



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

SUPERSEDES

CS 401.3 Notice and Order Concerning Support, August 25, 2023

REFERENCES

45 CFR 303.4 and 303.101; MCA §§ 40-5-231, 40-5-1008, 40-5-201(8)(9)(10)(14), 40-5-203(3), 40-5-225 -227, Title 40 Ch 5 Part 4, 40-5-Part 8, 53-4-248(3); ARM 37.62.901- 37.62.965

Introduction

The Child Support Services Division (CSSD) establishes the support obligation of a parent by entering a support order requiring the parent to provide child support, medical support, or both for the children named. One support order is generally used to establish the obligations of both parents. If the obligee is not a parent but a non-parent custodian, the support order contains an obligation for only the obligor.

Definitions and Terminology

Absolute Defenses: Defenses that need no further proof and, if true, prevent the CSSD from proceeding with the support order action. Absolute defenses may include;

- The CSSD served a notice on the person by mistake, intending to serve another person.
- There is a current court order establishing another man as the father and the obligor is not the mother.
- The CSSD does not have subject matter jurisdiction to establish support.

Affirmative Defenses: Defenses that if not raised before the hearing, cannot be raised at a later time. Affirmative defenses to the support order action may include;

- The obligee has waived the right to receive child support.
- A court has declared any of the children emancipated.
- A support order for the financial support of the children already exists against the obligor.
- The CSSD lacks personal jurisdiction over the parent to establish a support order.

Continued Services: A case that was opened by referral from a IV-A, IV-E or Medicaid agency. The obligee in that case is no longer receiving public assistance and does not request case closure. The CSSD is required by federal regulations to provide continued services.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Jurisdiction by Consent

Jurisdiction by consent can substitute for personal jurisdiction and is established if any of the following conditions apply:

1. The parent submits a direct request for services to the CSSD.
2. The parent is receiving services in a IV-D intergovernmental case referred to the CSSD, and the parent has consented to the jurisdiction of the initiating agency by applying for IV-D services with that agency or failing to refuse continued services.
The obligee's receipt of public assistance benefits in an initiating state is not necessarily a consent to the personal jurisdiction of that state, or the CSSD. The CSSD notifies the initiating agency at the time of case opening that a waiver signed by the obligee is required, and that until the waiver is received the CSSD cannot proceed with the case.
3. The parent signs a document waiving any contest to personal jurisdiction.

Legal Separation Action: The parents are married and are seeking a formal document setting out rights and responsibilities but are not seeking a dissolution of marriage. This action may include a child support obligation. This action may be converted to a dissolution action after initiated.

Medical Support Order: Judgment, decree, or order, including approval of a settlement agreement that provides for the medical care of a child.

Montana Child Support Guidelines: The standardized formula, set out in the Administrative Rules of Montana, to determine a monetary support obligation. The guidelines must be used by the CSSD, district courts, attorneys, and parents.

Non-Public Assistance: A case that never has or currently is not receiving government aid such as TANF or IV-E Foster Care.

Obligated Parent: A parent obligated under the terms of a Notice and Order Concerning Support (NOCS) to provide monetary and/or medical support for a child.

Obligee: A person, a public agency or Indian tribe owed a duty of support.

Obligor: A person, including an alleged father, who owes a duty of support.

Parent: The natural or adoptive parent of a child.

Parenting Action: Parents have filed an action to formalize various rights and responsibilities related to the child. This action may include parenting time and may include a request for child support.



CHILD SUPPORT SERVICES DIVISION ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Personal jurisdiction: The power of the Department to bind a person to a determination involving rights or obligations. Personal jurisdiction can be waived.

Personal jurisdiction exists when,

- The parent can be served by personal service or by certified mail in Montana.
- The parent resided with the child in Montana.
- The parent engaged in sexual contact in Montana and the child may have been conceived by that contact.
- The parent resided in Montana and provided prenatal expenses or support for the child.
- The parent submits to Montana jurisdiction by consent, by waiver of contest, or by entering a general appearance.
- The child resided in Montana as a result of a parent's acts or directives.
- There is any other basis for jurisdiction under the Montana and U.S. constitutions.

Prima Facie: A Latin term that means "at first sight" or "on its face". It is used to describe evidence that seems sufficient to prove a fact or proposition, unless contradicted by additional evidence.

Public Assistance: Government aid such as TANF or IV-E Foster Care.

Subject Matter Jurisdiction: DPHHS's authority to hear and determine an action or controversy. Subject matter jurisdiction cannot be waived.

Support Order: An order, whether temporary or final, that provides for the payment of a specific amount of money, including an amount for medical and health needs, childcare, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child.

