is requested, the OALJ will convene a discovery conference by telephone with all parties. At the conference the OALJ will establish dates for the accelerated completion of each phase of other discovery. Time tables for other discovery set out in the Montana Rules of Civil Procedure may be substantially shortened.

(a) If a party objects to the schedule or scope of other discovery, the OALJ will refer the matter to an ALJ for resolution of the dispute and, if appropriate, the setting of a revised discovery schedule. The party seeking discovery has the burden of showing that the discovery is needed for the proper presentation of the party's case. The ALJ may order such other discovery as is deemed appropriate or may deny the request for other discovery.

(3) Without need for other discovery or subpoena, specific identifiable CSED records that are relevant to a disputed material fact, upon request and payment of any necessary copying fees, may be made available to a party unless the requested records are expressly exempt or protected from disclosure by state or federal law.

(4) When other discovery or subpoenas cannot be effectively completed prior to a hearing because of shortened time tables or limitations on the scope of discovery, and the incompleteness causes a surprise element to be introduced during a hearing, the ALJ may order the exchange of additional relevant information or exhibits. The hearing record shall remain open until the time set for the exchange has passed; the ALJ may order the hearing to be reconvened within 10 days after the record is closed. When a hearing is reconvened, it will be for the limited purpose of taking further testimony, or to cross-examine with regard to the exchanged information or exhibits. This remedy may be had in addition to, or in conjunction with, any other remedy provided by these rules.

(5) When necessary to protect records that are confidential or exempt from disclosure by state or federal law, or to protect a party or person from undue annoyance, excessive embarrassment, oppression or undue burden or expense, upon motion by a party or by the person from whom other discovery is sought, the presiding ALJ may make any order including one or more of the following:

(a) that other discovery not be had;

(b) that the other discovery may be had only on specified terms and conditions;

(c) that other discovery be had only if the discovery is by a method other than that selected by the party seeking discovery;

(d) that certain matters should not be inquired into, or that the scope of other discovery be limited to certain matters; and

(e) that other discovery be conducted with no one present except persons designated by the ALJ.

(6) The product of other discovery or subpoena shall not be routinely filed with the OALJ. A party who makes a motion referring to or supported by the product of other discovery or subpoena must support the motion by copies or abstracts of the discovery relied upon. A party who seeks to introduce the product of discovery or subpoena as a part of the record must identify such documents in the witness and exhibit list provided for in ARM 37.62.939. The use of depositions at hearing or in lieu of testimony by a witness shall be governed by the Montana Rules of Civil Procedure. Where consideration of only a portion of a deposition is necessary the ALJ may order the preparation of excerpts to avoid a bulky record or consideration of irrelevant or prejudicial matter.

(7) The party requesting other discovery is responsible for preparing and making all arrangements for the conduct of the requested discovery. The requesting party is also responsible for the costs of serving the discovery on other parties, deposition costs, the preparation of transcripts of depositions, and the costs of preparing, copying and transmitting discovered materials.

(8) If a party or other person fails or refuses, without good reason, to be sworn or to answer or respond to a discovery request or subpoena, the ALJ, after directly ordering the party or person to obey the discovery request, may enter an appropriate order that:

(a) deems that the facts are established in accordance with the claim of the party seeking to establish such facts through the discovery process;

(b) refuses to allow the disobedient party to support or oppose designated claims or defenses, or prohibits that party from introducing designated matters in evidence;

(c) invokes the enforcement provisions of 2-4-104(1) and 40-5-226(13), MCA; or

(d) assesses sanctions under 40-5-226(14), MCA. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 38 reserved

37.62.939 WITNESS AND EXHIBIT LIST AND EXCHANGE OF EXHIBITS (1) A party must prepare and file with the OALJ a witness and exhibit list when the party intends to present, use, or refer to at hearing:

- (a) the testimony of any witness other than the party; or
- (b) any exhibit or other documentary evidence.

(2) The witness and exhibit list must include:

- (a) for each witness, including the party if the party intends to testify, the name, address and telephone number at which the witness can be reached for the hearing;

- (b) a brief summary of the testimony to be given by each non-party witness;

- (c) a listing of each exhibit separately identified by number or alphabet letter; and

- (d) attached to the list, the original copy of each exhibit identified in the witness and exhibit list. If an original copy is not reasonably available, a clear photocopy of the original may be substituted for the original. Each attached exhibit must be numbered consistent with the list and, in addition, each exhibit must include some marking to identify the party offering the exhibit.

(3) Within the time set by the ARM 37.62.919 scheduling order the witness and exhibit list with attachments must be filed with the OALJ. Within the same time the party must also serve copies of the list and copies of the attached exhibits on all parties as provided by ARM 37.62.917. If a witness is to give testimony with regard to a particular exhibit, the party should deliver a copy of that exhibit to the witness within this same time.

(4) If a party fails without good reason to file a witness and exhibit list or fails to serve a copy of the list on another party as provided in this rule, the ALJ may prevent the witness from testifying at the hearing or may exclude the exhibit as evidence. Upon a showing of good reason, the ALJ may allow a late witness or exhibit. If a party objects to the late entry, the ALJ may, upon motion by the party, delay the hearing or final decision and order and reconvene the hearing at a later date to allow the moving party to adequately cross-examine or rebut the late witness's testimony or late exhibit. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 40 reserved

37.62.941 PREHEARING STATUS CONFERENCE (1) After a hearing is opened on the record and immediately preceding the presentation of evidence, the presiding ALJ shall conduct, on the record, a case status conference. The purpose of the conference is to:

(a) identify those facts which the parties agree to be true and which will require no proof during the hearing;

(b) identify those hearing exhibits which the parties agree may be entered without objection;

(c) identify the contentions of the parties;

(d) identify and clarify those issues of fact or law, including possible defenses, that remain to be determined by the ALJ during the hearing;

(e) identify any unusual legal or evidentiary issues;

(f) identify and exclude any matter raised by a party that is outside the scope of the hearing or which the ALJ has no authority to determine; and

(g) address such other matters as will promote the orderly and prompt conduct of the hearing.

(2) Based on the information identified in (1) the ALJ shall issue an order directing the course of the hearing as specified in ARM 37.62.945.

(3) If the status conference demonstrates that there are no facts at issue, the ALJ may convert the status conference to a proceeding for summary disposition of the case. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 42 reserved

37.62.943 BURDEN OF PROOF AND STANDARD OF PROOF (1) In all hearings conducted under this chapter, the party proposing that a certain action be taken must prove the facts at issue by a preponderance of the evidence unless the substantive law provides a different burden or standard. A party asserting an affirmative defense has the burden of proving the existence of the defense. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 44 reserved

37.62.945 PROCEDURE AT HEARING (1) The presiding ALJ shall direct the order of presentation of evidence and cross-examination and shall limit the scope of the hearing in conformity with the prehearing status conference.

(2) The ALJ may enter appropriate oral orders during the hearing to control the conduct of witnesses, the parties or their attorneys, including conduct which is disruptive or constitutes contempt of the ALJ or the administrative hearing process.

(3) The hearing may be continued with recesses as determined by the presiding ALJ.

(4) With the exception of matters limited by the prehearing status conference or excluded under ARM 37.62.937, to the extent necessary for full disclosure of relevant facts and issues, the presiding ALJ shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence. Evidence that is incompetent, irrelevant, immaterial, or unduly repetitious may be excluded.

