

ESTABLISHING A SUPPORT OBLIGATION

Federal Offset Hearing

CS 405.20

SUPERSEDES

CS 405.20, Federal Tax Intercept Supervisory Reviews, November 1, 1989.

REFERENCES

State v. Frank, 115 Mont. 283,735 P.2d 290 (1987)

Policy

A CSED federal offset hearing is available to any obligor dissatisfied with the results of an administrative review conducted by the regional manager in section CS 508.5. A hearing is also available to an obligor denied a review under the procedures in that section. The hearing is available at any time after a federal offset has actually occurred.

The purpose of the federal offset hearing is to satisfy the procedural due process requirements set forth in State v. Frank. Case law from this decision requires a full evidentiary hearing on the record by a hearing officer before the CSED can retain any money to satisfy arrearages accrued under an administrative order. Because the CSED updates the amount of arrears available for offset on a monthly basis, any given offset collection can include amounts accrued but not yet adjudicated by the CSED.

There is no Montana law granting contested case status to a CSED federal offset action; consequently, the decision from the federal offset hearing is not subject to judicial review. Any judicial remedy must be pursued in state, federal, or tribal court, as appropriate. Likewise, time frames associated with the federal offset hearing are set by CSED policy only, none being required under state or federal law.

Procedures

Office of the Administrative Law Judge

1. Upon receiving a written request for a hearing concerning a federal offset administrative review, promptly identifies the case on system, enters a case note for the request received, and generates a cover sheet listing the case number and identifying the package as a request for a federal offset hearing. Makes a copy of the request and any accompanying documents, and sends the copy with the cover sheet to the appropriate caseworker.

Caseworker

2. Upon receiving a copy of the federal offset hearing request from the Office of the Administrative Law Judge (OALJ), proceeds as follows:
 - a. Immediately places a hold on disbursement of any offset collections received toward non-TANF arrears in the case. Removes the hold if the hearing is denied in step 6; if the hearing is granted, awaits the outcome of the hearing.
 - b. Researches the case to determine whether both of the following conditions are met:
 - 1) The CSED has conducted (or has denied) an administrative review of the submission of the case for federal offset.

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NOTE:

Review Required in Existing “Case”. For purposes of determining whether an administrative review has occurred, the “case” referred to is the case last submitted. If the CSED previously submitted the obligor’s arrears, then deleted the case when the arrears were paid off, then later submitted new arrears that accrued after the deletion, the submission after the deletion is considered a new “case” for federal offset purposes. The requirement for an administrative review will be satisfied only if there has been a review in the new case.

- 2) An offset in the submitted case has actually occurred.

In special situations where there is reason to believe an offset has occurred but the Financial Management Service (FMS) has not yet notified the CSED, contacts CSED Federal Offset Specialist. The specialist contacts the federal Office of Child Support Enforcement (OCSE) Special Collections Unit and requests confirmation.

3. Within 5 working days of receiving the copy of the hearing request, prepares an affidavit stating the results of the research in step 2b; if applicable, attaches a copy of the administrative review decision or denial; signs the affidavit in the presence of a notary; and sends the original affidavit and any attachments to the OALJ, retaining a copy for the case file. Enters a case note for the affidavit prepared and sent.

In a separate communication, informs the OALJ of any dates or times the caseworker is not available for a hearing.

Office of the Administrative Law Judge

4. Upon receipt of the affidavit sent in step 3, attaches the affidavit to the hearing request and forwards the request to the Administrative Law Judge (ALJ).

Administrative Law Judge

5. Reviews the information in the affidavit and the hearing request and determines whether there is evidence the conditions in step 2 are met.
 - a. If so, grants the hearing and proceeds to step 9.
 - b. If not, denies the hearing; proceeds to step 7 if applicable.