Non-Parent Custodian: A public agency or person other than a parent who is authorized by legal process to have physical custody of a child; has actual physical custody of a child with the written consent of the parent or parents having legal custody of the child; or has actual physical custody of a child because of the parents' neglect, failure, or inability to provide for the child's support, medical care, and other needs. A non-parent custodian is **not** an obligated parent.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

POLICY

Conditions for Establishing a Support Order

The CSSD may enter a support order against a parent or parents when the following conditions apply:

- The obligor is not a minor.
- There is no existing support order.
- Personal jurisdiction must exist over a parent prior to establishing a support order against that parent.
- Either the obligor or the obligee is not receiving public assistance money from the Montana TANF Program for minor children. The CSSD cannot establish a support order while both are receiving Montana TANF for minor children.
- When the obligor is male, and the paternity of the children is resolved or is not at issue. If paternity of the children is at issue, the action to establish a support order may be combined with a notice issued under CS 602.1 Case Initiation: Mother Obligee or CS 602.2 Case Initiation: Non-Parent Custodian.

Determining the Type of Support Notice: Notice and Order Concerning Support (NOCS) or Temporary Notice and Order Concerning Support (TNOCS)

A NOCS is appropriate when there is no pending action in another tribunal to establish a support order. If there is a pending support action in district court, the type of pending action determines if a NOCS or TNOCS can be issued. Montana law requires proceedings for dissolution of marriage and legal separation to include a support order. If support has not been ordered by a district court in those proceedings, the CSSD will issue a TNOCS. Montana law does not require parenting actions to include a support order, but a support order may be included. Depending on the pleadings and the status of the parenting action the CSSD could issue either a NOCS or a TNOCS. If an action is pending in another state, Tribe or nation, an Office of Legal Affairs (OLA) attorney should be consulted.

Party Status of Obligee

If personal jurisdiction is established over a parent obligee, the CSSD makes the obligee a party to the establishment action by serving a NOCS on the obligee under this section.

Noticed Amounts and Guideline Determinations

The CSSD alleges support amounts due by serving a NOCS. Amounts in the notice must be based on the Montana Child Support Guidelines, except in cases where the CSSD does not have sufficient financial information to perform a guideline calculation. CSSD policy defines "sufficient financial information" as any information that can be used to reasonably approximate the obligor's income or ability to earn income. This policy presumes that all other information needed for an initial guideline determination can be obtained, or approximated based on knowledge of the case.



CHILD SUPPORT SERVICES DIVISION ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

TANF Exemption

The CSSD alleges non-guideline support amounts only when it is impossible to identify or impute obligor income. In these cases, the notice must allege amounts based on the greater of the maximum amount of public assistance payable to the child under the TANF program, or the child's actual needs as alleged by the obligee. The CSSD does not solicit allegations of the child's needs but assumes these are represented by the TANF amount unless otherwise advised.

As a matter of CSSD policy, notices containing non-guideline amounts should be very rare, and should be issued only after the caseworker has made every reasonable effort to obtain information for a guideline calculation.

Confidentiality of Information

Information about a parent's employment, financial condition, medical condition, identification numbers, household, or other families is not routinely provided to other persons except as it is reflected in a guideline worksheet. A parent's financial affidavit may only be released if required by law, such as during a contested case action like a child support administrative hearing.

Exemption from Immediate Income Withholding

The CSSD may exempt an obligor from immediate income withholding if it finds there is good cause not to require immediate withholding, or there is an acceptable alternative arrangement in place for the payment of support. The finding is made by the caseworker while negotiating the support order or by the Administrative Law Judge (ALJ) at hearing.

The original NOCS contains a provision requiring immediate income withholding. If a parent disagrees with the provision, the parent may contact the CSSD to request an exemption.

Good Cause for Immediate Income Withholding Exemption

An exemption for good cause may be recommended if all the following conditions are met:

- A parent provides convincing evidence that implementation of immediate income withholding would not be in the best interests of the child. For example, there is evidence the parent's employer, despite the statute forbidding the practice, will fire, refuse to hire, or refuse to promote the parent if the employer is required to comply with the CSSD withholding requirements. The resulting loss of income available for child support would not be in the best interest of the child.
- If support was previously ordered and there is proof of timely payment.
- No arrears are owing, and the parent has paid in full any judgment listed in the NOCS.



CHILD SUPPORT SERVICES DIVISION ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Alternative Payment Arrangement

An exemption based on an alternative payment arrangement may be recommended if all the following conditions are met:

- Support payments for amounts in the NOCS are made through the CSSD.
- There is a written agreement for payment of support signed by the obligor and the obligee, or there is an oral agreement between the obligor and obligee that the caseworker has heard directly stated by both.
- The agreement provides sufficient security to ensure compliance with the arrangement. Examples of possible security include bonds, prepayment of support at least one month ahead, and automatic withdrawal on the obligor's bank account or paycheck.
- No arrears are owing, and the obligor has paid in full any judgment listed in the NOCS.