(5) Evidence may be presented through exhibits and testimony of the parties or other witnesses. Testimony may be given in narrative fashion by witnesses or by question and answer. All oral testimony must be under oath or by affirmation. The presiding ALJ may exclude witnesses from the hearing so that they cannot hear the testimony of other witnesses.

(a) Under the provisions of ARM 37.62.949, officially noticed facts and law may be admissible without requiring foundation testimony.

(6) When there are multiple parties in the case, after the opportunity provided for under (4), at the ALJ's discretion a party may be excused and allowed to withdraw from any remaining part of the hearing which is not specific to that party.

(7) During the course of the hearing the ALJ may:

(a) question the parties and their witnesses to elicit full disclosure of all pertinent facts; and

(b) inquire into any circumstance or other matter the ALJ may find pertinent and relevant.

(8) Only evidence that is offered and received during the hearing or submitted following the hearing with the permission of the presiding ALJ may be considered in rendering a decision.

(9) At the conclusion of a hearing, the presiding ALJ may leave the record open and may order or permit submission of additional evidence or post hearing briefs. The ALJ shall set a schedule for the exchange of such additional evidence or briefs. The record is considered closed either at the conclusion of the hearing or, if ordered or permitted, upon the due date for the submission of the materials. Evidence and other materials submitted after the due date or without permission of the presiding ALJ may be returned to the submitting party and may not be considered by the ALJ when deciding the case.

(10) The ALJ shall cause the hearing to be recorded on audio tape at the CSED's expense. The CSED is not required to prepare a transcript at its own expense. Any interested person, at the person's expense, may request a typed transcription of the tape recording or may cause additional audio, video or stenographic recordings to be made during the hearing if the making of additional recordings does not cause distraction or disruption.

(11) CSED hearings are open to public observation, except for the parts that the presiding ALJ declares to be closed pursuant to a provision of law authorizing closure. If the hearing is conducted by telephone, the availability of public observation is satisfied by allowing interested persons to observe and listen to the hearing at the location of any one of the participants or to listen to or inspect the audio tape record or to inspect any transcript obtained by the CSED. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 46 reserved

37.62.947 INTERPRETERS (1) Whenever a party or a witness is unable to understand or speak the English language, and the presiding ALJ determines that this inability may impair the substantial rights of any party to a fair hearing, the ALJ may adjourn the hearing and appoint ex parte an interpreter at the CSED's expense. The hearing will be reconvened after an interpreter is obtained.

(2) Every person appointed as an interpreter under this rule, before entering upon his or her duties, shall take an oath or affirmation to give a true verbatim translation.

(3) Interpreters are subject to the rules of evidence relating to their qualifications as experts.

(4) No interpreter shall be appointed who has a personal interest in any matter at issue, or who is related to any party, or who has a personal or business relationship with any party.

(5) In addition to and not in substitution for an interpreter appointed by the ALJ, a person who is a party or witness may appear in any contested proceeding with the person's own interpreter at the person's expense. If the person's interpreter is to make translations on the record, (2) and (3) of this rule shall apply to the interpreter. The interpreter may be a relative of or may have a personal relationship with the party or witness, however, the relationship shall be noted in the record of the case.

(6) Interpreters for the hearing impaired shall be appointed as provided in 49-4-501 through 49-4-511, MCA. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 48 reserved

37.62.949 PROPOSED DECISION, FINAL DECISION AND ORDER

(1) Following the close of hearing and the receipt of post-hearing briefs and other evidence ordered by the ALJ, the presiding ALJ shall prepare a proposed decision and order. Copies of the proposed decision and order shall be served on each party as provided in ARM 37.62.917. A proposed decision and order is interim in effect and does not become a final CSED decision and order except as provided in (2) of this rule and by ARM 37.62.951(6).

(2) The parties shall have 20 days following service of the proposed decision and order to review the order. At the end of the 20 days, the presiding ALJ may enact the proposed decision and order as a final CSED order unless a party, within the 20 day review period, files a motion to review the proposed order as provided by ARM 37.62.951. A decision and order that becomes final under this rule takes effect as to its terms on the date it is enacted. Copies of the final decision and order shall be delivered or mailed to each party, and to each party's attorney if any.

(3) Proposed and final decisions and orders must include findings of fact, conclusions of law and the policy reasons for the decision if the decision is based on an exercise of CSED discretion as referenced in ARM 37.62.905(1)(b).

(a) Findings of fact must be accompanied by a concise and explicit statement of each of the underlying facts in the record or officially noticed that support those findings.

(b) Each conclusion of law must be supported by cited authority or by a reasoned explanation.

(c) If a party attempted to or did rebut the applicability of any policy, fact or other material officially noticed under ARM 37.62.929, the order must include appropriate findings and conclusions.

(d) If the admissibility of an exhibit or other evidence was not ruled on during the hearing as provided by ARM 37.62.927, the order must contain a ruling on the evidence and state the reasons why the evidence was accepted or rejected.

(e) If a party submitted a motion under ARM 37.62.951, the final order must include a ruling, separately stated, on each issue raised, each finding of fact or ruling of law requested, each policy consideration raised or contested, and any other matter permitted by ARM 37.62.951 as a ground for revising a proposed order. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 50 reserved

37.62.951 MOTION TO REVIEW PROPOSED ORDER (1) Within 20 days after service of a proposed decision and order any party may file a motion to review the order.

(2) A motion to review must set out, with specificity, one or more of the following grounds upon which a proposed order may be reviewed:

(a) Through inadvertence or mistake, the ALJ overlooked an important fact presented at the hearing which could affect the decision;

(b) The ALJ considered some fact that is not in the hearing record;

(c) A party requested a specific finding of fact or conclusion of law which was not made;

(d) The ALJ failed to consider a law, a policy or other material under ARM 37.62.905 which the ALJ should have included as a matter of course;

(e) The ALJ inappropriately applied official notice to a fact or other material under ARM 37.62.929;

(f) When the admissibility of evidence was ruled upon after a matter was submitted for decision, the ALJ improperly accepted or rejected the evidence;

(g) New evidence was discovered or became accessible after the hearing was closed and that evidence was not reasonably available at the time of the hearing;

(h) The ALJ based the order on a mistake of fact or law; or

(i) There have been intervening changes in controlling law.

(3) A motion to review is not for the purpose of:

(a) allowing the parties to present the case under new theories;

(b) presenting arguments which the ALJ has already considered and rejected;

(c) raising arguments which could or should have been made before the initial decision was rendered; or

(d) rehearing the case on the merits.

(4) The motion must be considered by the same presiding ALJ who issued the proposed decision and order.

(5) The presiding ALJ may, upon the ALJ's own initiative and without need for a motion, initiate a review under this rule. The provisions of (6) then apply as if a timely motion to review had been made by a party.