Office of the Administrative Law Judge

6. Within 10 working days of receiving the original hearing request, prepares, obtains the ALJ’s signature on, and issues according to the determination in step 5, EITHER
 - A Notice and Order for Federal Offset Hearing, granting the hearing, setting a hearing date no fewer than 5 and no more than 10 working days in the future, and providing instructions for the telephone hearing and the exchange of exhibits, OR
 - An order denying the hearing. The order must state the reasons for the denial and attach a copy of the caseworker’s affidavit. The order must inform the obligor the denial will remain in effect until such time as the obligor provides evidence that

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(a) an administrative review of the submission for offset has been conducted or denied, and (b) an offset based on the submission has actually occurred. The order does not contain a provision for judicial review.

Sends copies of the order (granting or denying) to the obligor, the caseworker, and in a non-TANF case the obligee; retains the original in the hearing file.

If a hearing is granted and the obligor requests a postponement in writing, refers the request to the ALJ; if the ALJ determines there is good cause, enters a case note and reschedules the hearing for a later date.

If a hearing is denied and the obligor later requests a hearing on the same matter in writing, refers the request to the ALJ and takes appropriate action following the determination in step 7.

Administrative Law Judge

7. Upon receipt of a subsequent request for a hearing from an obligor whose original request was denied in step 6, reviews the obligor's request and determines whether there is now evidence the conditions in step 2 have been met. If so, grants the hearing and proceeds to step 9. If not, denies the hearing and takes no further action.

Caseworker

8. If a hearing is granted, prepares exhibits, arranges for witnesses, and prepares a list of witnesses and exhibits. By the exhibits due date, sends the original exhibits and the list to the OALJ; sends copies of the exhibits and list to the obligor and, in non-TANF cases, the obligee.

Administrative Law Judge

9. Conducts a full evidentiary hearing on the federal offset. Issues at hearing are limited to the following:
 - 1) Whether the amount of arrears certified for the period up through the actual offset was correct.
 - 2) Whether the federal payment was properly subject to offset in this case.
 - 3) Underlying issues such as whether the CSED had jurisdiction and authority to act in retaining the offset to satisfy the arrears; or whether there was a mistake of fact concerning the obligor's identity or the existence of the support obligation.
 - 4) If applicable, whether the administrative review was properly denied on the basis of a previous opportunity to raise the contested issues.

If the obligor fails to appear for the hearing and no good cause for postponement has been shown, deems the request for hearing withdrawn, and instructs the hearing assistant to issue an order dismissing the hearing.

Evaluates the hearing record and makes a determination on the issues. If the administrative review was improperly denied, does not remand the case to the regional manager, but proceeds to determine any issues raised in (1) through (3) above. Enters a case note for the hearing held.

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10. Within 5 working days after the hearing is held, prepares, obtains the ALJ's signature on, and issues a CSED decision and order; the decision and order does not contain a provision for judicial review. Sends copies to the obligor, the caseworker, and in non-TANF cases the obligee. Enters a case note for the decision and order sent.

Caseworker

11. Upon receipt of the hearing decision and order, provides a copy to the regional manager or, in an incoming transfer case, sends a copy to the submitting state. Implements the order as follows:
 - a. If the order upholds the amount of arrears and the pay sources available for offset, removes any hold placed on disbursement of the offset collection in step 2a, and takes no further action.
 - b. If the order changes the amount of arrears or the pay sources available for offset, proceeds in any sub steps below that apply.
 - i. Requests the appropriate accounting adjustment; includes the date of the hearing decision in the adjustment request. Does not delay initiation of the adjustment process pending receipt of the offset funds from FMS.
 - ii. Immediately alerts the Federal Offset Specialist to the review-related adjustment, for purposes of the special weekly update required in section CS 508.3 Collection by Federal Offset.
 - iii. If required by the terms of the decision and order, excludes the case from future, pay source-specific offsets by suppressing the offset type(s) on system.

Federal Offset Specialist

12. Upon being notified of an adjustment in step 11, notifies OCSE of the change in the submitted amount within 10 working days after the hearing decision.