

ESTABLISHING A SUPPORT OBLIGATION

Notice of Intent to Vacate an Administrative Default Support Order

CS 401.8

SUPERSEDES

[new section]

REFERENCES

MCA §§ 40-5-225 through 40-5-227

Background

In 1998, the CSED initiated the Mirage Debt Project. The overall goal of the project was to reduce debt to a reasonable level. Mirage debt was the result of Administrative Default Support Orders that were not based on a Montana Child Support Guidelines Calculation. Instead, the order was based on an AFDC grant amount for the number of children in the case. If after receiving the Notice of Financial Responsibility (NFR), the Noncustodial Parent (NCP) did not timely respond to the notice, the NCP defaulted to the AFDC grant amount in the notice.

In most instances, an Administrative Default Support Order resulted in a higher support amount than would be calculated under the guidelines. In order to reduce arrears debt two approaches were taken. The first approach was to replace the Administrative Default Support Order with an order based on a guidelines calculation. This is known as the Notice of Intent to Vacate a Default Support Order (NOIV). The second approach was to negotiate a lump sum settlement on the arrears debt, see CS 501.5 Lump Sum Settlements.

Definitions

Administrative Default Support Order

Prior to 1997, this support order occurred when the NCP did not timely respond to the Notice of Financial Responsibility. The notice may have been based either on the Montana Child Support Guidelines or on an AFDC grant amount.

Notice of Financial Responsibility (NFR)

Prior to July 1, 1997, the NFR was the action used by the CSED for establishing an Administrative Child Support Order. It was replaced by the Notice and Order Concerning Support (NOCS).

Notice of Intent to Vacate a Default Support Order (NOIV)

The action used by the CSED to replace an Administrative Default Support Order when the amount for current support was not based on a guidelines calculation.

Policy

Scope of Procedures

This section contains policy and procedure for replacing an Administrative Default Support Order entered prior to July 1, 1997 that was not based on a guidelines calculation.

Applicability

A case is eligible for a NOIV Action if the Administrative Default Support Order was **not** based on a Montana Child Support Guidelines Calculation, and was entered before July 1, 1997, as a result of a NFR, and *current*

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support is still due. Once a new support amount is established, it is retroactive to the effective date of the underlying order.

The NOIV Action replaces only the support amount in the order. It cannot be used to change any other provisions of the order, such as medical language or emancipation date.

The NOIV process should **not** be used on an arrears only case having an Administrative Default Support Order. Instead, a lump sum settlement process should be used, see CS 501.5 Lump Sum Settlements.

Permission

A non-public assistance case with an Administrative Default Support Order does not require permission of the custodial parent or of the other state to undergo a NOIV Action. The CSED has been granted an Authorization to Act by the Custodial Parent (CP) and /or has authority via the continued service provision.

Montana Child Support Guidelines Determination

The amount of current support in the NOIV must be based on the current Montana Child Support Guidelines. The guidelines calculation should be based on financial information provided by the parties, or sufficient financial information. CSED 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 guidelines determination (income of obligee parent, deductions from income) can be obtained or approximated based on knowledge of the case.

Non-CSED Default Orders

If the existing order was entered by a court or another state's IV-D agency, replacement is not available.

Procedures for Caseworker

1. Determine case eligibility. A case is eligible for a NOIV Action if the support order is an Administrative Default Order not based on a Montana Child Support Guidelines Calculation, was entered before July 1, 1997 and *current* support is still due.
2. Review the case for a NOIV Action. In most instances, a NOIV Action is appropriate when a case meets the eligibility criteria. However, in a case whose NCP is incarcerated the regional legal unit should be consulted to avoid complications.

Initiation of a NOIV Action. Once a case is reviewed and meets eligible criteria, initiate a NOIV action. Initiation of a NOIV Action is comprised of performing a guidelines calculation and preparing a NOIV, see steps three and four below.

3. Perform a Montana Child Support Guidelines Calculation. Initial determination of the support amounts for the NOIV should be based upon the guidelines found in CS 404.1 Child Support Guidelines. In addition, take the following actions in all cases, regardless of whether financial affidavits are on file:
 - 1) Actively search for information about the obligor's earned and unearned income, using available sources and leads such as SEARCHS wage information (ESW), Federal and State tax information, a completed financial affidavit, and suggestions from the other parent about possible assets or unreported employment.

