

## ENFORCING A SUPPORT ORDER

### Medical Hardship Review

CS 520.5

#### SUPERSEDES

CS 520.5 Medical Hardship Review, April 24, 2019

#### REFERENCES

MCA §§ 40-5-208 and 40-5-801 through 40-5-825; ARM 37.62.1909, 45 CFR 303.31

#### Definitions

For purposes of this section the following definitions apply:

**AFFECTED OBLIGEE:** An obligee who is the custodian of one or more enforcement children in the case, and who is not the enforcement parent.

**EMPLOYED FOR ORDER TO ENROLL (OTE):** An enforcement parent who, according to CSSD information, is paid by an entity other than himself or herself, or whose business is registered with the Montana Secretary of State as a DBA (Doing Business As) or a corporation.

**EMPLOYER HARDSHIP/EMPLOYER INSURANCE:** A hardship determination in this section performed with respect to insurance available to the enforcement parent through his or her employment.

**EMPLOYMENT RELATED INSURANCE:** The CSSD considers employment related insurance from Unions or TRICARE\* to be employment insurance. References to employer or employer insurance should be read to include the employer related insurances mentioned above. In cases where the enforcement parent refuses to obtain health insurance from either of these, the CSSD can enforce the insurance requirement through a contempt or medical penalty action. Hardship determinations for employment related insurance should be treated in the same manner as those for ordinary employer insurance.

\*TRICARE, formerly known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), provides civilian health benefits for military personnel, military retirees, and their dependents. Included under the TRICARE name are a number of options such as TRICARE Standard, TRICARE Prime and TRICARE Reserve Select (TRS). In addition, dental is offered through the TRICARE Dental Program (TDP). Details on all the TRICARE options can be found on the [TRICARE website](#).

**ENFORCEMENT PARENT:** The parent whose health insurance order the CSSD is enforcing or preparing to enforce.

**GROSS INCOME:** All cash earned or received by the enforcement parent except means-tested benefits, payments for reimbursement of expenses, and child support payments. Gross income does not include income of other household members. In the case of self-employment, gross income means gross revenue less reasonable and necessary business expenses.

**OTE OUT-OF-POCKET PREMIUM COST:** The amount per month the enforcement parent must pay from his or her own funds for dependent coverage. If the plan requires that the parent be enrolled to purchase coverage for the children, the premium cost **includes** the cost of the parent's coverage as well.

Amounts contributed by the employer or other group are not included in the out-of-pocket cost. For this reason, if there is no additional cost to add children to a pre-existing plan it is not considered an out-of-pocket cost.

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**PRIVATE HARDSHIP/PRIVATE INSURANCE:** A hardship determination in this section performed with respect to insurance available outside of the enforcement parent's employment. The insurance may be individual insurance or insurance available through a non-employer group, such as a union or TRICARE\*.

\*Unions, TRICARE and out of state employers are not subject to an OTE, calculate a hardship for these as you would an employer hardship.

**SELF-EMPLOYED:** An enforcement parent who is receiving income, but who does not meet the definition of a parent, "employed for OTE" above. The CSSD makes this determination via review of electronic sources and the case file.

**UNEMPLOYED:** An enforcement parent for whom the CSSD is unable to locate income after (1) checking electronic sources and the case file, (2) contacting the parent directly or receiving a direct statement from the parent, and (3) contacting the other parent, or the third-party custodian if applicable. Benefits paid to the parent are not considered income. If efforts in (1) and (3) reveal no income but the CSSD is unable to contact the enforcement parent, it may be assumed the parent is unemployed.

### Policy

#### Purpose of Medical Hardship Review

The purpose of a medical hardship review is to determine whether health insurance is available to the enforcement parent at a reasonable cost. If it is determined insurance is not available to the parent at a reasonable cost, the CSSD grants a medical hardship and does not enforce the health insurance obligation for that parent. The use of these review procedures may avert the need for a hearing in many cases.