If an exemption is recommended and a supervisor approves, an amended NOCS is issued that includes the exemption.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

PROCEDURES

Initial Review

Caseworker

Determines Jurisdiction over Obligor

1. Determines if the CSSD has personal jurisdiction. See Definitions and Terminology.
2. If not, initiates an intergovernmental referral or proceeds to CS 250.1 Native American Jurisdiction.

Determines Jurisdiction over Parent Obligee

Determines if one of the following conditions applies to the case, if one does, proceeds to establish a support order against the obligor only.

- **Native American Jurisdiction**

The CSSD does not have jurisdiction over the parent obligee based on factors in CS 250.1 Native American Jurisdiction.

- **Obligee Parent is a Minor**

When the parent obligee is under eighteen years of age the CSSD may establish a medical support order, but not a monetary support order. The obligor will be required to pay 100% of uncovered medical expenses.

- **Intergovernmental Responding Case**

If the CSSD cannot obtain personal jurisdiction over the out of state obligee proceeds with issuing the non-parent custodian version of the support notice.

Determines Type of Support Notice

Issuing a NOCS or a TNOCS depends upon the type of district court action being taken. District court actions may include parenting actions, legal separation, or dissolution of marriage. Refers to the headings below to determine the next action.

District Court Parenting Action

1. Gathers documents to determine whether a child support obligation has been requested of the court.
2. Reviews documents to determine whether a NOCS or TNOCS is needed.

Issues a TNOCS

When the parenting action is pending in district court, and the petition or response identifies a need for a child support order. Proceeds to CS 401.4 Establishment of a Temporary Notice and Order Concerning Support.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Issues a NOCS

If the parenting action is:

- Pending in district court, and the petition does not include a child support allegation.
- Final in district court, and no child support was ordered.

Does Not Issue Notice

- When child support has been ordered by the district court in the parenting action or legal separation action.
- Enforces the district court order.

District Court Dissolution of Marriage Action or Legal Separation Action

1. Gathers documents to determine whether the district court has entered a support order.
2. Reviews documents to determine whether a TNOCS is needed.

Issues a TNOCS

If the dissolution of marriage action is:

- Pending in district court, issues a TNOCS even if district court states CSSD will calculate support.
- Final in district court, and no child support amount is ordered.

Refers to CS 401.4 Establishment of a Temporary Notice and Order Concerning Support.

Does Not Issue Notice

- When child support has been ordered by the district court.
- Enforces the district court order.

Reviews Available Financial Information for Obligated Parent

Sources of information should include electronic sources available to the CSSD, the case enrollment form or referral, information in the case record from other actions, current wage publications, and any incidental information. If necessary and where practical, obtains additional information through informal contact with the parents or custodian.

At caseworker's option, requests financial information in advance of the formal notice process by preparing, and sending to the enrollee parent a CS 202.1A 10-Day Letter requesting more Information asking the enrollee parent to complete and return a financial affidavit, and provide other information if necessary, or CS 401.3H Cover Letter with financial affidavits (return due in 10 days) asking them to complete and return two financial affidavits, one with obligee and one with obligor information.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Guideline Calculations

1. Performs a guideline calculation, as in CS 404.1 Child Support Guidelines unless the TANF exemption applies.
2. Determines the support amount to be ordered based on the guideline transfer payment and the associated breakdown for each child.

Difference Due to Rounding

Where the amount in the support order will be a per-child amount as in most cases, and the total of the per-child amounts for all the children differs from the total transfer payment listed in Worksheet A, due to rounding, retain the per child amounts. For example: Worksheet A lists the per child per month support amount as \$152.00, but a total monthly transfer payment of \$305.00. Issue the notice for \$152.00 per child per month.

TANF Exemption Amount

1. If the TANF exemption applies enters a case note explaining why a guideline calculation was not possible.
2. Determines the obligor's monthly child support obligation per child as follows:
 - For amounts refers to Bulletin for Determination of Non-Guideline Support Amount, under Establishing A Support Amount Due.
 - Divides the grant amount by the number of children to get the per-child obligation.

Prepares the first Notice and Order Concerning Support, CS-401.3A

1. Enters the amount of the obligor's child support obligation from the guideline calculation or TANF Amount.
2. Enters commencement date determined in the Commencement Date step below.
3. Selects options for the NOCS document according to the facts of the case:
 - Selects third-party language if the obligee is not a parent or if the CSSD cannot obtain personal jurisdiction over the obligee parent.
 - For each obligated parent, selects the option to send a financial affidavit if one is not on file.
 - Selects consent language only if financial affidavits have been received for all obligated parents; amounts in the notice must be based on the guideline calculations.