(6) Upon receipt of a timely filed motion to review which specifies one or more of the grounds set out in (2), the presiding ALJ shall afford each party an opportunity to respond to the motion and, upon request, to present oral argument and submit written briefs on the matters raised by the motion. After considering the motion and the responses to the motion, the ALJ may affirm the proposed decision or correct, amend or modify it as necessary. If affirmed, the proposed order shall be enacted as a final CSED order. The enacted order takes effect as to its terms on the date it is enacted. If corrected, amended or modified, the ALJ shall issue a revised decision and order that is consistent with the proposed order as corrected, amended or modified. The revised decision and order shall be effective as a final CSED decision and order on the day it is signed by the ALJ. Copies of decisions and orders that become final under this rule shall be delivered or mailed to each party, and to each party's attorney if any. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 52 reserved

37.62.953 BENCH RULINGS (1) In order to more promptly deliver decisions and orders following any hearing in a case, particularly when the hearing does not involve complex factual questions or unique questions of law, the ALJ may, at his or her discretion, issue a bench ruling following the close of testimony and the closing arguments of the parties.

(2) The ALJ will announce the decision or order orally to the parties, on the record, outlining the factual and legal reasons for the decision. Except as provided in (3), the ALJ will prepare and issue a written decision or order within 20 days after the announcement of the bench ruling.

(3) A bench ruling which is to be a final disposition in a contested case shall be in lieu of the proposed order provided for in ARM 37.62.949. A party may move to review the bench ruling and the review may be conducted as provided in ARM 37.62.951, except the time for filing the motion shall be within 20 days after the announcement of the bench ruling. When the time for filing a motion to review has expired and no motion is filed or following resolution of a motion to review, the ALJ will prepare and issue a written final decision and order. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 54 reserved

37.62.955 HEARING RECORD (1) The contested case hearing record shall include all the items required by 2-4-614(1), MCA.

(2) Except for parts of the file admitted as evidence during the hearing, the CSED case file maintained by the CSED caseworker, including computerized and hard copy versions, is not a part of the hearing record. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 56 reserved

37.62.957 CLERICAL ERRORS AND EFFECT OF CORRECTION

(1) Clerical mistakes, typographical errors, and errors in mathematical calculations in any decision or order in a contested case arising from oversight or omission may be corrected by the ALJ at any time upon the ALJ's own initiative or upon the motion of any party and after notice to all other parties and the opportunity for such other parties to object.

(2) The ALJ will decide a motion to correct clerical errors based on the contents of the administrative hearing record and without a hearing. No new evidence will be accepted or considered with regard to the motion.

(3) Unless the ALJ orders otherwise, a corrected decision and order relates to and is effective from the date of the original decision or order.

(4) A motion to correct clerical errors does not:

(a) stay the effect of a final decision and order pending determination of the motion; or

(b) extend the time for filing a petition for judicial review of a final decision and order. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 58 reserved

37.62.959 INFORMAL DISPOSITION AND CONSENT ORDERS

(1) The parties to a contested case may informally resolve the case, any motion concerning the case, or any issue pending resolution in the case, by stipulation, agreed settlement, or consent order. Except as provided in (3), all informal dispositions must be in writing and must be submitted to the presiding ALJ for review. The ALJ will review the matter for conformity with applicable law and for jurisdiction of the CSED to enter an order or resolve the matter based on the informal disposition. Upon concurrence the ALJ will make any appropriate order based on the informal disposition including dismissing or vacating any pending hearing.

(2) If an informal disposition is reached at the hearing or just before, the parties may orally communicate the terms of the informal disposition to the presiding ALJ. As long as the terms of the informal disposition are stated on the record, there is no need to follow the oral communication with a written communication. The ALJ may vacate the hearing and enter an order adopting the terms of the informal disposition.

(3) Informal dispositions of any issue of fact or law in a matter set for hearing shall be made according to ARM 37.62.941. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 60 reserved

37.62.961 REHEARING OR NEW HEARING (1) After a final decision and order is issued, a motion or request for rehearing or new hearing on the merits of the contested case will not be considered. The filing of a motion or request for rehearing or new hearing does not extend the time for judicial review of the final decision and order. This rule does not abrogate the authority of a district court to remand the matter for a new hearing or additional hearing as the result of judicial review of a final decision and order. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 62 reserved

37.62.963 COMPUTATION OF TIME AND ENLARGEMENT (1) In computing any period of time for acts required by any of the rules in this chapter, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is the last day computed, unless it is a Saturday, Sunday or legal holiday. In that event, the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and holidays are excluded in the computation. A half-day holiday will be considered as other days and not as a holiday.

(2) Whenever a party has a right or is required to do some act under these rules within a prescribed period after service of a notice, order or other paper upon the party, and the notice, order or other paper is served upon the party by regular mail, 3 calendar days shall be added to the prescribed period.

(3) Except for dates or prescribed times fixed by statute and not subject to modification, an ALJ, for good cause shown, may enlarge the time to perform an act if the request or motion for enlargement is made before the expiration of the prescribed period for the act. If the request or motion is made after the prescribed time has expired, enlargement may be allowed only upon a showing of excusable neglect in the failure to act. Requests or motions for enlargement of time must be made as provided in ARM 37.62.921. (History: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Rule 64 reserved

37.62.965 DISMISSAL OF CONTESTED CASE OR WITHDRAWAL OF HEARING REQUEST (1) The CSED or a CSED staff attorney may ex parte dismiss a contested case proceeding at any time prior to entry of a final decision and order. A copy of the ex parte dismissal shall be served on all parties served with a contested case notice. The OALJ shall vacate any hearing that may be pending in the case. A dismissal under this rule is without prejudice and the CSED may initiate a new contested case proceeding at any time.

(2) A party requesting a hearing may withdraw the request at any time prior to or during the hearing. Prior to the hearing the request must be withdrawn in writing; during the hearing the request may be withdrawn orally with the ALJ.

(a) If the reason for the dismissal or withdrawal is based on an agreement between the parties that settles the contested case, the dismissal or request to withdraw will be made according to ARM 37.62.959.

(b) Except as provided for in (2)(a), when the OALJ or the presiding ALJ receives a request to withdraw, the ALJ will vacate the hearing provided that no other party has also requested a hearing in the same case. If no other party has requested a hearing, before vacating the hearing the ALJ will give the other parties an opportunity to request a hearing. If no party accepts this opportunity, the ALJ will vacate the hearing and the matter will be resolved as a default of the pending contested case notice or, if applicable, by stipulation. If another party requests or has requested a hearing, the request to withdraw will be deemed denied; the contested case will proceed to hearing and to a final decision and order based on the testimony and arguments of the parties who appear and participate at the hearing.

(c) If a party who has requested a hearing fails to appear at a scheduled hearing, the presiding ALJ may, unless prohibited by a statute, deem the party's request for hearing to be withdrawn. When a request is deemed withdrawn, the ALJ will proceed as provided in (2)(b).

(d) When a scheduled hearing is vacated as a result of a failure in (2)(c), the ALJ, upon a showing of good cause by the requesting party, may revive the withdrawn hearing request and schedule a hearing. The request to revive must be made in writing within 10 days after the hearing was vacated and must explain in detail why the requesting party was unable to appear at a scheduled hearing.

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(3) A scheduled hearing and a final decision and order may be vacated and dismissed at any time by the ALJ upon a showing that the CSED did not or does not have jurisdiction over the subject matter of the hearing or the final decision and order. (History: Sec. 2-4-201, 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; IMP, Sec. 2-4-201, 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA; NEW, 2000 MAR p. 3547, Eff. 12/22/00.)

Subchapter 10 reserved

Subchapter 11

Income Withholding Procedures

37.62.1101 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Act" means the Child Support Enforcement Act, Title 40, chapter 5, part 4, MCA.