#### Employer Hardship Determination

The CSSD reviews a case for an employer hardship based on the applicable conditions below:

- 1) There is no medical hardship currently in place for employer insurance and the enforcement parent alleges the insurance is too expensive. See procedures in step 1. Hardship Determination for Employer Insurance.
- 2) There is no medical hardship currently in place for employer insurance and the CSSD deems the enforcement parent's allegation in 1) above under the procedures in CS 520.7 Enforcing Health Insurance Orders. In cases where a hardship has already been denied, the CSSD may deem the request only if there has been a change in circumstances, see step 1. Hardship Determination for Employer Insurance in procedures below.
- 3) The employer notifies the CSSD that the enforcement parent's insurance costs exceed 5% of gross income. See step 2. Hardship Determination by Montana Employer in procedures.
- 4) The employer notifies the CSSD that insurance is not available to the enforcement parent. See steps 2. Hardship Determination by Montana Employer.
- 5) A medical hardship is currently in place and the hardship is about to expire according to the expiration date, see step 5. Monitoring the Employer Hardship.
- 6) A medical hardship is currently in place and there has been a change in case facts that could result in termination of the hardship based on a new hardship calculation, see step 5.

#### NOTE:

**Changes Affecting Hardship.** Changes that may be considered in 6) above include, the enforcement parent has changed or terminated employment, the enforcement parent's gross income has increased, or the enforcement parent's portion of the insurance premium has decreased.

**Private Hardship Determination.** In the majority of cases private insurance coverage is not pursued. If extraordinary circumstances of a case arise, the caseworker should consult with their supervisor to determine whether or not the private insurance provision is enforced.

#### Reasonable Cost

In determining whether insurance is available at a reasonable cost, the CSSD applies the following formula,  $\text{Out-of-Pocket Premium} \leq (\text{Gross Income}) \times 0.05$ :

- \*If the parent's monthly out-of-pocket premium cost for coverage of the child(ren) is less than or equal to 5% of the parent's gross income.
- \* The out-of-pocket monthly cost is the cost of coverage for the parent and children that is not paid by the employer.
- or
- If there is no additional cost to add a child(ren) to an already existing plan

#### Medical Hardship Determination by Montana Employer

When the CSSD is enforcing the health insurance obligation of a parent employed in Montana; the initial medical hardship review for employer insurance is conducted by the employer. The Order to Enroll issued in section CS 520.7 requires the employer to determine, using the CSSD's formula above whether the dependent health insurance available to the enforcement parent is reasonable in cost. In unusual cases the CSSD may override a "not reasonable" determination made by the employer, if it is aware of additional income not included in the employer's calculation. Upon request, the CSSD may also review and, if applicable, override the employer's initial determination that insurance is reasonable if time has passed since the OTE was issued and there has been a change in gross income or out-of-pocket premium. In the case of a non-Montana employer, the CSSD gathers the information on gross income and out-of-pocket premium cost, and performs the initial and subsequent reviews itself. See also Employer Determination for Multiple Cases later in this section.

#### Medical Hardship Determination for Children in the Same Case

In determining a medical hardship in a case, the CSSD considers all the enforcement children in the case together. Any enforcement children in a different case who are named in the same medical support order as the children in the case being reviewed are also considered part of the hardship unit.

**EXCEPTION:** If the enforcement parent has more than one case and there is more than one support order for all of the children in all of the cases, the policy for multiple cases in the next paragraph applies. If the premium for all the children in the hardship unit is not reasonable, the hardship is granted. This policy applies even in cases where enforcement for a subsequent child or new subcase is initiated after a medical hardship is denied for the original children. However, in a situation where a hardship is granted for a hardship unit that includes more than one case, and the children in one of the cases are currently covered by an Order to Enroll, the hardship must be denied for the OTE children.

**Medical Hardship Determination for Children in Multiple Cases**

In situations where a parent is the enforcement parent in more than one case, and the cases involve more than one medical support order, the medical hardship calculation is performed as follows:

**FIRST:**

Determine whether the parent's total out-of-pocket cost of health insurance premiums for all the cases is reasonable. If the cost is reasonable, deny the hardship for all cases; STOP. If the cost is not reasonable, continue.