CHILD SUPPORT SERVICES DIVISION ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

- Selects non-per child language if the amounts in the guideline worksheets are not equal amounts for each child for the paying parent or are not owed by the same parent for each child. Enters the total monthly payment for all the children in the not-per-child field.
- Selects non-guideline language if the amounts in the notice are not based on guideline calculations.
- Selects temporary obligation language only in conjunction with the procedures in CS 401.4 Establishment of a Temporary Notice and Order Concerning Support.
- Selects the judgment for genetic testing fees if applicable; adjusts the amounts if necessary.
- Does not select the income withholding exemption. This option is available only under specific conditions in an amended NOCS.
- Does not select the amended notice. This option is available only for an amended NOCS.
- Adjusts the language of the support order where applicable to reflect the requirements of CS 404.1 Child Support Guidelines for rebutted presumptions, variances, and anticipated changes in circumstance.
- Accommodate other special facts of the case with the advice of an OLA attorney.

Previously Established Medical Support

In rare instances, medical support provisions contained in the NOCS may duplicate the medical support obligation already established for a particular parent-child pair. It is not necessary to adjust the support order in this situation; standard language in the NOCS provides that any duplication of medical support caused by entry of the proposed support order does not increase the parent's medical obligation with respect to the duplicated provision.

Commencement Date

The presumed child support obligation commencement date should be the month following receipt of the CSSD Enrollment for Services, Intergovernmental request, or referral from another agency, such as TANF, IV-E Foster Care or Medicaid.

When there is good cause for a commencement date other than the presumed date (for example, the month of the child's birth, parent's separation date, court order, and/or other significant event) the caseworker may request a case note in the system from either a supervisor or an OLA attorney approving the non-presumptive date.

A supervisor or OLA attorney must **always** provide a case note of approval for the caseworker to proceed with the commencement date if it is more than six months from the date the NOCS will be



CHILD SUPPORT SERVICES DIVISION ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

issued, even if that date is the presumed commencement date. The commencement date of the child support obligation **cannot** be more than two years from the date of issuance of the support establishment notice, if rights to support were assigned to the state for any of that period.

NOCS Package

1. Generates the NOCS package for each obligated parent comprising:

- CS 401.3A Notice and Order Concerning Support.
- Prepared guideline worksheets.
- If applicable, CS-404.6A Financial Affidavit.

2. Retains a copy of the signed NOCS and any guideline worksheets in the case record.

In a case where the obligee will not be ordered to provide medical support in the notice, sends a copy of the NOCS by regular mail to the obligee with the hearing request removed.

Paternity Coordination

If paternity is at issue, combines the service of the NOCS package with the service of the CS 605.2A Notice of Parental Responsibility (NPR) and coordinates as appropriate. Refers to CS 605.2 Notice of Parental Responsibility: Single and Multiple-Allegation Cases.

Service and Response Time

For each obligated parent, serves the NOCS package and monitors for response. The first service method used should be the most cost-effective with the highest probability of successful service based on the caseworker's knowledge of the case.

Service Options

1. Service is obtained by one of the following:

- CS-405.1 Acknowledgment of Receipt of Notice and Waiver of Service

Special provision for service by acknowledgement

If the obligated parent does not respond in writing to the acknowledgment within 20 calendar days after the date of mailing, the CSSD must issue the package for service by sheriff or private process server only, in accordance with the Montana Rules of Civil Procedure.

- CS-401.3C Praecipe Sheriff/Process Server
- Certified mail restricted delivery: return receipt requested.



CHILD SUPPORT SERVICES DIVISION ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

2. Identifies the best option in terms of time, cost, and reliability in that jurisdiction. Fees for sheriffs' offices and private process servers vary, and prepayment may be required. Seeks supervisor approval of a state warrant when prepayment is required.
3. Keeps copies of all documents and methods of service in the case record.
4. Monitors for return of the documents or contact by the obligor and obligee within 20 calendar days of service.

Obligor Parent Who is Not the Child's Mother Claims Non-paternity

If an obligor parent claims non-paternity and CSSD records show paternity is presumed or adjudicated, explains the CSSD will proceed with establishment of the support obligation.

The parent may request a hearing on the NOCS and contest the existence of a paternity presumption or order at that time.

Failed Service on a Parent

Service is Obtained on Obligor only

If service is obtained on the obligor but cannot be obtained on the parent obligee by either acknowledgment or certified restricted mail, an attempt must be made by sheriff or process server before the NOCS can be amended to the non-parent custodian version, see Prepares Amended NOCS below.

Service Cannot be Obtained on Obligor

If service cannot be obtained, takes the necessary steps to locate the obligor; this includes, but is not limited to, monitoring automatic interfaces.