(2) "File or file with the department" for the purposes of 40-5-414(1), MCA, means that the request for hearing must be delivered to and received by the CSED hearing office within the time specified by law.

(3) "Notice" means a notice of intent to withhold income issued pursuant to 40-5-413, MCA.

(4) "Order" means an order to withhold income issued pursuant to 40-5-415, MCA, and, where the context requires, also means an order to modify issued pursuant to 40-5-417, MCA. (History: 40-5-405, MCA; IMP, 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 37.62.1102 reserved

37.62.1103 WITHHOLDING ENTITY (1) The CSED is hereby designated the "income withholding entity" pursuant to 42 USC 666(b)(5). (History: 40-5-405, MCA; IMP, 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 37.62.1104 reserved

37.62.1105 VOLUNTARY WITHHOLDING (1) Notwithstanding the provisions of 40-5-412(2), MCA, the CSED may, at the request of the obligor, take steps to implement income withholding at any earlier time, in an amount determined in accordance with 40-5-416, MCA. (History: 40-5-405, MCA; IMP, 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 37.62.1106 reserved

37.62.1107 EFFECT OF DELAY OR CONTINUANCE (1) If, due to a request for an extension of time by an obligor, a hearing decision cannot be rendered within the 45 day time provided for in 40-5-414(6), MCA, (unless the appropriateness of withholding to pay current support is at issue), the withholding of income to pay current support shall commence on the day the extension of time is approved by the hearing officer. In such case, withholding to pay the alleged delinquent portion will not commence until after the hearing has been conducted and it has been determined what amounts are properly due and owing. (History: 40-5-405, MCA; IMP, 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 37.62.1108 reserved

37.62.1109 ISSUES DETERMINABLE AT HEARING (1) The administrative hearing provided in the act is limited to the determination of whether income withholding, including the amounts to be withheld, is improper because of a mistake of fact. To accomplish this purpose, and to facilitate the speedy resolution of disputes relating to income withholding, the obligor must state in his hearing request a mistake of fact which constitutes grounds upon which the request is based. If the obligor fails to state such grounds, the department may deny the hearing because there is no issue upon which a hearing may be granted.

(2) For purposes of this section, a "mistake of fact" shall be defined to include the following:

- (a) mistakes concerning the identity of the obligor;
- (b) mistakes concerning the existence or amount of the support obligation;
- (c) mistakes in the determination that delinquent support amounts owed are equal to or greater than one month's support; and
- (d) mistakes in the computation of delinquent support amounts owed.

(History: 40-5-405, MCA; IMP, 40-5-413, 40-5-414, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 37.62.1110 reserved

37.62.1111 PROMPT DELIVERY OF WITHHELD AMOUNT (1) For purposes of 40-5-421(1), MCA, the term "promptly" as it relates to the delivery of withheld amounts shall be defined as being no more than ten days after the obligor's regularly scheduled payday. (History: 40-5-405, MCA; IMP, 40-5-421, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 37.62.1112 reserved

37.62.1113 AVAILABILITY OF HARDSHIP ADJUSTMENTS (1) In certain circumstances, the amount of money required to be withheld to defray delinquent support amounts owed under the terms of the act may be temporarily reduced at the discretion of the CSED. Such a "hardship adjustment" may be made upon a showing that extraordinary costs or expenses for special medical, dental, and mental health needs have been incurred by the obligor or the obligor's dependents; that these costs are actually being paid by the obligor; and that the obligor is not being reimbursed by insurance. A hardship adjustment may also be based upon special costs or expenses which are directly related to the obligor's ability to earn income available for withholding, and which, if not paid by the obligor, would result in a major loss of income. Further, a hardship adjustment may be considered if the total income of the obligor's household only minimally meets the subsistence level for food, housing, clothing, and other necessities as established by the United States poverty guidelines.

(2) Such exercise of discretion does not constitute a "contested case" under the terms of the Montana Administrative Procedure Act, nor does it represent a "mistake of fact" upon which a hearing may be granted. (History: 40-5-405, MCA; IMP, 40-5-416, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 37.62.1114 reserved

37.62.1115 EFFECT OF HARDSHIP DETERMINATION (1) A pending hardship determination does not stay or delay hearings on, or implementation of, income withholding.

(2) A request for hardship determination may be made at any time, without regard to whether income withholding is pending or has been previously implemented.

(3) A hardship adjustment applies only to the amount to be withheld to defray accumulated interest, fees, if any, and delinquent support amounts owed. It does not affect the amount of the obligor's current support obligation.

(4) Whenever the CSED has determined that a hardship adjustment is appropriate, it shall issue an order, or a modification of an existing order, which reflects the hardship adjustment. No order may be issued for the withholding of less than:

(a) the amount of current support plus \$25.00 per month if the obligor owes an ongoing current support obligation; or

(b) \$25.00 per month if the obligor's current support obligation has terminated.

(5) When the hardship adjustment ceases, the CSED may, without further notice to the obligor, modify or amend the order to withhold the amount of delinquent support determined to be proper prior to the hardship adjustment. (History: 40-5-405, MCA; IMP, 40-5-416, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 37.62.1116 reserved

37.62.1117 PROCEDURES FOR DETERMINING HARDSHIP

ADJUSTMENTS (1) The CSED will use the following procedures as a guideline for the exercise of its discretion in determining hardship adjustments:

(a) The obligor must request a review of the case in writing. Such review will determine if the obligor is eligible for a reduction of the amount which would normally be withheld to defray the support delinquency and interest, if any.

(b) The review will be conducted ex parte by the CSED's regional office based solely upon the financial affidavit and supporting documents, if any, provided by the obligor. Since financial hardship may affect all members of the obligor's current household, the financial affidavit must include information pertaining to everyone residing with the obligor.

(c) The standard for review will be the application of a formula developed by the CSED, which takes into consideration the total net income and assets of the obligor and his current household, the United States poverty index promulgated each year by the United States Department of Health and Human Services, the actual amount of allowable special expenses described in ARM 37.62.1113, and other support obligations actually being paid by the obligor. The CSED will, upon request, provide copies of the formula to any interested person.

(d) The CSED will determine the length of time the hardship adjustment will continue, based on the information provided by the obligor. The hardship adjustment will terminate at the end of the determined period, or cessation of the hardship condition, whichever occurs first. In the event the hardship condition continues after the end of such period, it shall be the obligor's duty to request further review at that time.

(e) If the obligor disagrees with the CSED's determination, a request may be made in writing for further review by the CSED division administrator or designee.

(f) If a request for further review is received, the division administrator or designee will review the previous determination and make an independent determination based on the documents and affidavits provided by the obligor, and upon all other relevant considerations. The decision of the division administrator or designee will be final for all purposes.

(g) Only one request for a hardship review is available to the obligor for each claimed incident of hardship. Further review will not be granted except upon a showing of circumstances not existing at the time of the original determination.