**SECOND:**

Identify the premium costs for each case, then group the costs as follows: (1) the cost for the case with the oldest medical support order; (2) the combined cost for the case with the oldest medical support order plus the case with the next oldest medical support order; (3) the combined cost for the cases with the oldest, next oldest, and next oldest medical support orders; etc. For purposes of this paragraph, if a case involves more than one medical support order, the oldest order determines the "group" for that case.

**NEXT:**

Determine reasonableness beginning with group (1). If the cost for group (1) is reasonable, deny the hardship for that group and move on to group (2); if the cost for group (1) is not reasonable, grant the hardship for all groups; STOP.

**NEXT:**

If the cost for group (2) is reasonable, deny the hardship for that group and move on to group (3); if the cost for group (2) is not reasonable, grant the hardship for the case with the latest support order in group (2), and for all succeeding groups; STOP.

**REPEAT:**

Continue the above process for group (3) and all succeeding groups.

For each group in the above process the CSSD uses the least expensive premium available for the number of children in that group even if that means different plans are used in calculations for different groups. Also, the above process applies regardless of whether any of the children are currently covered.

The following examples illustrate the hardship determination process for multiple cases:

**EXAMPLE 1:**

5% of parent's gross income = \$100 per month.

Case A: 1 child, older order

Case B: 1 child

Lowest available monthly premiums:

1 child = \$80

2 children = \$140

**Determinations:**

Total premium for both cases (\$140) exceeds 5% (\$100).

Group 1 premium (case A only, \$80) does not exceed 5%.

Group 2 premium (cases A and B, \$140) exceeds 5%.

> Deny hardship for case A; grant hardship for case B.

**EXAMPLE 2:**

5% of parent's gross income = \$150 per month.

Case A: 1 child, oldest order

Case B: 1 child, next oldest order

Case C: 2 children

Lowest available monthly premiums:

1 child = \$80

2 children = \$140

3 children = \$220

4 children = \$220

**Determinations:**

Total premium for all cases (\$220) exceeds 5% (\$150).

Group 1 premium (case A only, \$80) does not exceed 5%.

Group 2 premium (cases A and B, \$140) does not exceed 5%.

Group 3 premium (cases A, B, C, \$220) exceeds 5%.

> Deny hardship for case A; deny hardship for case B; grant hardship for case C.

NOTE that in most situations the cost for 3 children will be the same as the cost for 2 children; in this example the children in case C live out of state, so a different plan applies.

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#### EXAMPLE 3:

5% of parent's gross income = \$150 per month.

Case A: 2 children--1 in order X, 1 in order Y (order X is older)

Case B: 1 child, in order Y

Lowest available monthly premiums:

1 child = \$80

2 children = \$140

3 children = \$220

4 children = \$220

#### Determinations:

Total premium for both cases (\$220) exceeds 5% (\$150).

Group 1 premium (case A only, \$140) does not exceed 5%.

Group 2 premium (cases A and B, \$220) exceeds 5%.

> Deny hardship for case A; grant hardship for case B.

Case A represents Group 1 because it includes order X, which is older than any order in case B. The child in case B is not included in the hardship unit with the children in case A because there is more than one support order for all the children in all the cases.

#### EXAMPLE 4:

5% of parent's gross income = \$100

Case A: 1 child, in order X

Case B: 1 child, in order X

Lowest available monthly premiums:

1 child = \$80

2 children = \$140

#### Determinations:

Total premium for both cases (\$140) exceeds 5% (\$100).

> Grant hardship for cases A and B.

In this example the policy for multiple cases does not apply, because there is only one support order for all the children, so the children are considered to belong to the same hardship unit—see policy for children in the same case.

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#### Employer Determination for Multiple Cases

In some cases, a Montana employer may contact the CSSD for guidance on how to apply the reasonable cost (5%) test when the enforcement parent has multiple cases, **or** the enforcement parent may contact the CSSD claiming the total premium cost for multiple cases exceeds 5% of gross income, but the Montana employer has enrolled all of the children. In either situation the caseworker may assist the employer with the determination using the principles stated in the above paragraphs and examples.