- If within one year from the date of the original NOCS being issued, the obligor is located, arranges for service of the original NOCS.
- If, within one year from the date the original NOCS was issued the obligor is **not located**, the NOCS is dismissed.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Dismisses the NOCS

Proves Support Order Exists

If in response to service of the NOCS an individual timely contacts the CSSD, and proves that a support order for the child support obligation already exists,

Prepares CS 401.3F Motion and Order to Dismiss Administrative Notice.

- If no hearing is requested sends CS 401.3F to the Administrative Orders Unit (AOU).
- If a hearing is requested send CS 401.3F to the Office of Administrative Hearings (OAH) for processing.

Child of the Action in Another Case

If the child of the action becomes active in another CSSD case with a different obligee after the NOCS is served on at least one obligated parent, retains the NOCS action for the original obligor and obligee except,

- If the original obligee is a parent and cannot be served amends or dismisses the NOCS according to Failed Service on a Parent above.
- If the new obligee is a parent and the original obligee was not a parent, at caseworker discretion, dismisses the notice and issues a new NOCS for the two obligated parents.

Amends the NOCS

Receipt of New Information

1. When new information such as a change in income or daycare expenses is provided it must be used in a subsequent guideline calculation. Amends the NOCS regardless of whether the child support amount changes.
2. Attaches an accurate guideline calculation to the amended NOCS. This is important for a subsequent modification action to determine whether a significant change of circumstances has occurred.

Prior Support Action Pending

If proof is received that a support action was pending in a district court prior to the date the NOCS was issued, amends the NOCS to include temporary language, and refers to CS 401.4 Establishment of a Temporary Notice and Order Concerning Support.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Change to Income Withholding Exemption

When the parties contact the CSSD **prior** to resolving the NOCS to prove that conditions for the exemption to income withholding apply, issues an amended NOCS.

Prepares Amended NOCS

Proceeds as necessary:

- Creates new guideline calculation if new information was received.
- Updates the support obligation in the NOCS, if needed.
- Amends to a non-parent custodian, or temporary version, or corrects an error in case information.

Does not amend the NOCS solely to add a judgment for genetic testing fees.

Does not amend the NOCS to a TNOCS if the parents subsequently file a district court action after a NOCS is issued.

Proceeds according to the following:

- Does not change the commencement date determined for the original NOCS, unless needed. If needed follows Commencement Date procedures above.
- If an income withholding exemption is approved by a supervisor, includes the income withholding exemption language.
- If service fails on the obligee, after multiple service attempts as described above, issues an amended notice using the non-parent custodian version.
- If the parent obligee was successfully served with the original NOCS, but now cannot be located, does not amend the NOCS to the non-parent custodian version, instead takes action to locate the obligee or proceeds with case closure steps.
- Selects the amended notice language.
- Sends the amended notice package to the previously served obligated parents by regular mail. If any obligated parent was not previously served, the amended notice package must be served on that parent by certified mail or process server.
- In a case where the obligee will not be ordered to provide medical support in the notice, sends a copy of the amended NOCS by regular mail to the obligee with the hearing request removed.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Service and Response Time

- Serves amended NOCS by regular mail, monitors for response within three mailing days, plus 20 calendar days after date of mailing.
- Serves amended NOCS by acknowledgment, certified restricted mail, sheriff, or process server to any parent not previously served with the NOCS and monitors for a response within 20 calendar days of service. Regular mail service may be used for any obligated parent previously served with the NOCS.

Additional notices beyond the first NOCS and amended NOCS are generally not appropriate, unless one or both financial affidavits are produced in response to the amended NOCS.

Preparing the Support Order/Resolving the Notice

1. When no obligated parent has timely requested a hearing, prepares the support order below that applies to the case.
2. Proceeds to assemble the applicable package below:

A Signed Consent to Support

If both obligated parents have returned signed consents, prepares CS-401.3B Entry of Support Order, attaches it to the notice containing the signed consents from both obligated parents, along with the guideline worksheets.

In a case with only one obligated parent, adds the notice containing the obligor's signature to the package, along with the guideline worksheets.

Default Support Order

1. If no obligated parent has returned the signed Consent to Support, the notice package includes the most recent notice and the guidelines worksheets.
2. Completes the certificate of service and response.

Consent and Default

If one obligated parent has returned the signed Consent to Support and one has not, uses the document containing the signature of the consenting parent to complete the certificate of service and response; includes it, along with the guideline worksheets, when assembling the package.

Assembles Package

The package contains the support order as prepared above and if necessary, CS-401.3E Exception to Income Withholding.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Package Review

Submits NOCS package to AOU or OAH depending on whether there has been a request for a hearing.

- AOU, if a hearing was never requested. Retains a copy in the case record and enters a case note.
- OAH, if a hearing was requested and then withdrawn. Retains a copy in the case record and enters a case note.

At regional discretion, submits the NOCS package for supervisor review and approval. Upon approval submits package as above to AOU or OAH.

