



Child Support Enforcement CSE Directive 09-1

Massachusetts
Department of
Revenue

Child Support Orders that are Unclear, Illegible, Ambiguous, or Lack Information Necessary to Collect and Enforce the Order

Introduction

This directive, 09-1, supersedes CSE Directive 04-2 ("Child Support Orders that are Unclear, Illegible, Ambiguous, or Lack Information Necessary to Collect and Enforce the Order"), issued on December 22, 2004.

The Child Support Enforcement Division of the Massachusetts Department of Revenue (DOR) collects child support in two types of cases: full service cases and "income withholding only" cases. In full service cases, DOR provides services to establish paternity and to establish, enforce, and modify child support orders. In "income withholding only" cases, the only service DOR provides is to collect and distribute child support paid by income withholding. DOR also maintains the state case registry, which is a record of all child support orders entered or modified in the Commonwealth.

Every child support case in the Commonwealth has some connection with DOR. It is therefore important for parents, family law practitioners, employers, and the courts to understand the extent of DOR's involvement – whether minimal or extensive – so that all participants in a child support case understand their rights and responsibilities, as well as how to work effectively with DOR. This Directive explains the action that DOR takes when it receives a court order for child support that does not include the information necessary to collect and enforce the order; contains terms that are unclear, illegible, or ambiguous; or includes contingencies that are subject to interpretation. This Directive also explains how DOR proceeds when it does not have the information required to maintain the state case registry. The purpose of the Directive is to ensure that everyone connected to a child support case knows the information that DOR needs to process a case and understands the basis for the actions that DOR takes if the necessary information is not provided.

Directives

1. DOR will enforce child support orders when they include all necessary information and do not contain terms that are unclear, illegible, or ambiguous. Except in cases brought before the court with DOR's

assistance, the parties are responsible for obtaining an order that clearly and unambiguously states all of the necessary information, including the start date, amount, and payment frequency of the current child support obligation, the amount of past-due support owed, and the termination date for the current support order.

2. DOR must maintain a state case registry that contains a record of every child support order entered or modified by a court in the Commonwealth of Massachusetts, including not only each case in which DOR is providing child support enforcement or income withholding only services but also cases in which DOR is providing no services. Every party to a paternity or child support proceeding, regardless of whether DOR is providing child support enforcement services, must provide to the state case registry, and update as necessary, his or her Social Security number, residential and mailing addresses, telephone number, driver's license number, and employer's name, address, and telephone number.
3. DOR will stop collecting current support on the date indicated in the court order if the order specifies a month, day, and year. If the court order extends the child support obligation beyond the youngest child's eighteenth birthday but the termination date is based on contingencies that are subject to interpretation, and one contingency is the child's twenty-third birthday, DOR will select the date of the youngest child's twenty-third birthday as the termination date of the order. If the order was issued by another state, DOR will stop collecting current support based on the law of that state. In all other cases, DOR will stop collecting current support when the youngest child turns 21. If the parties believe that collection of current support should end on a date other than the date selected by DOR, they must obtain a new court order, and provide a copy to DOR.

4. All child support orders entered in the Commonwealth must include a provision for immediate income withholding, unless the court suspends the income withholding and makes written findings in support of the suspension, including a determination that income withholding would not be in the best interests of the child and, in the case of a modification of a support order, proof

of timely payments made in compliance with the existing order. Income withholding may also be suspended if there is a written agreement signed by the parties and approved by the court. In cases in which DOR is providing full services, DOR will execute an income withholding order immediately only if the court order indicates that the income withholding order is to be executed immediately. If the income withholding is suspended or if the terms of the court order relating to income withholding are unclear, DOR will enter the income withholding order as “suspended.” If support becomes 30 days past-due, or upon request of either parent, DOR will execute the income withholding immediately.

Discussion

Section 4 of chapter 119A of the General Laws requires DOR to use automated collection, disbursement and data systems to the maximum extent feasible to carry out its responsibility to establish paternity and obtain, modify and enforce child support orders, including orders for medical support. DOR’s automated system, “COMETS”, must have complete and accurate information to function properly. If the terms of the order are unclear, illegible, or ambiguous, DOR is unable to enter a child support order in COMETS and therefore cannot enforce the order. For example, DOR cannot enter a child support order in COMETS if the start date for the order, the amount of the current child support obligation, or the payment frequency is missing or unclear. DOR cannot execute an income withholding order immediately unless the court order clearly states that income withholding is to take effect immediately. DOR will notify the parties if it is unable to enforce the order as written. In that event, the parties are responsible to obtain an order that is clear and unambiguous or to request income withholding if the original order does not contain a provision for immediate income withholding.