#### Cost-Beneficial Determinations Not Included

The hardship review process does not include a determination of whether the insurance available to the enforcement parent is cost-beneficial when combined with insurance available to, or already obtained by, the other parent. If a medical support order includes a cost-benefit condition for requiring insurance participation by both parents, the cost-benefit determination can be made only by a CSSD Administrative Law Judge at an administrative hearing on medical support issues.

#### Procedures

##### SEARCHS NOTE

The following procedures contain instructions to update SEARCHS for a hardship granted or a hardship denied. The specific method for updating SEARCHS depends on whether the hardship field on the SEARCHS MEC screen is still correct. If it is, the user must enter a case note confirming the status. If it is not, the user must update the field, which automatically enters a case note for the new status.

#### Procedures for Caseworker

- 1. Hardship Determination for Employer Insurance.** Upon receiving a request from an enforcement parent for a medical hardship reviews insurance available or in place through the parent's employer, enters a SEARCHS case note for the request received. Unless the option in NOTE 1 applies, proceeds in 1a through 1d below, as applicable, and sets the next review date on the SEARCHS MEC screen when action is completed.

Processing in this step does not extend the time frames for enforcement of employer insurance given in CS 520.7 Enforcing Health Insurance Orders.

**Option for Montana Employer Insurance.** *[In cases where the Order to Enroll (OTE) is already in place, the option described here applies only if the OTE contains the necessary language. The language was added to the standard OTE in January 2004; for OTEs issued around this time the caseworker should check the actual copy of the order before proceeding.]* If the health insurance is provided by a Montana employer, the OTE will instruct the employer not to enroll the children if the enforcement parent's out-of-pocket portion of the premium required for coverage exceeds 5% of the parent's gross income. Since this is the same calculation as that performed in step 1b below, the CSSD may elect to decline a request for a medical hardship review in this case and rely on the employer's determination. To apply this option the caseworker must contact the requesting parent and explain the employer is the determiner of the medical hardship in this situation. If the OTE results in enrollment or if it has already resulted in enrollment, that means the employer has determined that the parent's out-of-pocket premium is less than or equal to 5% of the parent's gross income. The CSSD will review the employer's determination at the request of the enforcement parent only if the parent presents some evidence that the calculation was not correctly performed, or that the amounts used in the calculation have changed since the employer applied the formula.

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**Deemed Request for Review.** For insurance available through the enforcement parent's employer, the CSSD may deem the parent's request in this step under the procedures in section or procedures in 520.7.

- a. **Hardship Letter** Prepares and sends to the enforcement parent CS-520.6A Letter Concerning Medical Hardship (Hardship Letter), acknowledging the parent's request for a hardship review and instructing the parent to submit the necessary financial information within 10 days. If the information is timely received, proceeds to step 1b. If the information is not timely received, proceeds with enforcement of the employer insurance, and monitors coverage as in step 7. If financial information or another request is received at some later date, begins again with this step.

**NOTE:**

**Financial Information Previously Obtained.** This step may be omitted if the necessary financial information is contained in the case file, and there is reason to believe the information is still current.

- b. **Hardship determination** Upon receipt of the necessary financial information completes CS-520.5C Medical Hardship Calculation, or documents in case notes the results of the calculation. See DEFINITIONS for guidance in determining gross income and out-of-pocket premium costs. If the hardship is granted, proceeds to step 1.c. If the hardship is **denied**, proceeds to step 1.d.
- c. **Employer hardship granted** If the hardship is granted, updates SEARCHS for both the employer *and* private hardships granted by setting **both** of the indicators on the MEC screen, proceeds in 1.c(i) through 1.c(v) below; then proceeds to step 5. to monitor the employer hardship.

**NOTE:**

**Employer Insurance.** When employer insurance is not available or exceeds the income-withholding cap, and the support order requires both parents to obtain insurance begin pursuit of employer related insurance with the other obligated parent.

