

**Income Withholding Hardship Determination and Adjustment**

**CS 510.5**

**SUPERSEDES**

CS 510.5, Hardship Adjustments, October 17, 2014

**REFERENCES**

MCA §§ 25-13-614, 40-5-206 and 40-5-416; ARM 37.62.1113 - 1117, 15 U.S.C. 1671 et seq.

**Policy**

**Hardship Determination**

Where income withholding is used to collect support debt, Montana law allows the CSED to determine and order an amount for satisfaction of the debt that is less than the maximum permissible amount, if the obligor can show that substantial hardship will result if the maximum amount is implemented or continued.

**Screening Hardship Requests**

Hardship adjustments are granted at the discretion of the CSED. Since the minimum amount available through a hardship adjustment is \$50.00 per case, the CSED generally declines, for practical reasons, to perform a hardship review when withholding is noticed or ordered for arrears with or without current support, and the amount toward the arrears is less than or equal to \$50.00. In this instance a hardship determination is not needed--the existing withholding for arrears is appropriate.

Where the CSED is withholding for arrears in more than one case, the above criteria is applied using a minimum of \$50.00 times the number of cases. The hardship amount will be per case with each case treated separately, independent of the children in the case.

**Criteria for Accepting Requests for Hardship Review**

Only one request for a hardship review is available to the obligor for each claimed incidence of hardship. The CSED will grant additional requests only upon a showing of circumstances not existing at the time of the original determination. In addition, the CSED will accept requests for review only when withholding for arrears is in place or has been noticed.

**Worksheet Amounts**

The CSED gathers information for the hardship calculation using CS510-5E Income Withholding Financial Hardship Application. Information from the application and other known information, is entered into the Hardship Adjustment Worksheet in the system. Worksheet amounts are limited to income and support obligation.

**1. Income**

Income means all cash earned or received by the obligor except amounts listed under Exclusions below. Non-cash benefits and imputed earnings are not included in income for purposes of a hardship determination. Income levels may remain constant from month to month or may vary, to determine monthly amounts for a variable income refer to Variable Income Levels below.

Typical sources of income are salaries, wages, tips, commissions, bonuses, severance pay, interest, dividends, trust income, student subsidies, self-employment income, government and disability benefits, cash public assistance, and child or spousal support.

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For purposes of hardship calculation, income from these sources is listed at the gross amount. Gross salary or wage income should also include any earned income credit included in the paycheck. Gross self-employment income is defined as gross receipts less actual (cash) costs of (1) goods sold and (2) necessary business expenses.

**Variable Income Levels**

Where income level is expected to fluctuate over the course of a year because of temporary or seasonal work or other factors, monthly income for purposes of hardship adjustment may be determined by either of the following methods or any logical combination of the two:

- a) Annualize the income by calculating the total income for one full year and dividing by 12. If a hardship adjustment is appropriate, the adjustment should extend for the full 12 months, unless a change of circumstances occurs.
- b) Perform a separate hardship calculation for each period associated with a different monthly income level. If this method is used, the duration of any resulting adjustment should be limited to the period that the corresponding income level will be in effect.

**Exclusions**

The following amounts are excluded from income in a hardship calculation:

- 1) One-time, unearned lump sums. Examples are gifts, inheritances, lump-sum disability payments, judgment awards, gambling winnings, and proceeds from loans or the sale of assets.
- 2) Reimbursements, allowances, and other pass-through amounts. Payments received toward specified out-of-pocket costs are excluded from income to the extent the costs are actually paid, and proof of payment is provided. Amounts exceeding actual costs, or designated for general living expenses, are not excluded. Examples of excluded amounts are reimbursements or advances for actual travel, medical, or training costs, and student subsidy amounts applied to tuition, books, and fees.
- 3) Benefits received in connection with the disability of a child.

**2. Support Obligation**

For purposes of a hardship determination, expenses allowed for current support are those enforced by the CSED for child support, spousal support, and medical support other than health insurance.

**Subsistence Allowance**

The subsistence allowance is equal to 1.3 times the U.S. Poverty Guidelines amount for one person.