Abstracting and District Court Action Review

AOU automatically files abstracts of finalized orders in the district court where the obligor resides; for out-of-state obligors, abstracts are filed in Lewis and Clark County District Court. If an abstract should be filed in a district court other than where the obligor resides, that request must be included in the NOCS package sent to the AOU or OAH.

Entry of Support Order

1. Following submission of the NOCS package or participation in the hearing, monitors for receipt of a signed copy of the final order.
2. Upon receipt of the signed final order:
 - Reviews terms in the order.
 - Updates the system with the support order information.
 - Sets up case accounts in the system.

Required case accounts include current support and accounts for any judgment period indicated by the order. The judgment period includes the months from the commencement date through the month before the accounts are set up. If the support order is signed and accounts are set up in the same month as the commencement date, there is no judgment.

- Begin enforcement of the support order.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Oral Bench Ruling is Not a Final Order

For purposes of the CSSD's authority to enforce a support obligation, a bench ruling takes the place of a proposed decision and order **only**. The caseworker cannot proceed to update the system or enforce the decision until a written final order is obtained.

Expediting Support Enforcement

To comply with the intent of federal regulations and state law concerning system data reliability and immediate effectiveness of support, it is essential that current support accounts are immediately available to receive payments at the completion of service of the NOCS or amended NOCS on all obligated parents.

For this reason, the caseworker should take every opportunity to expedite case processing from the day the service response period expires through the day enforcement begins. This includes efficient preparation and submission of the NOCS package to the AOU or OAH as well as close monitoring for return of the final order.

Processing Non-Hearing Support Order

Administrative Orders Unit

Upon receipt of a support order package:

- Finalizes the order, and enters a case note for the consent to support.
or
- Finalizes the default order and proceeds to Processing the Proposed Decision and Order; Final Decision and Order at the end of these procedures.

Abstracting Orders

1. Abstracts a finalized order to the district court where the obligor resides unless a caseworker requests it be abstracted to another county or counties.
or
Sends abstract to Lewis and Clark County District Court for out-of-state obligors.
2. Sends copies of the filed abstract to those who received copies of the support order.
3. Enters a case note.



CHILD SUPPORT SERVICES DIVISION ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Expedited Processing Required

CSSD policy requires that processing in the Non-Hearing Support Order step above and the Proposed Decision and Order; Final Decision and Order step below be completed the day the package is received or at the latest the next business day. Certain exemptions for corrections or extraordinary circumstances may apply.

Receiving a Hearing Request

Caseworker

For a case involving two obligated parents, if the CSSD has not yet obtained service on the non-requesting parent, monitors for service and if applicable proceeds to Processing the Hearing Request below.

Processing the Hearing Request

Administrative Orders Unit

Receives a hearing request and proceeds as follows:

1. Determines if the hearing request is timely.
 - If the hearing request is timely, sends copies of the hearing request to the caseworker and OAH.
 - If the hearing request is untimely, sends HR-5 Notice of Denial of Hearing Request to the alleged/presumed father and the caseworker.
2. Retains a copy of the hearing request in the case record.

Office of Administrative Hearings

1. Upon receipt of a timely request for a hearing contacts the caseworker to identify dates that they will be unavailable for a hearing.
2. In a two-obligation case also prepares and sends to the non-requesting parent a notice of requested hearing asking the parent to notify the OAH within 10 days of the dates and times the parent will be available for hearing.
3. Schedules hearing and sets any appropriate due dates.
4. Obtains the signature of the ALJ on a notice of hearing and scheduling order. The notice and scheduling order must include the hearing date, hearing instructions, due dates set by the OAH for witness and exhibits lists, exhibits, and requests for discovery. Provides copies to the CSSD, all obligated parents, and any non-parent custodian; retains in the hearing record.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Caseworker

Receives hearing request and proceeds as follows:

1. Within 3 working days, informs OAH of any dates they will be unable to attend a hearing.
 - For a case involving two obligated parents, if the CSSD has not yet obtained service on the non-requesting parent, monitors for service, and if applicable, proceeds to Hearing Preparation, below.
 - At caseworker discretion, contacts the obligated parents without waiting for the return of the hearing request from the OAH. Researches issues raised in the hearing request. In cases with two obligated parents, the contact may be combined into a single interview.
2. During the discussion with each parent identifies and attempts to resolve any issues cited in the hearing request or raised separately.
3. Enters a case note.

Defenses

If a parent claims an absolute or affirmative defense, elicits the parent's reasons or the supporting facts and proceeds with the following **before** proceeding to Contested Elements below.

Defense is proved

Dismisses the action, refers to Dismisses the NOCS above. Includes in the CS 401.3F Motion and Order to Dismiss Administrative Notice a request to vacate the hearing.