- i. **Effective date** If the employer insurance is currently in place sets the hardship effective date at 10 days after the date of the determination, and sets a tickler for the effective date. If no employer insurance is currently in place, the CSSD has not yet issued the OTE or has not yet received the Plan Administrator's response stating the children are enrolled, sets the effective date at the date of the determination.
- ii. **Expiration date** Sets the hardship expiration date at one year after the effective date, unless an earlier date is indicated by the enforcement parent's financial or employment situation or other case facts.
- iii. **Notifying the Custodian** Prepares and sends by regular mail to each affected custodian CS-510.8B, CP Action Letter, informing the custodian that the CSSD has granted a medical hardship and giving the effective date.
- iv. **Notifying the enforcement parent** Concurrently with step 1.c(i) above, prepares and sends to the enforcement parent CS-520.6A Letter Concerning Medical Hardship (Hardship Letter), informing the parent the hardship is granted and giving the effective and expiration dates.



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v. Terminating the OTE Upon the occurrence of the hardship effective date terminates any Order to Enroll that is currently in place. The CSSD issues an Order Terminating Enrollment only to disenroll all the children for whom coverage is currently in effect. There is no need for a termination order in cases where enrollment never occurred, the employer/payor did not offer dependent coverage, the parent was not eligible, or premiums exceeded federal withholding limitations or the Montana threshold for reasonable cost. Nor is a termination order required when enrollment has been discontinued by the plan administrator based on a lapse in withholding

**d. Employer Hardship Denied.** If the hardship is denied, updates SEARCHS for the employer hardship denied. Prepares and sends a Hardship Letter to the enforcement parent informing the parent the hardship is denied. Proceeds with enforcement of the employer insurance; if an OTE has not yet been issued, adjusts the OTE cover letter to the employer to remove the 5% limitation. Monitors coverage as in step 8. and takes no further action in this section.

**2. Hardship Determination by Montana Employer.** Upon issuing OTE to a Montana employer, monitors for response as described in section CS 520.7, and takes additional action relating to medical hardship below.

In cases where the OTE is issued without the 5% limitation (because the language was not yet standard when the OTE was issued, or because the caseworker removed the language before issuance based on a determination that premiums did not exceed 5%), skips this step (2) and proceeds in the remaining steps as applicable.

**a. Employer Determines Insurance Is Reasonable.** If the plan administrator responds that the children are enrolled, presumes the employer has applied the test for reasonable cost according to CSSD instructions and has determined that premiums do not exceed 5% of the enforcement parent's gross income. Processes the insurance coverage as in section CS 520.7. Proceeds to step 7. to monitor the coverage, and takes no further action in this section unless a request for a medical hardship is received or the situation changes.

**b. Employer Determines Insurance Is Not Reasonable.** If the employer responds that withholding for medical support would exceed 5% of the enforcement parent's gross income, updates SEARCHS for both the employer *and private* hardship granted by setting **both** indicators on the MEC screen. EXCEPTION: A Montana employer may not determine a medical hardship when there is no additional cost to add a child(ren) to a pre-existing plan.

Prepares and sends by regular mail to each affected custodian CS-510.8B CP Action Letter, informing the custodian that employer/payor insurance is not available because it is not reasonable in cost. Monitors the employer hardship as described in step 5 and takes no further action in this section.

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#### NOTE:

**Overriding an Employer-Granted Hardship.** If the caseworker is aware of significant additional income received outside of employment, he or she may re-determine the hardship using the updated gross income. If the redetermination results in the hardship being denied, the caseworker should issue a new OTE to the Montana employer, adjusting the cover letter to remove the requirement for the 5% test. Procedures at step 1.d (employer hardship denied) for notifying the enforcement parent, updating SEARCHS, and setting the next review date also apply.

**c. Employer Insurance Is Not Available.** If the employer or plan administrator responds that dependent insurance is not available to the parent or that dependent insurance will not be available for a period of at least six months, sets a tickler for the period of time it will take for the enforcement parent to qualify for employer insurance, proceeds to step 3.