**Determining Hardship Payment**

Gross Monthly Income  
Less 1.3% of Poverty Index Guide  
Less current support collected by the CSED  
= Amount Subject to Hardship

## ENFORCING A SUPPORT ORDER

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CSED applies the appropriate withholding percentage from the table below to determine the hardship arrears payment. (If the adjusted amount is more than the amount currently ordered, the CSED does not order a change in withholding.)

Funds Available	Hardship Payment	
	If current support is collected	If current support is <b>not</b> collected
\$0.0 -200.00	10%	35%
\$201.00- 400.00	25%	40%
\$401.00 – 600.00	40%	45%
\$601.00 - more	50%	50%

#### Garnishment Limitations

Montana statutes concerning garnishment limitations work in accordance with the Federal Consumer Credit Protection Act (CCPA), which limits the ability of creditors to garnish earnings of a debtor. In general, only 25% of a debtor's disposable earnings are subject to garnishment. However, exceptions to this limitation apply. For CSED purposes, the most applicable exception is garnishment for child support. Depending upon circumstances the CCPA allows an individual's disposable earnings to be subject to a 50%-65% garnishment limitation for child support arrears. Due to the variety of circumstances that may be involved the CSED chose 50% as a maximum garnishment amount.

#### Note:

**Determine garnishment limitations.** To determine whether garnishment limitations are required it is necessary to review the type of money being garnished. Money that does not fit the definition of earnings found in 15 USC 1672(a) is not subject to the garnishment limitation.

#### Minimum Debt Payment, Multiple Cases

The monthly debt payment determined by the CSED's hardship adjustment formula is subject to a minimum of \$50.00 per case. If the CSED is withholding income for arrears in more than one case, the hardship-adjusted amount should be divided equally among all the cases, except that the amount applicable to any one case may not be less than \$50.00. If another withholding case opens or an existing withholding case closes after a hardship adjustment is implemented, the CSED screens the new situation (all cases) as if no hardship adjustments were in place, and decides if a hardship determination should be performed (Screening Hardship Requests). If a determination is not appropriate, the obligor is now better off paying 1/24th of the arrears in each case, the CSED terminates the existing hardship adjustments. If a determination should be performed, the CSED proceeds as if for an original hardship request, taking into account all of the cases and any new information, and takes any withholding action indicated by the results of the determination.

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**A Temporary Hardship**

When an IWO has not been issued a temporary hardship is available. A temporary hardship is available only when an obligor initiates contact with the caseworker, and provides employment information. At that time a hardship calculation can be performed based on verbal employment information provided by the obligor. If employment information appears electronically from a new hire report during this process, an IWO must be issued within the two-day time frame for new hire hit.

A temporary hardship does not exceed 30 days from the date it has been granted. To extend the hardship beyond the temporary period the obligor **must return the signed** CS 510-5E Income Withholding Financial Hardship Application, along with proof of income or provide proof of income, and sign and return CS 510-5C Hardship Notification Letter before the end of the 30 days. Income information can be in the form of an employer's statement or pay stubs. The CS510-5E Income Withholding Financial Application or CS510-5C Hardship Notification Letter both contain the statute of limitations waiver.

**Duration of Hardship**

A hardship adjustment continues, as long as, the hardship conditions on which it is based exist. The duration is determined on a case-by-case basis. CSED policy limits the duration of a hardship to no longer than twelve months without an informal review. A full review is required every three years.

**Informal Review**

An informal review is required every twelve months, or upon a change of circumstances such as a change of income that significantly impacts the hardship. A thorough review must be conducted and documented in the system. Quarterly wages and other interface resources must be considered and documented during the informal review. The review must indicate why the hardship is still appropriate. If a 30% change is found in the bottom line withholding amount the informal review must be converted to a formal hardship review. Decreases in withholding are not appropriate at this step as the obligor would have to prove a different or increased hardship, through no personal fault.