Defense is not proved

If the defense is not proved, or if further information will be required to determine the validity, proceeds to Contested Elements. Requests the parent provide any information still needed as quickly as possible.

Consults with an OLA attorney on all questionable cases.

Contested Elements

Reviews elements of the case with the requesting/contesting parent and identifies any elements they intend to contest at hearing. Where necessary, explains specific CSSD procedures or guideline calculations, confirms the CSSD's authority to act, and gives or obtains any other information relating to issues raised.

In a case involving two obligated parents, either parent can contest any element of the case, regardless of whether the element applies to the contesting parent or the other parent. For example, the obligor can contest the CSSD's jurisdiction over the obligee. In identifying elements that may be contested the caseworker must be sure to specifically address all possible combinations.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Results of Contact with Obligated Parents

Upon completion of the interview(s), takes an appropriate action below:

Withdrawal of Hearing Request

If the requesting parent is satisfied with the explanation and no longer wishes to contest the notice, explains the procedures for withdrawing the hearing request or if applicable, consenting to the notice. Emphasizes any withdrawal must be in writing and signed by the requesting parent. If the request is not correctly withdrawn the hearing will proceed.

Amended Notice

If a parent provides information that changes the amounts used in the guideline calculation, only amends the NOCS if the support amount changes.

Failed Attempts to Contact

If unable to contact an obligated parent **before** the hearing date despite repeated attempts, documents attempts in case notes.

Hearing Preparation

Participates in discovery as necessary; compiles exhibits for use as evidence at the hearing and prepares a list of witnesses and exhibits. Refers to CSSD Witness and Exhibit List training for updates and details.

Important

The witness and exhibit list must include:

1. Name, addresses and telephone numbers for all the witnesses, including the CSSD caseworker identified as an expert witness.
2. Synopsis of the testimony expected by the witnesses.
3. All exhibits submitted.
4. Explanation of why each exhibit is being submitted and what it proves.

Redactions

1. If the CSSD is aware that a witness, or a child in the witness' custody is an alleged victim of domestic violence, replaces the name, address, and telephone number for the witness on the witness and exhibit list with the words, "in care of the Child Support Services Division".



CHILD SUPPORT SERVICES DIVISION ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

2. If a domestic violence indicator exists inspects all exhibits involving the alleged victim for contact and locate information. If found, redacts the information. A redacted version is provided to the obligor, obligee and any attorneys. An unredacted version and a redacted version is provided to the OAH. Does not in any way alter the original document(s).
3. Other confidential information, such as social security numbers, should be redacted. A redacted version is provided to the obligor, obligee, and any attorneys. An unredacted version and a redacted version are provided to the OAH. Does not in any way alter the original document(s).

No DVI Exists

Mails the list and exhibits directly to the obligor, obligee and any attorneys and sends to the OAH to be received on or before timeframes in scheduling order; retains one copy for the case record.

Intergovernmental Responding Case

In an intergovernmental responding case where the CSSD has personal jurisdiction over the out-of-state custodial parent, conducts the pre-hearing contact, exchanges hearing exhibits, and ensures the notice of hearing and scheduling order is sent. Adjusts these procedures as necessary if the CSSD needs the assistance of the initiating state with the hearing.

Caseworker Testimony

Prepares caseworker testimony under the general direction of an OLA attorney. Provides information about the *prima facie* case, including, at a minimum, the CSSD's authority to proceed, the lack of any existing support order, the existence of a paternity presumption or order, the service of the administrative notice, and the CSSD's jurisdiction.

Important

Evidence of paternity presumption or order. The caseworker should prepare testimony stating by what method paternity was established or presumed rather than introducing actual paternity documents, which may be subject to strict confidentiality regulations.

Judgment for Arrears

Provides evidence to the ALJ in the form of payment information for the ALJ to determine the arrears accrued from the commencement date through the hearing month. Requests a judgment at the hearing.

Continuances or Delays

Except in unusual situations or as noted below, does not request a continuance of the hearing or a delay in submitting the exhibits once the respective dates are set.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Continuance for Service on an Obligated Parent

In a case where the hearing date is approaching and an obligated parent has not yet been served, but efforts to serve the parent are continuing and are likely to be successful, CSSD policy allows for continuance of the hearing as needed to allow a reasonable time between service of the NOCS and the hearing.

1. If a continuance is needed to continue service efforts, prepares CS-405.7A Motion for Continuance.
2. Obtains supervisor approval.
3. Sends CS-405.7A Motion for Continuance the OAH.
4. Monitors for the rescheduled date.