(History: 40-5-405, MCA; IMP, 40-5-416, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 37.62.1118 reserved

37.62.1119 UNCLAIMED COLLECTIONS (1) In nonpublic assistance cases wherein automatic income withholding has commenced in accord with 40-5-204(5) or 40-6-116(8), MCA, and the obligee has not yet made application for CSED services, the CSED shall deposit collections in a trust or escrow account to be held until such application is received or it has been determined that the obligee has abandoned all claim to the collections. Such abandonment shall be deemed to occur if the obligee has not made application for services within six months. Should this occur the CSED will terminate income withholding and return the withheld funds to the obligor minus fees, if any. Interest earned as a result of funds held in the trust or escrow account accrue to the benefit of the CSED and may not be claimed by either the obligee or the obligor. (History: 40-5-405, MCA; IMP, 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rules 37.62.1120 and 37.62.1121 reserved

37.62.1122 DETERMINING UNENFORCEABLE CASE STATUS (1) This rule establishes the criteria which a IV-D case must satisfy to be categorized as unenforceable. All of the following criteria must be met:

(a) no payments have been posted to the case in the last 12 months, and payments are not expected to be posted in the immediate future;

(b) no payments from the federal offset program have been received during the past two years;

(c) no payments from the state offset program have been received during the past two years;

(d) if payments have been made in the past two years, collected by methods other than federal or state offset, those payments do not exceed \$1,000.00;

(e) the CSED has not identified any attachable financial institution accounts belonging to the obligor parent;

(f) the CSED has not identified any executable assets belonging to the noncustodial parent;

(g) a credit bureau report accessed within the past six months indicates that income or asset information is unavailable; and

(h) in a case involving Title IV-E funds, all of the children of the case have been emancipated, or parental rights of the noncustodial parent have been terminated. (History: 40-5-203, MCA; IMP, 40-5-203, MCA; NEW, 2007 MAR p. 118, Eff. 1/26/07.)

Subchapter 12 reserved

Subchapter 13

Suspension of Licenses

37.62.1301 PURPOSE STATEMENT (1) The purpose of this subchapter is to facilitate the implementation of the process to suspend licenses for nonsupport as provided in 40-5-701, et seq., MCA and establishing criteria for claiming hardship and requesting an immediate stay of suspension. (History: Sec. 40-5-713, MCA; IMP, Sec. 40-5-713, MCA; NEW, 1994 MAR p. 2447, Eff. 8/26/94; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 02 reserved

37.62.1303 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "CSED" means child support enforcement division.

(2) "Financial hardship payment plan" means a plan offered to the obligor by the CSED for agreement which provides for monthly support arrears payments by the obligor in a lesser amount than under a standard payment plan and which, upon approval by the CSED office of the administrative law judge, stays further license suspension proceedings.

(3) "Resultant hardship" means a hardship an obligor may claim at the time of or after the license suspension hearing, based on the impact of a license suspension on the obligor, to legal dependents residing in obligor's household, to obligor's employees, or to persons, business or other entities served by the obligor.

(4) "Standard payment plan" means a plan offered to the obligor by the CSED for agreement which provides for monthly support payments by the obligor and which, upon approval by the CSED office of the administrative law judge, stays further license suspension proceedings. (History: Sec. 40-5-713, MCA; IMP, Sec. 40-5-710 and 40-5-713, MCA; NEW, 1994 MAR p. 2447, Eff. 8/26/94; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 04 reserved

37.62.1305 CRITERIA FOR STANDARD PAYMENT PLAN (1) A standard payment plan agreement must contain, but is not limited to, the following:

- (a) sufficient security to ensure compliance with the support order;
- (b) an acknowledgment by the obligor of the amount of the unpaid support debt;
- (c) the obligor's agreement to pay each month an amount which equals current support plus at least 1/24 or more of the arrears debt;
- (d) voluntary or involuntary income withholding where applicable;
- (e) the obligor's waiver of a right to assert the affirmative defense of the statute of limitations to the collection of the debt not barred by a statute of limitations at the time the notice of intent to suspend was issued;
- (f) an agreement that entry into a standard payment plan does not reduce the arrears obligation but only the payments toward the arrears debt;
- (g) an agreement that a standard plan does not limit the CSED's right to pursue collection of the arrears by other means;
- (h) an agreement that the obligor gives up his or her right to an administrative fair hearing; and
- (i) an agreement that the obligor gives up his or her right to have a district court review the decision of the CSED hearing officer. (History: Sec. 40-5-713, MCA; IMP, Sec. 40-5-710 and 40-5-713, MCA; NEW, 1994 MAR p. 2447, Eff. 8/26/94; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 06 reserved

37.62.1307 FINANCIAL HARDSHIP PAYMENT PLAN (1) A financial hardship payment plan may temporarily reduce the monthly amount of money to be paid by the obligor toward delinquent support arrears amounts which would otherwise be due under the terms of a standard payment plan. All other requirements of a standard payment plan apply to a financial hardship payment plan.

(2) Circumstances justifying a financial hardship include, but are not limited to a showing of:

(a) extraordinary costs or expenses for special medical, dental, and mental health needs have been incurred by the obligor or the obligor's dependents; that these costs are actually being paid by the obligor; and that the obligor is not being reimbursed by insurance;

(b) special costs or expenses which are directly related to the obligor's ability to earn income available for direct payment or withholding, and which, if not paid, would result in a major loss of income. For example, if the obligor is a taxi driver who needs an operable vehicle to make money to pay support and the engine needs major repairs, a short term financial hardship payment plan may be appropriate; or

(c) total income of the obligor's household is below the United States poverty guidelines for an equivalent sized household. (History: Sec. 40-5-713, MCA; IMP, Sec. 40-5-710 and 40-5-713, MCA; NEW, 1994 MAR p. 2447, Eff. 8/26/94; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 08 reserved

37.62.1309 EFFECT OF FINANCIAL HARDSHIP PAYMENT PLAN DETERMINATION (1) A pending financial hardship payment plan determination does not stay or delay hearings on, or implementation of, license suspension, absent a stay or continuance issued by the CSED administrative hearing officer.

(2) A request for a financial hardship payment plan determination on each claimed incident of hardship may be made at any time, without regard to whether a license suspension proceeding is pending or has been previously implemented.

(3) A financial hardship payment plan applies only to the amount to be withheld to defray accumulated interest, fees, if any, and delinquent support amounts owed. It does not affect the amount of the obligor's current support obligation.

(4) Whenever the CSED has determined that a financial hardship payment plan is appropriate, the CSED hearing officer shall consider the financial hardship payment plan and either approve or disapprove the plan. (History: Sec. 40-5-713, MCA; IMP, Sec. 40-5-710 and 40-5-713, MCA; NEW, 1994 MAR p. 2447, Eff. 8/26/94; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 10 reserved

37.62.1311 PROCEDURES FOR DETERMINING FINANCIAL HARDSHIP PAYMENT PLAN TERMS (1) The CSED will use the following procedures as a guideline for the exercise of its discretion in determining the payment terms of a financial hardship payment plan:

(a) the obligor must request a financial hardship determination in writing to the CSED office issuing the notice of intent to suspend stating the reasons a hardship adjustment is appropriate and the length of time it should remain in effect. The CSED will determine if the obligor is eligible for a reduction of the amount which would normally be paid or withheld, under a standard payment plan, to defray the support delinquency and interest and fees, if any;

(b) the standard for determining the amount of the monthly payment toward support debt under a financial hardship payment plan will take into consideration the total net income and assets of the obligor and obligor's current household, the United States poverty index promulgated each year by the United States office of management and budget, the actual amount of allowable special expenses described in ARM 37.62.1307, and other support obligations for dependents not in obligor's household;

