



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

SUPERSEDES

CS 401.3 Notice and Order Concerning Support, March 23, 2006

REFERENCES

45 CFR 303.4 and 303.101; MCA §§40-5-225 through 40-5-227

Policy

Process for Establishing a Support Obligation

The CSSD establishes the support obligation of a parent by entering a support order requiring the parent to provide child support, medical support, or both for the children named. One support order is generally used to establish the obligations of both parents; the order contains a child support obligation and a medical support obligation for the obligor, and a medical support obligation for the obligee parent. If the obligee is not a parent but a third-party custodian, the order contains obligations for the obligor only.

Obligated Parent Defined

For purposes of this section and sections, [CS 401.4 Establishment of Temporary Support Obligation](#) and [CS 401.5 Motion and Order Replacing Support Order](#), the term obligated parent means the obligor or the parent obligee. A third-party custodian is not an obligated parent. A parent who is neither the obligor nor the obligee in the case cannot be an obligated parent.

Conditions for Establishing a Support Obligation

The CSSD may enter a support order against a parent or parents when the following conditions apply:

1. There is no existing child support order against the obligor.
2. The obligor is not a minor.
3. The obligor's paternity of the children is established or is not at issue, or a paternity action against the obligor is pending in a Montana district court and a temporary support order is appropriate, see [CS 401.4 Establishment of Temporary Support Obligation](#).
4. Either the obligor or the obligee is not receiving public assistance money from the Montana TANF Program for minor children.

In keeping with [MCA § 53-4-248\(3\)](#) the CSSD cannot establish a support order while both parents are receiving Montana TANF for minor children. The CSSD also may not enforce a Montana TANF obligation while the obligor is on Montana TANF for minor children.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Jurisdiction over Out-of-State Obligee

The CSSD cannot establish the medical support obligation of an obligee parent living out of state unless personal jurisdiction over that parent is established under [MCA 4-5-1008](#) and [MCA 4-5-231](#), either by consent of the parent or by long-arm authority.

Jurisdiction by consent

Jurisdiction by consent is established if any of the following conditions apply:

1. The parent submits a direct application for services to the CSSD.
2. The parent is the obligee in a IV-D interstate case referred to Montana and the parent has consented to the jurisdiction of the initiating state by applying for IV-D services with that state or failing to refuse continued services after becoming ineligible for Temporary Assistance to Needy Families (TANF) or Medicaid.

NOTE:

Public Assistance, Obligor-Applicant Cases Not Included. The obligee's receipt of public assistance benefits in the initiating state is not necessarily a consent to the personal jurisdiction of that state. Also, in cases where the obligor (not the obligee) is the applicant in the interstate responding case, the initiating state may or may not have jurisdiction over the obligee. In these cases, the CSSD has personal jurisdiction only if the parent consents by signing a document waiving any contest to personal jurisdiction, or long-arm jurisdiction as described below applies.

3. The parent signs a document waiving any contest to personal jurisdiction.

Waiver Required in Public Assistance Cases. In the case of an incoming interstate TANF, or Medicaid referral the CSSD requires a waiver. The CSSD notifies the initiating state at the time of case opening that a waiver signed by the obligee is required, and that until the waiver is received the CSSD cannot proceed with the case.

Jurisdiction by long-arm authority

Jurisdiction by long-arm authority is established if the parent has sufficient contacts with Montana under [MCA 4-5-1008](#) and [MCA 4-5-231](#). For example, the parent previously resided with the children in Montana. In questionable cases, a determination by the CSSD regional legal unit may be required.

Party Status of Obligee

If personal jurisdiction is established over a parent obligee, the CSSD makes the obligee a party to the establishment action by serving him or her with notice under this section. **The obligee is a party for purposes of the establishment action only.** In subsequent enforcement actions, except enforcement of medical support against the obligee, the obligee is not a party, and cannot request a hearing or present objections in a hearing requested by the obligor.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

Noticed Amounts--Guidelines Determinations

The CSSD alleges support amounts due by serving a Notice and Order Concerning Support (NOCS). Amounts in the notice must be based on the Montana Child Support Guidelines, except in cases where the CSSD does not have sufficient financial information to perform a guidelines calculation. CSSD policy defines "sufficient financial information" as any information that can be used to reasonably approximate the obligor's income or ability to earn income. This policy presumes that all other information needed for an initial guideline determination (income of obligee parent, deductions from income) can be obtained, or approximated based on knowledge of the case.