**3. Private Hardship Determination.** In the majority of cases private insurance coverage is not pursued. If extraordinary circumstances of a case arise, the caseworker should consult with their supervisor to determine whether or not the private insurance provision is enforced.

**4. Medical Hardship Calculation** Performs a medical hardship calculation based on existing information of the enforcement parent.

- a. Checks SEARCHS and the case file** for current financial information to determine the enforcement parent's gross income, and that the information is current financial circumstances, specifically income and deductions within the last 12 months, or within the previous calendar year.
- b. Identifies dependent health insurance plans** available to the parent outside employment. These include individual plans, as well as, insurance available through employment related insurance, such as a union or TRICARE.
- c. Performs a hardship determination** using CS-520.5C Medical Hardship Calculation.
  - i. If the non-employer plan is not reasonable in cost STOP. Documents the results of the calculation in case notes.
  - ii. If the non-employer plan is reasonable in cost, pursues enforcement of private health insurance. If the enforcement parent refuses to obtain health insurance proceeds to CS 520.10 Enforcing Health Insurance Orders--Penalty Actions.

**5. Monitoring the Employer Hardship** Proceeds in this step upon being alerted the employer hardship is about to expire (a SEARCHS tickler will appear 11 months from the date the hardship is entered), or becoming aware of a change of circumstances that may affect the hardship determination, or identifying a new employer for the enforcement parent.

**EXCEPTION:** If the CSSD receives a new-hire alert for the enforcement parent it must issue the OTE to the employer unless a new hardship determination can be performed within two working days.

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- a. No Change in Employer** If the parent has not changed employers, contacts the employer to verify gross income and out-of-pocket premium cost. Contact may be by telephone or CS 520.5B Payor's Statement. Performs a hardship determination using CS-520.5C Medical Hardship Calculation, or documents in case notes the results of the calculation.

    - If insurance is reasonable (the hardship no longer applies), proceeds to step 5.b.  
EXCEPTION: There is no requirement to perform an annual medical hardship calculation in a case where the parent has qualified for an employer hardship, but is voluntarily covering the child despite the hardship. Instead the caseworker should monitor for continued voluntary coverage, as long as, the employer and the insurance carrier remain the same.
    - If insurance is not reasonable (the hardship still applies), proceeds to step 3.d.
  - b. Parent's Financial Information** If the calculation in step 5a indicates the hardship no longer applies prepares and sends to the parent CS-520.5F OTE Warning Letter, informing the parent the CSSD will order enrollment.

    - i. If the parent timely responds and claims insurance is not reasonable, obtains the parent's financial information (via CS-520.6A or through any other method or resource). Performs a hardship determination using CS-520.5C, and takes action as in step 1.c or 1.d according to the results.
    - ii. If the parent does not timely respond, or does not submit adequate financial information if requested in step 5b(i), considers the hardship revoked, updates SEARCHS for the hardship denied, and proceeds in step 1.d as applicable.
  - c. Change in Employer** If the parent has changed employers, terminates the existing hardship and proceeds in CS 520.7 to issue an OTE to the new employer.

EXCEPTION: At the caseworker's discretion, **within two working days** of identifying the new employer performs a hardship determination using the new premium cost and gross income. If the hardship is granted, proceeds in step 5.d below.
  - d. Hardship Renewed** If the calculation in step 5.a indicates the hardship still applies, updates SEARCHS for the hardship granted, and notifies each affected custodian as in step 1.c. Sets the next medical review date on SEARCHS, and continues to monitor the employer hardship.
- 6. Monitoring the Insurance Coverage.** Upon occurrence of the medical review date, or upon becoming aware of a possible lapse in coverage, verifies the existing coverage by contacting the employer or the insurance company, as applicable. Follows procedures in CS 520.3, for confirming health insurance status directly with the enforcement parent.
- a.** If the coverage is still in place, enters a SEARCHS case note for the coverage re-verified, and updates the next review date on the SEARCHS MEC screen.
  - b.** If the coverage has lapsed, follows procedures in CS 520.7 for enforcing.