(c) the CSED will determine the length of time the financial hardship determination will continue, based on the information provided by the obligor. The hardship determination period will not exceed 2 years unless there are extraordinary circumstances. The financial hardship payment plan will terminate at the end of the determined period, cessation of the financial hardship condition, or upon modification of the obligor's current/future support obligation, whichever occurs first. In the event the financial hardship condition continues after the end of such period, it shall be the obligor's duty to request further review prior to the date of expiration;

(d) only one request for a financial hardship determination is available to the obligor for each claimed incident of financial hardship. Further review will not be granted except upon a showing of circumstances not existing at the time of the original determination; and

(e) if the obligor disagrees with the CSED's financial hardship determination, the license suspension process will proceed to hearing, if the obligor has timely requested a hearing pursuant to the requirements of 40-5-703, MCA. (History: Sec. 40-5-713, MCA; IMP, Sec. 40-5-710 and 40-5-713, MCA; NEW, 1994 MAR p. 2447, Eff. 8/26/94; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 12 reserved

37.62.1313 PROCEDURES AND CRITERIA FOR RESULTANT HARDSHIP

(1) The obligor must make a written claim for a resultant hardship to the CSED office of the administrative law judge. The obligor must mail a copy of claim to the CSED office issuing the notice of intent to suspend.

(2) The burden is on the obligor to prove that the claimed resultant hardship is not merely an inconvenience to the obligor, but is a tangible circumstance that would endanger or otherwise result in irreparable harm to the obligor's household, employees, legal dependents or other persons, businesses or entities served by the obligor. (History: Sec. 40-5-713, MCA; IMP, 40-5-710 and 40-5-713, MCA; NEW, 1994 MAR p. 2447, Eff. 8/26/94; TRANS, from SRS, 2000 MAR p. 3551.)

Rules 14 reserved

37.62.1315 STAY OF LICENSE SUSPENSION (1) A stay of a license suspension may be issued by the CSED office of the administrative law judge at any time subsequent to receipt in the CSED office of the administrative law judge of a written claim of resultant hardship or a written motion for a stay pending a financial hardship payment plan determination.

(2) The CSED office of the administrative law judge may issue an immediate stay if the hearing officer determines a reasonable chance of irreparable harm exists if a stay is not issued prior to a hearing on the resultant hardship claim or motion for a stay.

(3) Only one request for stay is available to the obligor for each claimed incident of financial or resultant hardship. (History: Sec. 40-5-713, MCA; IMP, Sec. 40-5-710 and 40-5-713, MCA; NEW, 1994 MAR p. 2447, Eff. 8/26/94; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 16 reserved

37.62.1317 CONTESTED CASE HEARING PROCEDURES (1) Except as otherwise provided in these rules or the authorizing statutes, administrative hearings shall be requested and conducted as provided in Title 46, chapter 30, subchapter 6. (History: Sec. 40-5-713, MCA; IMP, 40-5-703 and 40-5-713, MCA; NEW, 1994 MAR p. 2447, Eff. 8/26/94; TRANS, from SRS, 2000 MAR p. 3551.)

Subchapter 14 reserved

Subchapter 15

State Debt Offsets

37.62.1501 OFFSET OF STATE TAX REFUNDS FOR CHILD SUPPORT DEBTS (1) The CSED will notify the state auditor as provided for by 17-4-105, MCA, of any past due debt resulting from or relating to a child support obligation owing to the state under Title IV-D of the Social Security Act. The debt must have accrued through a written contract, court judgment or administrative order, and shall be for a definite amount of money due and owing for support of a child, or for the repayment of support monies retained contrary to an assignment under 53-2-613, MCA, or for the costs or fees due under any contract, judgment or administrative order.

(2) If the tax refund exceeds the debt, the excess tax refund will be returned to the taxpayer by the department of revenue.

(3) All cases which have a past due debt resulting from or relating to a child support obligation owing to the state under Title IV-D of the Social Security Act will be referred to the state auditor for tax offset except when there is a court order, administrative order, or written agreement of record which sets a payment schedule for the payment of the past due debt with which the taxpayer is in compliance and the order or agreement must also exclude tax offset, either expressly or implicitly. (History: Sec. 17-4-105, MCA; IMP, Sec. 17-4-105, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 02 reserved

37.62.1503 NOTICE OF STATE TAX REFUNDS FOR CHILD SUPPORT DEBTS (1) After the department of revenue gives written notice of a pending offset as provided by 17-4-105(2), MCA, and the taxpayer desires to contest the proposed offset, the taxpayer must request a hearing in accord with ARM 46.30.601 following the day the notice was mailed to the taxpayer. (History: Sec. 17-4-105, MCA; IMP, Sec. 17-4-105, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 04 reserved

37.62.1505 CHILD SUPPORT OFFSET OF JOINT RETURN (1) If the refund to be offset is a joint return, the spouse who does not owe the child support obligation ("injured spouse") may object pursuant to the procedures set forth in ARM 42.16.107 through 42.16.109 to having his or her share of the refund applied against the child support obligation. Under those procedures, an adjustment will be made to the joint tax return reflecting that portion of the return that is attributable to the taxpayer who owes the child support arrearages and only that portion will be offset.

(2) Filing the "injured spouse statement" does not relieve the taxpayer who is liable for a past due debt resulting from or relating to a child support obligation payable to the state under Title IV-D of the Social Security Act from requesting a hearing under ARM 37.62.1503 if the taxpayer wishes to contest the offset procedure or to present defenses to the debt. (History: Sec. 17-4-105, MCA; IMP, Sec. 17-4-105, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Subchapter 16 reserved

Subchapter 17

Reports to Credit Reporting Agencies

37.62.1701 NOTICE ON INTENT TO REPORT (1) The notice of intent to report a support debt to a consumer reporting agency required by 40-5-261, MCA, may be given by incorporating a statement of such intent in the notices generally served on obligors under 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232, 40-5-413, 17-4-103, MCA, and 45 CFR 303.72 as amended. (History: Sec. 40-5-262, MCA; IMP, Sec. 40-5-261, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 02 reserved

37.62.1703 ELECTRONIC REPORTS (1) For the purpose of reporting a support debt to a consumer reporting agency, upon a request by a consumer reporting agency, the CSED may provide such information by electronic means. (History: Sec. 40-5-262, MCA; IMP, Sec. 40-5-261, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 04 reserved

37.62.1705 AMOUNTS TO BE REPORTED (1) The CSED will report to the consumer reporting agency only those support debts when:

(a) the amount of the debt retainable by the CSED for the reimbursement of AFDC expenditures is a sum of \$150.00 or greater; or

(b) the amount of the debt owing to an obligee is the sum of \$500.00 or greater.

(2) Reports will be provided to a consumer reporting agency only upon request of an agency with whom the CSED has entered into an agreement which specifies the form and content of the reported information, and which imposes terms and conditions for the use of the information so as to protect its confidentiality. (History: Sec. 40-5-262, MCA; IMP, Sec. 40-5-261, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 06 reserved

37.62.1707 CONTESTING ACCURACY OF REPORTED INFORMATION

(1) After service of notice specified in ARM 46.30.501 which contains a statement of intent to report a support debt to a consumer reporting agency, the obligor may contest the accuracy of the intended report during a hearing conducted pursuant to the notice.

