

## ENFORCING A SUPPORT ORDER

### Registration of Support Orders for Enforcement Only

CS 500.2

#### SUPERSEDES

CS 500.2 Registration of Support Orders for Enforcement Only, May 22, 1998

#### REFERENCES

MCA 40-5-271(3)

#### Policy

A foreign order registered under this section is for the purposes of enforcement only, and does not confer jurisdiction for any other purpose.

**FOREIGN ORDER DEFINED**--A foreign order is an order issued by a court or agency in another state. In questionable cases, consult a supervisor.

CSSD provides notice of the registration, and an opportunity to contest the registration at hearing. Once registered the CSSD may file an abstract of the order with the district court.

The following are requirements for registration:

1. The foreign order must be final. A child support order is final if it is not pending appeal, or the subject of a pending modification. Consult a supervisor if there is a question as to whether an order is final for purposes of registration.
2. The issuing court or agency must have had subject matter jurisdiction. The foreign state's law must authorize that court, or agency to issue child support orders.
3. The issuing court, or agency must have had personal jurisdiction over the parent owing support.

If an order is valid on its face the law presumes that the issuing tribunal had full authority, and jurisdiction to issue the order.

When the CSSD registers an order for enforcement it notifies the parties to the order of the registration. The notice informs them:

- Of the amount of any alleged arrearage as of the date of the notice.
- That a party may request a hearing to vacate the registration, or to assert defense to any alleged arrearage as stated, under reasons the administrative law judge may vacate registration.
- That a hearing to contest the validity, or enforcement of the order must be requested within 20 days after service of the notice.
- That failure to contest the validity, or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearage will preclude further contest of the order with respect to any matter that could have been asserted at the hearing.

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The administrative law judge may vacate registration of a foreign order, if at a hearing to enforce the order the parent owing support presents evidence that the:

- Court or agency issuing the order did not have subject matter jurisdiction to enter the order, or lacked personal jurisdiction over the contesting party.
- Court or agency issuing the order did not give the party reasonable notice, and opportunity to be heard before the order was entered.
- Order was obtained by fraud.
- Issuing court or agency has stayed enforcement of the order pending appeal.
- Order has been vacated, suspended, or modified by a later order.
- There is a defense under the law of this state to the remedy sought, or the statute of limitations precludes enforcement of some or all of the arrearage.

Upon confirmation of the arrears by default or hearing the arrears will be confirmed, and considered adjudicated for enforcement and will become an automatic support lien. Writs of executions and other appropriate actions can be taken. **However, the arrears are not adjudicated for purposes of income withholding in the registration for enforcement process. A separate notice for income withholding must be issued for a past due support obligation.**

#### Procedures

##### Caseworker

1. Upon determining registration of foreign order is necessary to enforce a case, prepares form CS 500.2C, Notice of Registration of Support Order for Enforcement, and the debt computation worksheet. Signs and dates notice. Makes necessary number of copies for distribution in this step and step 2. Sends notice and attachments as follows:
  - Original notice, certified debt computation worksheet, and certified copy of registered order to the Office of Administrative Hearings (OAH) for filing in Support Order Registry.
  - One copy of notice, debt calculation worksheet and order to non-custodial parent, and custodial parent. When Montana is the responding jurisdiction in interstate cases sends the custodial parent's copy to the initiating state.
  - Retains one copy of notice, debt computation worksheet and registered order for case file.
  - Monitors for response of 23 calendar days following the date of mailing on the Certificate of Service for the notice.
2. On the 24th day after mailing if an employer is known, issues an income withholding order for current support only. Proceeds with other enforcement remedies. Modifies the Support Order Detail (SOD) screen by indicating registration for enforcement was accomplished, and supersedes the order information on SOD.
3. Upon being notified by the OAH that an enforcement registration hearing has been granted, enters SEARCHS case note.

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#### Office of Administrative Hearings (OAH)

4. Upon receiving a request for registration hearing, determines whether request is timely. A timely request is one received within 23 calendar days after the notice is mailed.
  - a. If so, immediately notifies caseworker. Schedules registration hearing, prepares and sends Notice and Order for Hearing. Proceeds to step 7.
  - b. If not, processes Order Denying Hearing Request, obtains ALJ's signature, and sends copies to parties; retains original in file.

#### Administrative Law Judge

5. If granted, conducts hearing on registration issues; these may include whether original tribunal had subject matter, or personal jurisdiction to issue order; whether tribunal gave the party reasonable notice and opportunity to be heard; whether the order was obtained by fraud, whether enforcement of the order has been stayed by the issuing tribunal pending appeal; whether the order has been vacated, suspended, or modified by a later order; whether there is a defense under Montana law to the remedy sought, and whether the statute of limitations precludes enforcement of some or all of the arrearage.
6. Issues hearing decision and order.

#### OAH

7. Makes copies of decision and order, sends to the parties and caseworker. If registration is vacated, removes foreign support order from Support Order Registry.

#### Caseworker

8. If decision and order vacates the registration, consults with staff attorney to consider effect of hearing decision on enforcement proceedings; updates SOD to remove registration. If decision and order confirms registration, if an employer is known, issues an income withholding order for current support. Proceeds with other appropriate enforcement actions, and updates SOD as instructed in Step 2.
9. Upon receiving copy of decision and order from enforcement registration hearing, retains in file for future reference.