Hearing Participation

- Participates as a witness and presents any special request prepared in Processing the Hearing Request above.
- Provides prepared testimony as needed to prove elements of the case; proof is not needed where the parties stipulate to an element during the prehearing status conference. If appropriate, performs a live guideline calculation during the hearing concurrently with the ALJ.
- Except in unusual situations, does not request the hearing record be held open. In special situations involving unfamiliar points of law, request the ALJ set a briefing schedule as needed. Due dates for briefs are not subject to the CSSD time frames for the hearing process.
- Upon receiving a copy of the proposed decision and order from the OAH in Processing the Proposed Decision and Order; Final Decision and Order below, reviews the proposed order carefully for accuracy and general conformance with CSSD practices, specifically checks the judgment amount and months, these need not be the same as in the NOCS, and check the first payment date. The first payment date should be set at the first of the month following the ALJ's signature on the final order.
- If the above or any other elements of the proposed order are inconsistent with CSSD data reliability requirements or with the evidence and discussions of the hearing, consults an OLA attorney concerning a possible motion to review. Does not set up accounts or begin enforcement of the proposed decision and order. Upon receipt of the final order signed by the ALJ, refers Entry of Support Order above.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Vacating Hearing

Office of Administrative Hearings

Hearing Requester Withdraws Request

1. If before the hearing is held, the requestor withdraws the hearing request in writing and the non-requesting parent has signed the Consent to Support refers to Processing Non-Hearing Orders above. Issues an order vacating the hearing to the:
 - Obligor, obligee and any attorneys.
 - Caseworker
 - OLA attorney who has formally entered an appearance.
2. Retains original order in the hearings file.

Hearing Requester Signs Consent to Support

If the requesting parent later signs the Consent to Support, proceeds as follows depending on case type:

- In a two-parent obligation case deems the hearing request withdrawn and vacates the hearing only if the other parent also signs the Consent to Support.
- In a one-parent obligation case deems the hearing request withdrawn and vacates the hearing.

Non-requesting Parent

If the parent that did not request a hearing has **not** signed the Consent to Support, an opportunity is given to request a hearing.

1. If the non-requesting parent timely requests a hearing, reschedules the hearing date if necessary.
2. If the non-requesting parent does not timely request a hearing, issues an order vacating the hearing.

Amended NOCS and Request for Hearing

If a parent requests a hearing in response to a NOCS and the NOCS is then amended, the request for hearing automatically applies to the amended NOCS. The hearing is not vacated unless all obligated parents sign the Consent to Support contained in the amended NOCS, or the requesting parent withdraws the request, or signs a consent to the amended NOCS, and the conditions for vacating above apply.



CHILD SUPPORT SERVICES DIVISION ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

At the hearing, the ALJ will determine the support order based on the evidence presented. If the evidence refutes any of the terms of the amended NOCS, the final order entered in the action will be different from the order in the amended notice.

Conducts Hearing

Administrative Law Judge

Conducts the hearing and determines the support obligations as in ARM 37.62.941 through 37.62.945, and MCA § 40-5-226. If necessary, limits the hearing to issues submitted in writing by the obligated parents prior to the hearing.

Before taking formal evidence and testimony, conducts a status conference to identify the specific issues being contested. Obtains stipulations from the obligated parents to uncontested issues.

Bench Ruling

Following the close of testimony and any closing statements of the obligated parents, the ALJ may issue a bench ruling on the record, orally announcing the proposed decision and order. The bench ruling is in lieu of a written proposed order and states that any motion for review of the proposed decision and order must be filed within 20 days after announcement of the bench ruling. Responds to any motion to review or failure to file a motion to review, as in Proposed Decision and Order; Final Decision and Order.

Failure to Appear

If the parent who requested the hearing fails to appear, may dismiss the hearing request and enter a default decision and order declaring the amount stated in the NOCS to be final. In a case involving two obligated parents the ALJ may choose to proceed with the hearing to determine the support obligations based on the NOCS information available to the CSSD and evidence provided at the hearing.

Terminology

The terms final decision and order and final order are used as in ARM 37.62.901 through 37.62.965 to mean a determination that exhausts CSSD administrative remedies for the action in question. The term does not necessarily imply the availability of judicial review.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Proposed Decision and Order; Final Decision and Order

Following the close of the hearing, issues and signs a proposed decision and order establishing the support obligations.

- If no party files a motion enacts the proposed decision and order as a final order.
- If within 20 days after service of the proposed decision and order, any party files a motion to review the order setting out any of the grounds for review in ARM 37.62.951, proceeds to consider the motion. Affirms, corrects, amends, or modifies the proposed order.
- For any proposed or final decision and order, provides copies to the CSSD, the obligor, obligee, and any attorneys.

Abstracting Orders

Administrative Orders Unit

1. Abstracts a finalized order to the district court where the obligor resides unless a caseworker requests it be abstracted to another county or counties or sends abstract to Lewis and Clark County District Court for out-of-state obligors.
2. Sends copies of the filed abstract to those who received copies of the support order.
3. Enters a case note.