(2) Except as provided in (3) of this rule, at any time after a support debt is reported to a consumer reporting agency, an obligor may request an administrative hearing to contest the accuracy of the support debt. Except as provided in (3) no hearing shall be denied for lack of timely request.

(3) An obligor may not be granted a hearing to contest the accuracy of a support debt whenever the amount of the debt:

(a) has previously been determined by a court or administrative final decision and order; or

(b) was at issue under a notice served upon the obligor under 40-5-222, 40-5-223, 40-5-225, 40-5-232, and 40-5-413, MCA, and the obligor either failed to timely request a hearing or failed to appear at a scheduled hearing. (History: Sec. 40-5-262, MCA; IMP, Sec. 40-5-261, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Subchapter 18 reserved

Subchapter 19

Medical Support Enforcement

37.62.1901 PROVIDING INFORMATION (1) Whenever an obligor is required under 40-5-208, MCA to provide the CSED with information regarding health or medical insurance coverage, the obligor shall provide the information within 20 days following the receipt of a written request from the CSED. The information must be provided by a verified writing using a form provided by the CSED or a form provided by the obligor which contains essentially the same information.

(2) The request for health or medical insurance coverage information shall be deemed continuing, and the obligor must report changes in the information to the CSED within 20 days of the change.

(3) Failure to provide or update the information may result in the assessment of a monetary sanction under 40-5-208, MCA. (History: Sec. 40-5-202, MCA; IMP, Sec. 40-5-208, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; AMD, 1991 MAR p. 135, Eff. 2/1/91; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 02 reserved

37.62.1903 NOTICE TO OBLIGOR (1) If the CSED determines that an obligor failed to provide or maintain health or medical insurance coverage pursuant to statute or court or administrative order, or if the obligor fails to provide information concerning such coverage, or both, the CSED may cause to be served upon the obligor, a notice of such failure. The notice shall include:

- (a) names of the obligor, the obligee and the child;
- (b) a description of the court or administrative order, or statute which created the obligation to obtain and maintain insurance coverage;
- (c) a statement of the monetary sanction to be assessed and the months for which the assessment is made;
- (d) an order commanding the obligor to appear and show cause why the amount assessed should not become final;
- (e) a statement that the amount finally assessed will be subject to income withholding, warrant for distraint and other remedies available to the CSED to collect the assessed amount; and
- (f) a statement of possible defenses to the assessment of monetary sanctions. (History: Sec. 40-5-202, MCA; IMP, Sec. 40-5-208, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 04 reserved

37.62.1905 REQUEST FOR HEARING (1) If an obligor is served with a notice as provided in ARM 46.30.613, to show cause why monetary sanctions should not be imposed on the obligor, and if the obligor desires to show cause, the obligor must, within 10 days after receipt of the notice, request an administrative hearing. (History: Sec. 40-5-202, MCA; IMP, Sec. 40-5-208, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 06 reserved

37.62.1907 AMOUNT OF MONETARY SANCTION (1) The CSED will assess the amount of \$100 per child for each month an obligor is determined to have failed to provide or maintain health or medical insurance as ordered or as required by statute. The CSED will assess an additional \$100 per child for each month an obligor fails to provide or update information concerning coverage. When an obligor fails to obtain and maintain coverage and also fails to provide information regarding such coverage or lack of coverage, a total possible sanction of \$200 per child per month may be assessed. (History: Sec. 40-5-202, MCA; IMP, Sec. 40-5-208, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; AMD, 1991 MAR p. 135, Eff. 2/1/91; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 08 reserved

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37.62.1909 REASONABLE COST OF HEALTH INSURANCE (1) An individual insurance or a health benefit plan is presumed to be available to a parent at a reasonable cost if:

(a) the amount payable for individual insurance or health benefit plan premiums does not exceed 5% of that parent's gross income; or

(b) a health benefit plan is available through an employer or other group organization for which the premium is partially or entirely paid by the employer or other group organization.

(2) The presumption under (1) may be rebutted by clear and convincing evidence, and the tribunal has the discretion to:

(a) order individual insurance or health benefit plan coverage when the amount of the premium may be greater than the presumptive amount; or

(b) not order coverage when the amount of the premium is less than the presumptive amount. (History: Sec. 40-5-806 and 40-5-825, MCA; IMP, Sec. 40-5-806 and 40-5-825, MCA; NEW, 2001 MAR p. 1646, Eff. 8/24/01; AMD, 2003 MAR p. 2304, Eff. 10/17/03.)

Subchapter 20 reserved

Subchapter 21

Modification of Support Orders

37.62.2101 MODIFICATION OF SUPPORT ORDERS (1) The CSED may conduct a review for modification of a support order which it is enforcing upon a verified written application showing one or more of the criteria for review under 40-5-272, MCA.

(2) The party filing an application for a review may withdraw the application prior to service of the administrative notice described in 40-5-273, MCA without triggering the prohibitions of ARM 37.62.2103(2)(a). (History: 40-5-202, MCA; IMP, 40-5-226, MCA; NEW, 1990 MAR p. 1337, Eff. 7/13/90; AMD, 1994 MAR p. 2011, Eff. 7/22/94; TRANS, from SRS, 2000 MAR p. 3551; AMD, 2006 MAR p. 574, Eff. 2/24/06.)

Rule 37.62.2102 reserved

37.62.2103 AVAILABILITY OF REVIEW (1) For purposes of 40-5-272(4)(a), MCA, a substantial change in circumstances includes, but is not limited to:

(a) an increase or decrease at least 30% in a parent's income for child support, as defined by the Montana child support guidelines, ARM 37.62.106(1);

(b) the adoption, emancipation, or death of a child in households where more than one child are the subjects of the guideline calculation, if the existing order is not a per child amount;

(c) the movement of a child from one parent's home to the home of the other parent, with the intent that the move is permanent and is:

(i) evidenced by the written consent of the other parent;

(ii) ordered by a court of competent jurisdiction; or

(iii) demonstrated to have continued for 90 days prior to the request for review and modification;

(d) the development of special needs by a child, if those needs were not considered in the original order; or

(e) evidence that the original Montana order was set without reference to the child support guidelines.

(2) The CSED will deny a request for review of a support order if any of the following conditions exist:

(a) less than 36 months have elapsed from the date that the existing support order was entered, an administrative hearing was granted under 40-5-277, MCA, or an administrative order was issued which denied a modification because of the applicant's failure to meet one of the criteria described in 40-5-272, MCA and no substantial change of circumstances has occurred.;

(b) the CSED does not have an open IV-D case after the procedures in ARM 37.62.2107 have been completed;

(c) the State of Montana does not have or cannot obtain personal or subject matter jurisdiction over a necessary party;

(d) the address of a necessary party has not been verified;

(e) review and adjustment services are being provided by another IV-D agency;

(f) a modification or adjustment action is pending in another forum; or

(g) the support order will terminate within six months after the date the request for review is received by the CSED. (History: 40-5-202, MCA; IMP, 40-5-202, MCA; NEW, 1994 MAR p. 2011, Eff. 7/22/94; TRANS, from SRS, 2000 MAR p. 3551; AMD, 2006 MAR p. 574, Eff. 2/24/06.)

