

ESTABLISHING A SUPPORT OBLIGATION

Establishment of Temporary Support

CS 401.4

SUPERSEDES

CS 401.4 Establishment of Temporary Support Obligation, June, 2000

REFERENCES

MCA §§ 40-5-225 through 40-5-227

Policy

The CSED may establish a temporary support obligation against a parent in a CSED case if a support action is pending in district court and a temporary or permanent support obligation has not been ordered or a paternity action is pending and there is clear and convincing evidence of paternity based on genetic tests or other evidence.

The process for establishing a temporary support obligation is largely the same as the process for establishing a support obligation under CS 401.3 Notice and Order Concerning Support (NOCS). Procedures in this section identify points at which the two processes diverge, and give the required actions at those points. The main procedural differences are as follows:

- 1) The prescribed notice period is 10 working days (instead of 20 calendar days).
- 2) The caseworker is required to determine whether an applicable action is pending in district court, and to monitor the action and dismiss any unresolved CSED notice when the court order is entered.
- 3) An obligated parent may request a hearing to show that a temporary support obligation is inappropriate under the circumstances.

The temporary support order is no less effective than the support order entered in CS 401.3, and is enforced in the same manner. It terminates automatically upon entry of a final order by the district court. If the court order is retroactive, amounts paid under the CSED temporary order are credited against the final obligation. If the district court never enters an order, the temporary order continues indefinitely until terminated by operation of law.

Procedures for Caseworker

1. Upon determining that conditions in CS 401.3 or 401.6 Subsequent Notice and Order Concerning Support for establishing a support order apply, checks the application, referral, or other case information for indicators that a support or paternity action may be pending in a Montana district court. Possible indicators, in addition to direct statements, may include references to legal actions or parents' attorneys, or the absence of a divorce decree or presumption of paternity. If no indicators are found, follows the procedures in CS 401.3 or 401.6 for establishment of a permanent support obligation.
 - a. If indicators of a support action are found, contacts the clerk of court to determine whether a support action has been filed and, if so, whether the action is still pending; if necessary also contacts the attorneys in the case.

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- i. If contacts confirm a support action is pending, enters a SEARCHS case note for the pending action and follows the procedures in this section to establish an order for temporary support. Simultaneously proceeds in step 2.

CAUTION:

If the pending court action is for an additional child under the procedures of CS 401.6, consults with the CSED staff attorney before proceeding in this section. Generally the CSED does not pursue temporary establishment for additional children; exceptional situations are described in 401.6. If temporary establishment for an additional child is appropriate, proceeds in this section, referring to 401.6 (instead of 401.3) as applicable.

- ii. If a pending action is not confirmed, follows the procedures in CS 401.3 or 401.6 for establishment of a permanent support obligation.
- b. If indicators of a paternity action are found, consults with the CSED staff attorney to identify the action and to determine whether further CSED involvement in the case is appropriate and whether clear and convincing evidence of paternity exists.

If so, works with the staff attorney to adapt forms and procedures in this section as necessary. If a pending paternity action is not confirmed, proceeds to CS 602.1 Case Initiation—Mother Oblige and CS 401.3 or 401.6 for establishment of paternity and a permanent support obligation.

2. Where appropriate, consults with the CSED staff attorney on the feasibility of entering the district court action under authority of MCA § 40-5-202. The CSED may wish to enter the action as an independent party to ensure the court order contains the guidelines amounts, medical support, and income withholding provisions required in Title 40, Chapter 5 or it may be beneficial for the CSED to contact the attorneys involved in the action informally, to discuss the statutory requirements and to recommend a further provision for immediate enrollment.
3. Performs the pre-notice reviews, determines the support payments and judgment amounts, and prepares the notice packages as in CS 401.3. In preparing CS-401.3A selects the temporary obligation language to create the Notice and Order Concerning Temporary Support (TNOCS).
4. Arranges for service on the obligated parent as in CS 401.3; for response
 - service by certified mail, within 3 mailing days plus 10 working days after mailing, or 10 working days after the date the parent signs the return receipt, whichever allows for a later response
 - service by personal process server, within 10 working days after the date on the return of service
 - waiver of service within a reasonable time, as in CS 401.3 (in case of failed service proceeds as in CS 401.3.)
5. If a support order is entered by the district court at any time before a temporary order is entered in these PROCEDURES, dismisses the notice as in CS 401.3. Other conditions in CS 401.3 for dismissing the notice also apply.

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6. Resolves the TNOCS as in CS 401.3; notification requirements are not mandatory. If appropriate, issues an amended TNOCS, or prepares, submits, and processes a temporary support order based on the obligated parents' default or consent as in CS 401.3.
7. If a hearing on the TNOCS is requested, responds to the OALJ, contacts the obligated parents, completes and sends the Hearing Checklist and the Witness and Exhibit List, and prepares for and participates in the hearing as in CS 401.3. In addition to the elements of the prima facie case listed in CS 401.3, also prepares testimony that a support action is pending in district court, and no prior temporary support order exists.

Procedure for Office of Administrative Law Judge (OALJ)

8. If a hearing is requested, processes the request as in CS 401.3, including scheduling, notice and other documents, hearing conduct, order entry, abstracting, and notification of parties. Files the abstract in the district court in which the support action is pending.

Procedures for Caseworker

9. Upon entry of the CSED temporary support order, sets a tickler to check with the clerk of court for entry of the court order. When the court order is entered, obtains a copy and proceeds as in 9a through 9d below.

(OPTIONAL: At the discretion of the caseworker, upon entry of the temporary order also prepares and sends to any obligated parent CS-520.7C Voluntary Enrollment Authorization. If the parent signs and returns the authorization the CSED can use it as a basis for initiating or maintaining the immediate enrollment contained in the temporary order. The authorization will remain in effect when the temporary order terminates, as long as the new court order requires the parent to provide health insurance.)

- a. Updates the SEARCHS SOD screen
- b. Adjusts the SEARCHS accounts as necessary, beginning at the effective date of the court order. If the adjustment creates an overpayment, does not issue a refund, but processes the excess amount as in step 9d below.
- c. Modifies any enforcement actions as necessary to reflect the updated current support or debt.
- d. If the court order declares non-paternity or that a periodic support obligation is not proper, adjusts the accounts according to the current CSED accounting policy for "no order" situations. (In this situation the obligee must refund to the obligor any improper amounts paid under the temporary support order.)

No action to terminate the CSED temporary support order is necessary.

10. If the court order does not contain the medical support obligation required under MCA § 40- 5- 8 (that is, an obligation to provide health insurance and pay medical expenses equivalent to that in the temporary support order, see CS 520.3 Reviewing Health Insurance Orders), updates the SEARCHS SOD screen to describe the medical aspects of the court order, and enforces the medical obligation according to the terms of the court order. Immediate enrollment applies if the court order contains a

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provision for immediate enrollment, *or* if a Voluntary Enrollment Authorization was entered for an obligated parent in step 9 and the court order contains a requirement for health insurance for that parent.