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- 2) When appropriate, determine the obligor's qualifications and time available for earning income. Impute income according to earning capability. Generally, imputation is appropriate when any of the following apply:
- The obligor is qualified for employment at a higher wage than is currently being earned. For example, the obligor is licensed as a plumber but is working at an unskilled or lower-wage job, or is unemployed.
 - The obligor is employed part-time and is not a full-time student. Income should be imputed at the full-time amount, unless there is information indicating a special limitation on earning capability.
 - The obligor has seasonal employment. Monthly income should be imputed by adding the actual or projected income for the seasonal months, to a reasonable imputed income. For example, minimum wage amounts or unemployment benefits for the off-season months and dividing by 12.
 - No information can be obtained about where or whether the obligor is currently employed, however there is,
 - Evidence the obligor is qualified for employment at a level above minimum wage. For example, the obligor was able-bodied when last seen, and is known to have been employed in the timber industry in the past. Income should be imputed at the higher level.
 - No evidence of qualification above minimum wage, and the obligor is known to have worked at minimum wage jobs in the past. Income should be imputed at minimum wage.
- 3) Upon obtaining a reasonable approximation of income for the obligor, obtain or impute all other information needed for a guidelines calculation by consulting case information or contacting the obligee. In the absence of any information to the contrary, the income of the obligee may be imputed at minimum wage, and the remaining information completed by setting expenses and non-standard deductions at \$0

If a reasonable approximation of income for the obligor is not possible, then a NOIV cannot be prepared.

Retroactive relief. The effective date for the NOIV is the effective date of the underlying order.

4. Prepare the NOIV. Check for a domestic violence indicator. If an indicator is set make sure the certificate of mailing does not include an address for the person who is listed as the alleged victim.
- Send to both parties, by regular mail, a copy of the NOIV and the Request for Informal Review (for an Interstate Responding case send to the other state), place the original in the case file
 - Include a copy of the guidelines calculation and a financial affidavit
 - Enter a case note and set a tickler to allow twenty days for a response

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Informal Review

The informal review is an optional process based upon a request from either party. If both parties request an informal review, the caseworker decides whether to conduct the review separately or together. It is recommended that in the informal review the guidelines calculation be reviewed line by line with the requesting party.

If after an informal review the caseworker and requesting party cannot come to an agreement, send the requesting party a request for hearing. Once completed the requesting party should send the hearing request to the Office of the Administrative Law Judge (OALJ). Allow twenty days for return of the hearing request. See CS 401.03 Notice and Order Concerning Support for detailed information on hearing procedures.

Procedures for Paralegal/Caseworker

5. Finalize a NOIV. If after twenty days no hearing request is received, the NOIV automatically becomes the support order. Complete the abstract using the twenty-fourth day as the entry date. The rest of the abstract can be completed using information from the original order. The filing will be in the same county under the same cause number. Sign the abstract and praecipe.

Upon return of the abstract, send copies of the abstract and the Notice of Intent to Vacate to all parties and the Office of Administrative Law Judge (OALJ). Enter a case note and Proceed to step 7 Enter a NOIV into the system.

Procedures for Caseworker

6. Amend the NOIV. If one of the parties responds by providing additional information that changes the calculation, send an amended NOIV to the parties. Provide another twenty days for a response. At the end of the twenty days the NOIV automatically becomes the support order, refer to step 5 Finalize a NOIV.
7. Enter a NOIV into the system:
 - 1) Supersede the default order on the Support Order Detail (SOD) Screen. Do not void or end the default order.
 - 2) Enter the arrears amount from the NOIV as it adjudicates the debt. In addition, all other provisions such as medical or a judgment of that order are still in effect.
 - 3) Complete all fields on the SOD screen—the effective/start date is retroactive to the date of the underlying order.
 - 4) Modify the amount on the Account Status Amounts (AC2) screen. Do not build new accounts.
 - 5) Build a new Declining Balance Detail (DBD) based upon the NOIV.
 - 6) Request lump sum adjustments to the arrears account(s) for the difference between the arrears accrued under the default NFR and the revised arrears under the NOIV.

Lump sum adjustment requests should be separated by the arrears that accrued in the prior Federal Fiscal Year and those that have accrued in the current Federal Fiscal Year (October 1 – September 30).