**Full Review**

A full review is required every three years or upon a change in circumstances, such as a new employer. A hardship cannot be carried over to a new employer without a full review. The need for full review does not delay the timeframe for issuance of an income withholding order as a result of a new hire hit or new employer. Send CS 510-5D Hardship Expiration Letter and CS510-5E Income Withholding (IW) Financial Hardship Application. Upon return of the completed and signed IW Financial Hardship Application, the obligor must provide proof of income sufficient to make a decision regarding current gross income. Examples of proof of income include a letter of employment or pay stubs. A new calculation should be performed based on the updated information. The calculation is necessary to determine the continuation of the hardship, and if a change in hardship amount is appropriate.

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**Requirement for Supplemental Remedies and Statute of Limitations Waiver**

Because a hardship adjustment lowers the percentage of the arrears the CSED can expect to collect through income withholding, the CSED must pursue debt reduction through other enforcement remedies wherever possible. Supplemental remedies are especially important in cases where the hardship adjustment results in a major loss in collection potential.

The CSED also requires the obligor to waive any statute of limitations defenses with respect to the total arrears. The waiver in CS 510-5E Income Withholding Financial Hardship Application and CS 510-5C the Hardship Notification Letter preserves the CSED's future opportunities to pursue all possible enforcement remedies.

**Procedures**

**1. Receipt of Hardship Request**

Upon receiving an acceptable verbal or written request for a hardship adjustment from the obligor determines if an Income Withholding Order (IWO) has been issued to the obligor's current employer. If yes, proceeds to step 1 a, if no proceeds to step 1 b.

- a. IWO has been Issued. When an IWO is in place with the obligor's current employer, prepares and sends CS 510-5E Income Withholding Financial Hardship Application. Does not delay any income withholding actions that are already in progress for the full amounts. Proceeds to step 2 Return of Unsigned Income Withholding Financial Hardship Application.
- b. IWO has not been Issued. When an IWO has not been issued to the obligor's current employer a temporary hardship is available. An obligor who initiates contact with the caseworker, and provides employment and credible income information may receive a temporary hardship. An obligor may also receive a temporary hardship when employment and income information is provided during contact initiated by a caseworker.
  - i. Attempts to negotiate an arrears amount less than 1/24 of total arrears, but an amount in keeping with the CSED goal of providing for the children while they are minors.
  - ii. Performs a hardship calculation based on verbal employment information provided by the obligor.
  - iii. Prepares and issues the IWO for the amount verbally agreed upon and in no instance less than the hardship calculation amount. At the same time, prepares and sends CS 510-5E Income Withholding Financial Hardship Application. Sets a tickler for temporary hardship expiration date (a temporary hardship does not exceed 30 days). Proceeds to step 5 Review of Temporary Hardship.

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**2. Return of Unsigned Income Withholding Financial Hardship Application**

Upon return of the Income Withholding Financial Hardship Application, checks for obligor's signature. If the application is signed, proceeds to step 3. If the application is not signed, proceeds in step 2a or 2b.

- a. If no adjustment is currently in place, contacts the obligor and explains a hardship determination cannot be performed until the application is signed. Proceeds to step 3 when the required signature is obtained.
- b. If an adjustment is currently in place, and the obligor is timely requesting a renewal does not delay the determination process, but contacts the obligor for the required signature and concurrently, proceeds to step 3. If the obligor does not sign the application within a reasonable amount of time and a renewal has been granted, terminates the adjustment at that time.

**3. Return of Signed Income Withholding Financial Hardship Application**

Upon return of the signed Income Withholding Financial Hardship Application and income documentation, performs a hardship calculation. Issues amended income withholding order(s) if necessary.

- a. If obligor remains eligible for a hardship, determines duration of the hardship adjustment. Refers to policy, Duration of Hardship and review requirements. Sets the total withholding for arrears at the adjusted amount, or \$50.00 times the number of cases, whichever is greater. Proceeds to step 4.
- b. If obligor is not eligible for hardship adjustment, proceeds to step 4.