Rule 37.62.2104 reserved

37.62.2105 HEARING ON DENIAL OF REVIEW REQUEST (1) When a review is denied under ARM 37.62.2103, the parent requesting the review has the right to request a hearing on whether the review was properly denied. The request for hearing shall be made to the CSED Office of the Administrative Law Judge, and must be received within 10 days after service of a notice denying the review request.

(2) The hearing shall be conducted in accordance with CSED rules at ARM 37.62.901, et seq., except that the hearing is not a contested case hearing, and therefore no judicial review is available. The scope of the hearing is limited to the CSED's decision rejecting the review request, and the order of the administrative law judge is not subject to ARM 37.62.949 regarding proposed orders. (History: 40-5-202, MCA; IMP, 40-5-202, MCA; NEW, 1994 MAR p. 2011, Eff. 7/22/94; TRANS, from SRS, 2000 MAR p. 3551; AMD, 2006 MAR p. 574, Eff. 2/24/06.)

Rule 37.62.2106 reserved

37.62.2107 PROCEDURE FOR TERMINATING REVIEW OR MODIFICATION AFTER CLOSURE OF IV-D CASE (1) If a IV-D case is closed while a review application or modification action is pending, the CSED will mail notice to the party who did not open the IV-D case and offer that party the opportunity to apply for support enforcement services.

(2) If a new IV-D referral or an application for support enforcement services is not received by the CSED within 20 calendar days of the date the notice was received by the party, the modification notice will be dismissed or the review application denied.

(3) If a new IV-D referral or an application for support enforcement services is received by the CSED within 20 calendar days of the date the notice was received by the party, the action will continue from the point at which the IV-D case was closed.

(4) No additional or duplicate fees for performing the administrative review and modification will be charged in a case re-opened under this rule.

(5) This rule does not apply when closure is the result of a good cause determination by the appropriate agency under 42 CFR 433.147 or 45 CFR 232.40 through 232.49 that support enforcement may not proceed without risk of harm to the child or caretaker relative. (History: 40-5-202, MCA; IMP, 40-5-202, MCA; NEW, 1994 p. 2011, Eff. 7/22/94; TRANS, from SRS, 2000 MAR p. 3551; AMD, 2006 MAR p. 574, Eff. 2/24/06.)

Rule 37.62.2108 reserved

37.62.2109 CHOICE OF LAW (1) All reviews and modifications under this subchapter will be conducted using Montana law, rules, procedures and child support guidelines.

(2) Any disputes about the effect or interpretation of Montana law, rules or procedures shall, if possible, be resolved with reference to the interpretations of the courts of Montana. (History: 40-5-202, MCA; IMP, 40-5-202, MCA; NEW, 1994 MAR p. 2011, Eff. 7/22/94; TRANS, from SRS, 2000 MAR p. 3551.)

Rule 37.62.2110 reserved

37.62.2111 TIME FRAME DETERMINATIONS (1) For purposes of determining time frames in reviews and modifications conducted under this subchapter, the following provisions apply:

(a) a request for review is received when the CSED has sufficient information to determine if review is available under ARM 37.62.2103; or

(b) the CSED shall take no action on a review or modification while the procedures under ARM 37.62.2107 are being performed. The time provided for the performance of procedures under ARM 37.62.2107 shall not be counted in any determination of time frames. (History: 40-5-202, MCA; IMP, 40-5-202, MCA; NEW, 1994 MAR p. 2011, Eff. 7/22/94; TRANS, from SRS, 2000 MAR p. 3551; AMD, 2006 MAR p. 574, Eff. 2/24/06.)

Rule 37.62.2112 reserved

37.62.2113 REQUESTS FOR DISCOVERY (1) Requests for discovery by parties in administrative modification cases must be received in the CSED Office of the Administrative Law Judge on or before the 10th day after service of a Notice of Review of Child Support Order and Order to Produce Financial Information upon the party requesting discovery. The CSED may request discovery by including a discovery order within its notice of proposed modification.

(2) Requests for discovery may be denied for untimeliness or for other good and reasonable cause.

(3) Except as otherwise provided in these rules or the authorizing statutes, discovery shall be conducted as provided in ARM Title 37, chapter 62, part 9. (History: 40-5-202, MCA; IMP, 40-5-202 and 40-5-273, MCA; NEW, 1994 MAR p. 2011, Eff. 7/22/94; TRANS, from SRS, 2000 MAR p. 3551; AMD, 2006 MAR p. 574, Eff. 2/24/06.)

Rule 37.62.2114 reserved

37.62.2115 SETTLEMENT CONFERENCE (REPEALED) (History: 40-5-202, MCA; IMP, 40-5-202, MCA; NEW, 1994 MAR p. 2011, Eff. 7/22/94; TRANS, from SRS, 2000 MAR p. 3551; REP, 2006 MAR p. 574, Eff. 2/24/06.)

Rule 37.62.2116 reserved

37.62.2117 NEGLIGIBLE CHANGE (1) If the difference between the existing total monthly support order and the proposed support obligation is less than 15%, the change may be considered negligible and the child support provisions of the existing support order need not be modified.

(2) Provisions in the existing order for the medical needs of the child may be modified even if the change in the child support amount is negligible. Where an existing support order does not contain a provision for the medical needs of the child, the order may be modified to include a medical support order even if the change in the child support amount is negligible. (History: 40-5-202, MCA; IMP, 40-5-202, MCA; NEW, 1994 MAR p. 2011, Eff. 7/22/94; TRANS, from SRS, 2000 MAR p. 3551; AMD, 2006 MAR p. 574, Eff. 2/24/06.)

Rule 37.62.2118 reserved

37.62.2119 MODIFICATION HEARING (1) A party may request a hearing on the Notice of Administrative Review.

(2) The request for hearing must be received in the office of the administrative law judge within 20 days after the Notice of Administrative Review is received by the party requesting a hearing.

(3) If no party timely requests a hearing, the administrative law judge may enter an order adopting the terms and provisions proposed in the notice, including the child support amount and the imposition or modification of a medical support order.

(4) After the modification hearing, the administrative law judge shall enter an order in accordance with 40-5-277, MCA.

(5) The order shall be effective the first day of the month following the issuance of the Notice of Proposed Modification. If the modification result is a lowered child support obligation, all payments received during the pendency of the modification action shall be credited against the new obligation, and amounts exceeding the modified obligation shall be applied first to outstanding arrearages, fees, and fines. Any amount remaining after such credits shall be applied to future child support by reducing the amount of child support collected under the new order for no more than six months, or before the order terminates, whichever comes first. Parties may agree to an alternate schedule. No refunds shall be available from the CSED. (History: 40-5-202, MCA; IMP, 40-5-202, 40-5-272, 40-5-273, MCA; NEW, 1994 MAR p. 2011, Eff. 7/22/94; TRANS, from SRS, 2000 MAR p. 3551; AMD, 2006 MAR p. 574, Eff. 2/24/06.)

Rule 37.62.2120 reserved

37.62.2121 ADDITIONAL HEARING PROCEDURES (1) To the extent they are not inconsistent with the provisions of this subchapter, the overall hearing procedures set forth in subchapter 6 of this chapter are applicable to administrative hearings under this subchapter. (History: 40-5-202, MCA; IMP, 40-5-273, MCA; NEW, 1994 MAR p. 2011, Eff. 7/22/94; TRANS, from SRS, 2000 MAR p. 3551; AMD, 2006 MAR p. 574, Eff. 2/24/06.)