Section 4(a) of chapter 119A requires that the automated system include a state case registry that contains records of all support orders entered or modified in the Commonwealth, including not only cases receiving full child support enforcement and income withholding only services from DOR but also cases in which DOR is providing no services. Each case record must contain information for both parties, including names, Social Security numbers, and dates of birth. For cases receiving DOR’s full services, the case record also includes the amount of support owed under the child support order; the amount of arrears, interest and penalties; amounts collected and disbursed; and the date of birth and Social Security number for each child for whom support is ordered. Regardless of whether DOR is providing child support enforcement services, each party to a child support or paternity proceeding must provide to the state case registry –

subject to privacy and safety safeguards – location and identity information. Such information includes the party’s Social Security number, residential and mailing addresses, telephone number, driver’s license number, and employer’s name, address and telephone number. It is the party’s responsibility to update the information contained in the state case registry as necessary. Pursuant to § 4(a), upon sufficient showing that DOR has made a diligent effort to ascertain the location of the party, the court shall deem due process requirements for notice and service of process to be met if delivery of notice is made to the most recent residential or employer address on file with the state case registry.

Examples

Following are examples of child support orders that are unclear or ambiguous, are missing information, or include contingencies that are subject to interpretation. Each example contains an explanation of the action DOR will take when it receives such an order.

1. Start date for collection and enforcement of the current support obligation: Court orders for child support are presumed to be effective as of the date the order is signed. Unless the order states a specific effective date that is different from the date the order was signed, DOR will select the date the order was signed as the effective date. DOR, however, cannot begin to collect and enforce child support until the order is received by DOR. DOR will begin to collect and enforce support as of the first Friday following the date DOR receives the order. If the parties reduce to judgment or otherwise agree on amounts owed for the period before DOR assumed responsibility for enforcing the order, DOR will adjust its records to reflect and collect those amounts.

2. Amount of the current child support is missing or unclear: The current child support obligation must be expressed as a dollar figure to be paid at a regular interval (e.g., “\$100 per week” or “\$500 per month”). DOR cannot enforce orders that are based on a percentage of income or bonuses, unless the amount is reduced to a sum certain, either by agreement of the parties or court order (e.g., “25% of the noncustodial parent’s gross income of \$50,000” or “10% of the noncustodial parent’s \$5,000 holiday bonus”). In addition, DOR cannot calculate orders that merely refer to the child support guidelines or statutory law without stating a specific dollar figure (e.g., “child support shall be payable in an amount consistent with the child support guidelines” or “child support shall be payable in an amount consistent with G.L. c.208, § 28”). The parties must obtain a court order that establishes the current child support obligation in a sum certain to be paid at a regular interval.

3. Amount of child support fluctuates: While DOR is able to accommodate orders that include seasonal adjustments to the amount of current child support, judges, attorneys, and parties should be aware that complex orders are susceptible to error. To reduce the potential for error, the order must clearly state the exact date on which the change in the amount of child support is to take place and the exact amount of support to be paid (e.g., “Child support shall be \$200 per week from September 1st through June 30th each year and \$50 per week from July 1st through August 31st each year”).

4. Termination date is missing, unclear, not specific, or based on contingencies: DOR will stop collecting current support on the date indicated in the court order, if the order specifies a month, day, and year (e.g. “June 30, 2009” or “the child’s eighteenth birthday”). Unless the court order provides a different, specific date on which the obligation to make current child support payments terminates, DOR will select the date of the youngest child’s twenty-first birthday. If the termination date of the current support obligation is based on contingencies (e.g., “child support will be paid while the child is enrolled in college”), and one contingency is the child’s twenty-third birthday, DOR will select the date of the child’s twenty-third birthday. DOR will stop collecting current support on the selected date unless the court issues a modified order providing a specific month, day and year for the termination of the child support obligation. If the child support order was established in another state, DOR will apply the law of that state to select the date for termination of the current support obligation. If either of the parties believes that collection of current support should end on a date other than the date selected by DOR, he or she must obtain a new court order that provides a specific month, day, and year for the termination of the order and provide a copy of the order to DOR.

5. Amount of past-due support owed is unclear or the payment terms are unclear: For DOR to enforce it, the order must state the amount of past-due support as a specific dollar amount (e.g., “\$2,000” or “\$500 for unpaid medical expenses”). The order must not be stated as an amount owed for a period of time (e.g., “amounts unpaid from January 1, 2003 to June 30, 2003”), or as an indeterminate amount (e.g., “one-half of unpaid medical expenses”). The parties must obtain a court order that reduces the amount of past-due support to a sum certain in order for DOR to enforce the order.

6. Amount of the child support order is expressed in a foreign currency: If the child support order is expressed in a foreign currency, DOR will calculate the amount of the child support based on the foreign exchange rates set by the Federal Reserve Bank as of the date DOR receives the order. DOR may recalculate the amount of support once each calendar quarter

based on the Federal Reserve Bank’s foreign exchange rates if the calculation is requested by either party. If the parties disagree with the exchange rate used by DOR to calculate the amount of support, they must obtain and provide to DOR a court order that specifically states the foreign exchange rate to be used.