**4. Results of Hardship Determination**

Upon completing review of the completed Income Withholding Financial Hardship Application, takes action as follows:

- a. Prepares CS 510-5C Hardship Notification Letter, notifying obligor of results of review and, if applicable, listing duration of adjustment and total adjusted withholding for arrears.
- b. If the Hardship is denied issues CS510-5C.
- c. If hardship adjustment is granted and the withholding amount for arrears has changed, prepares and serves an amended IWO according to the procedures in CS 510.3 Withholding Action—With Notice.

Enters hardship expiration date on SEARCHS, sets tickler for 30 days before expiration date. If appropriate to obligor's situation, also sets tickler for earlier date to check for change in circumstances. Proceeds to step 7 Request for Further Review, or to step 9 Hardship Expiration Review, whichever is applicable.

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**5. Review of Temporary Hardship**

Upon expiration reviews for compliance with terms of the temporary hardship. The Income Withholding Financial Hardship Application must be signed, and all requested income documentation included.

- a. If the application is not signed or documentation is incomplete, prepares and serves on the employer an amended IWO for 1/24th of the arrears amount.
- b. If income documentation received differs from the initial (verbal) income information performs a new calculation based on the returned information. Prepares and serves on the employer an amended IWO for the revised amount.

**6. Results of Temporary Hardship Determination**

Prepares and sends CS-510.5C Hardship Notification Letter, notifying obligor of the results and, if applicable, listing the duration of hardship adjustment. Sets the total withholding for arrears at the adjusted amount.

Enters a hardship expiration date in SEARCHS and sets tickler for 30 days before expiration. If appropriate to obligor's situation, also sets tickler for earlier date to check for change in circumstances. Proceeds to step 7 Request for Further Review, or to step 9 Hardship Expiration Review, whichever is applicable.

**7. Request for Further Review**

If at any time after being notified of the results of a hardship adjustment the obligor requests further review in writing, takes action as follows:

- a. Promptly forwards the following documents to the Regional Manager for the final determination:
  - Obligor's returned request for further review
  - Screen print of hardship calculation performed in case along with notations
  - Completed Income Withholding Financial Hardship Application and income documentation
- b. Monitors for the results of the Regional Manager's determination. If the determination differs, issues an amended IWO, and sets a new expiration date if necessary. If the Regional Manager affirms the determination, takes no further action.

**Procedures Regional Manager**

**8. Final Review**

Promptly upon receipt of necessary materials from the caseworker reviews the hardship determination and reaches a final decision. Sends the obligor CS 510-5G Final Hardship Review notifying the obligor of the results of the determination. If the hardship is granted lists the amount and duration of the hardship, then sends a copy to the caseworker. Enters an event, which includes text-describing the basis for the decision.

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**Procedures Caseworker**

**Hardship Expiration Review**

Yearly Informal reviews are required every year and a formal review is required every 3 years. At least 30 days before an existing hardship adjustment expires, reviews the case for evidence of continued hardship.

- a. If during an informal review clear evidence of continued hardship exists and the adjustment amount is still appropriate, (withholding would change by less than 30 percent). Enters case note with basis for renewal, including the saved hardship worksheet. Resets expiration date on SEARCHS.
- b. At a minimum of every three years, or annually If clear evidence of continued hardship does not exist (or a different adjustment amount may be appropriate), prepares and sends to obligor CS-510.5D Hardship Expiration Letter together with an Income Withholding Financial Hardship Application.
  - i. If the obligor returns the completed Income Withholding Financial Hardship Application and required supporting documents before the existing hardship expires, follows PROCEDURES in this section for hardship determination beginning at step 2. (REMINDER: If the hardship is renewed at the same amount, a new withholding order is not needed. Reset the expiration date on system.)
  - ii. If the obligor does not return the necessary documents before the existing hardship expires, issues IWO for 1/24th of the noticed arrears amount.

**NOTE:**

**Evaluate the effect of the hardship.** For any hardship granted or renewed evaluates the effect of the decreased withholding on the total debt collection. If the hardship creates a significant shortfall, investigates other avenues of debt reduction and pursues as appropriate. Possible actions may include identification of and execution on additional assets and receivables, seek-work motions, license suspension and lump-sum settlements.