

ESTABLISHING A SUPPORT OBLIGATION

Direct Income Withholding Hearings

CS 405.13

SUPERSEDES

CS 405.13 Direct Income Withholding Hearings, August 22, 1998

REFERENCES

MCA § 40-5-157

Policy

LIMITED USE: It is the policy of the CSED to limit the use of these procedures to those rare occasions where regular referral of the case to Montana would result in a serious loss in enforcement effect. This policy presumes that income withholding contests involving Montana employers are handled more accurately and efficiently when Montana has full authority to enforce support in the case.

Direct Income Withholding

Under the direct income withholding provisions of Montana UIFSA law, an income withholding order issued in another state may be sent directly to an employer in this state for enforcement. The employer must comply with the terms of a direct income withholding order that appears regular on its face, but may seek assistance from the CSED in determining whether the order was issued by an appropriate authority or in distributing withheld amounts. Regardless of the terms of the order the employer must comply with Montana law in the areas of the employer's fee, the maximum allowable withholding, and the time frames for withholding and forwarding required amounts.

Contesting Direct Withholding

Montana UIFSA law also provides that the obligor may contest the direct income withholding order "in the same manner as if the order had been issued by a tribunal of this state." The CSED implements this provision by allowing the obligor to request an administrative hearing with the Office of the Administrative Law Judge.

Issues at Hearing

By law the hearing is limited to issues concerning the validity or enforcement of the direct income withholding order, such as whether due process was afforded prior to issuance of the order, whether the order correctly reflects the facts for which it was authorized, or whether the entity to which the order was directed qualifies as an "employer" for purposes of direct withholding. On some issues it may be necessary for the Administrative Law Judge (ALJ) to consider the income withholding laws or specific case records of the other state in deciding validity and enforcement.

The ALJ does not decide issues already decided by an appropriate tribunal in the other state, or issues the obligor had (or should have had) an opportunity to raise prior to issuance of the withholding order. For example, the ALJ does not decide the amount of arrears owed, or the existence of a support obligation.

The ALJ also does not decide issues concerning the manner in which the employer is enforcing the withholding order. These include (1) whether the employer is abiding by the terms of the order concerning payment amounts (current support, arrears, interest, and fees), payment duration, payee address, and medical support, and (2) whether the employer is complying with Montana law with respect to maximum withholding, employer fees, and time frames. For relief on these issues the obligor must apply directly to the tribunal that issued or obtained the withholding order.

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Parties to the Hearing

Generally there are only two parties to the hearing: the obligor and the obligee. The CSED is not a party in the matter, and is not responsible for defending the direct withholding order. The “obligee” is the party that issued or obtained the direct withholding order; generally, this is either the IV-D agency in the other state (acting on behalf of the custodian) or the custodian herself/himself, if there is no IV-D case. The parties to the hearing must provide any evidence they wish the ALJ to consider, including information specific to the other state.

Form of Request

For purposes of these procedures any writing from the obligor contesting the validity or enforcement of the direct income withholding order, or containing any equivalent statement, qualifies as a request for a direct income withholding hearing.

Procedures

Caseworker

1. Upon receiving a written request from the obligor for a direct income withholding hearing, immediately date-stamps and faxes the request to the Office of the Administrative Law Judge (OALJ), and the Interstate Regional Manager.

Follows immediately with the original by regular mail to the OALJ. Does not open a CSED case or process receipt of the request on SEARCHS.

Interstate Regional Manager

2. Immediately upon receiving a copy of a request for a direct income withholding hearing contacts the obligee and attempts to obtain a IV-D interstate referral or, in a non-IV-D case, a direct application. If a referral or application is not possible, identifies the obligee’s correct mailing address and any necessary protections, for use by the OALJ.

If a referral or application is agreed, requests that the obligee immediately issue or obtain an order terminating the direct withholding order. Upon receipt of a copy of the terminating order, immediately informs, and forwards a copy to, the OALJ. Proceeds with income withholding for the new case as provided in section CS 510.1 or 510.3.

Hearings Assistant

3. Upon receipt of a written request for a direct income withholding hearing either directly from the obligor or indirectly through a regional office, date-stamps the request and submits it to the Administrative Law Judge (ALJ) for a decision to grant or deny; proceeds to step 5 or 7.

Administrative Law Judge (ALJ)

4. Reviews the request. If the obligor is contesting the validity or enforcement of the direct income withholding order (see POLICY re: “validity and enforcement” issues), grants the hearing; otherwise denies the hearing.

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Hearings Assistant

5. If the hearing is denied, prepares and obtains the ALJ's signature on an order denying the hearing. Sends copies of the order to all parties, the Interstate Regional Manager, and the CSED Employer Relations Specialist; takes no further action.

Employer Relations Specialist

6. Upon receiving a copy of a CSED order denying a request for a direct income withholding hearing, reviews the reasons for the request and the denial. If there is an issue involving the manner in which the employer is enforcing the withholding order, contacts the employer and attempts to informally resolve the issue or educate the employer as appropriate.

Hearings Assistant

7. If the hearing is granted, opens an OALJ case; if necessary contacts the Interstate Regional Manager for assistance in determining the parties' identities and addresses.

As soon as possible after receipt of the request, prepares and issues a Notice and Order for Direct Income Withholding Hearing scheduling an administrative telephone hearing for a date within a reasonable time of the notice. Mails copies of the notice to all parties by regular United States mail; also sends a copy to the Interstate Regional Manager. Retains the original in the case file record and calendars the hearing. Forwards the case file to the ALJ prior to the hearing date.

8. [IF APPLICABLE] Upon receiving a copy of an order terminating the direct income withholding order, immediately informs the ALJ and prepares and issues, on the motion of the OALJ, an Order Dismissing Hearing on the grounds that the issues are moot. Mails copies of the order to all parties by regular United States mail. Retains the original in the case file record.

Obligor, Obligee

9. Prepare respective cases for hearing according to instructions received from the OALJ.

ALJ

10. Conducts the administrative telephone hearing, limiting the issues to those concerning the validity and enforcement of the withholding order. Prepares a written decision and order within a reasonable time after the close of the hearing record.

Hearings Assistant

11. Completes the certificate of mailing for the decision and order. Mails copies of the decision and order to all parties by regular United States mail; also sends a copy to the CSED Employer Relations Specialist. Retains the original in the case file record. (Does not report the decision to MONTLAW, since it has no value as Montana precedent.)