7. Order limits or restricts DOR’s enforcement methods: DOR uses a variety of enforcement remedies to collect past-due support. DOR is authorized, and in some cases required, by federal and state law to use these enforcement remedies. 42 U.S.C. 651 *et seq.*; G.L. c. 119A. Parties cannot select the enforcement remedies that DOR is to use in their cases. If the court order contains limits or restrictions on DOR’s enforcement authority, DOR may opt to take no action to enforce or collect the past-due support, and may recommend that the custodial parent close the DOR case.

8. Order states that child support is to be paid directly to the custodial parent, but DOR is providing services: If the custodial or noncustodial parent applies for or is receiving DOR services, he or she has authorized DOR to collect and disburse the child support on his or her behalf. In such cases, child support must be payable to DOR. DOR will update COMETS to reflect the amount of current support and past-due support, if any, stated in the court order and will continue to enforce the child support obligation. If the parents do not want payments to go through DOR, the parents can ask DOR to close its case provided that the custodial parent is not a current recipient of public assistance and the noncustodial parent does not owe past-due support to the Commonwealth. However, if past-due support is owed to the Commonwealth, DOR will NOT close its case and will continue to collect the current support payments until the debt owed to the custodial parent and the Commonwealth is paid. Even if DOR closes its case, if child support is paid by income withholding, DOR must continue to collect and disburse the child support paid by income withholding, but will not provide any other services, including enforcement.

9. Medical insurance provisions unclear or ambiguous: The terms of the order must state clearly which party is responsible for providing health care coverage. If the terms of the order relating to medical insurance coverage are unclear or ambiguous, DOR will select the interpretation that is most favorable to continued medical support for the child. If either party disagrees with DOR’s interpretation, he or she must obtain a new court order that clearly states which party is responsible for providing health insurance coverage. In cases receiving DOR full services, DOR will end enforcement of a medical support order if the court order indicates a specific date when the obligation to provide such support terminates. If the court order is silent, unclear, ambiguous, or is based on

contingencies that are subject to interpretation, DOR will end enforcement of the medical support order on the date that the obligation for current child support terminates.

10. Application for services is not complete: If DOR is not currently providing full services on a case and the custodial parent is not receiving public assistance benefits, but one of the parents wants to receive full services, DOR must have a completed application for services before the order can be enforced by DOR. Only one party to an order needs to complete an application, and either the custodial parent or the noncustodial parent can apply for services. If the custodial or noncustodial parent has submitted an incomplete application, DOR will notify that parent of the information he or she must submit before DOR will provide child support enforcement services.

11. DOR received a copy of the order, but the order does not state whether income withholding is immediate or suspended: The law provides that every child support order must have an income withholding provision. DOR will treat the income withholding provision as "suspended" under the following circumstances: (1) the child support order does not indicate clearly whether income withholding is immediate or suspended, (2) the order is silent on the issue of income withholding (i.e., the order makes no mention whatsoever of income withholding), or (3) the order specifically states income withholding is not ordered. If the noncustodial parent does not comply with the support order and support becomes 30 days overdue, or upon request of either parent, DOR will implement the income withholding immediately.

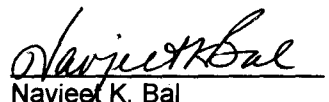
12. Neither parent wants DOR's full services, but the order states that child support is to be paid by income withholding: Unless the custodial parent receives public assistance or the noncustodial parent owes past-due support to the Commonwealth, the parties are not required to receive full child support enforcement services from DOR. The court order, however, may state that child support is to be paid by income withholding through DOR. The parties, or the employer, must provide the identifying information necessary for DOR to create a case record and disburse the child support payments made by income withholding. If the income withholding provisions of the court order are unclear, DOR will treat the income withholding order as "suspended."

13. Neither party wants DOR's full services and the income withholding order is suspended: If the court orders that income withholding is suspended, DOR will limit its involvement to maintaining a record of the order in the state case registry provided that the custodial parent does not receive public assistance and the noncustodial parent does not owe past-due support to

the Commonwealth. The custodial and noncustodial parent each must still provide DOR with the following information: name; residential and mailing addresses; telephone number; Social Security number; driver's license number; employer's name, address and telephone number; and date of birth and Social Security number for each child for whom support is ordered. The parties must also provide a copy of the child support order. DOR will notify the parties if any of the required information is missing or unclear and the parties will be required to provide the information to DOR.

14. Case is income withholding only and child support obligation has terminated: In an income withholding only case, it is the responsibility of the parents to notify DOR and to notify the employer or other payor to stop withholding and remitting child support. In these cases, the only service DOR provides is to collect and distribute child support paid by income withholding (including withholding from Workers' Compensation and Unemployment Compensation benefits). DOR's computer system will not automatically stop collecting the current support when the support obligation terminates. DOR will continue to collect and distribute any payments received in the case.

Authority: G.L. c. 119A, §§1, 4, 6, 12.


Navjeet K. Bal
Commissioner of Revenue
November 4, 2009