Determine noticed amounts

In initially determining noticed amounts according to above policy, the caseworker must take the following actions in all cases, regardless of whether financial affidavits are on file:

1. Actively search for information about the obligor's earned and unearned income, using available sources and leads, such as SEARCHS wage information (ESW), Federal and State tax information, a completed financial affidavit, and suggestions from the other parent about possible assets or unreported employment.
2. When appropriate, determine the obligor's qualifications and time available for earning income, and impute income according to earning capability. Generally, imputation is appropriate when any of the following apply:
 - a. The obligor is qualified for employment at a higher wage than he or she is currently earning for example, the obligor is licensed as a plumber but is working at an unskilled or lower wage job or is unemployed.
 - b. The obligor is employed part-time and is not a full-time student; income should be imputed at the full-time amount, unless there is information indicating a special limitation on earning capability.
 - c. The obligor has seasonal employment; monthly income should be imputed by adding the actual or projected income for the seasonal months, to a reasonable imputed income say, minimum wage amounts or unemployment benefits for the off-season months and dividing by 12.
 - d. No information can be obtained about where or whether the obligor is currently employed, but there is evidence the obligor is qualified for employment at a level above minimum wage for example, the obligor was able-bodied when last seen, and is known to have been employed in the timber industry in the past; income should be imputed at the higher level and there is no evidence of qualification above minimum wage, but the obligor is known to have worked at minimum-wage jobs in the past; income should be imputed at minimum wage.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

3. Upon obtaining a reasonable approximation of income for the obligor, obtain or impute all other information needed for a guideline calculation by consulting case information or contacting the obligee parent. In the absence of any information to the contrary, the income of the obligee parent may be imputed at minimum wage, and the remaining information completed by setting expenses and non-standard deductions at \$0. If a reasonable approximation of income for the obligor is not possible, the TANF exception applies.

TANF Exception

The CSSD alleges non-guidelines support amounts only when it is impossible to identify or impute obligor income. In these cases, the notice must allege amounts based on the greater of the maximum amount of public assistance payable to the child under the TANF program, or child's actual needs as alleged by the obligee the CSSD does not solicit allegations of the child's needs but assumes these are represented by the TANF amount unless otherwise advised.

As a matter of CSSD policy, notices containing non-guidelines amounts should be very rare, and should be issued only after the caseworker has made every reasonable effort to obtain information for a guidelines calculation.

Confidentiality of Information between Parents

Information about a parent's employment, financial condition, medical condition, identification numbers, household, or other families is not routinely provided to the other parent except as it is reflected in a guideline worksheet. The CSSD provides a copy of a parent's financial affidavit to the other parent only upon request, and only for child support-related purposes.

The CSSD routinely list the mailing addresses of the obligor and obligee on the notice of the establishment action. If a parent or custodian has asked to have address or other reported personal information protected from the other parent, claiming risk of physical or emotional harm to the requestor or the child, the CSSD will honor the request.

Exception from Immediate Income Withholding

The CSSD may exempt except an obligor from immediate income withholding if it finds there is good cause not to require immediate withholding, or there is an acceptable alternative arrangement in place for the payment of support.

The finding can be made by the caseworker in the course of negotiating the support order, or by the Administrative Law Judge (ALJ) at hearing.

The process for obtaining an exception begins with the obligated parent. The original NOCS contains a provision requiring immediate income withholding. If the obligated parent disagrees with the provision, the parent may contact the CSSD to request an exception.



CHILD SUPPORT SERVICES DIVISION

ESTABLISHING A SUPPORT OBLIGATION

Notice and Order Concerning Support

CS 401.3

An exception for good cause may be recommended if all of the following conditions are met:

1. The obligor or obligee provides convincing evidence that implementation of immediate income withholding would not be in the best interests of the child. For example, there is evidence the obligor's employer, despite the statute forbidding the practice, will fire, refuse to hire, or refuse to promote the obligor if the employer is required to comply with CSSD withholding requirements. The resulting loss of income available for child support would not be in the best interests of the child.
2. If support was previously ordered, and there is proof of timely payment.
3. No arrears are owing, and the obligor has paid in full any judgment listed in the NOCS.

An exception based on an alternative arrangement may also be recommended if all of the following conditions are met:

1. There is a written agreement for payment of support that is signed by the obligor and the obligee, or there is an oral agreement between the obligor and obligee that the caseworker has heard directly stated by both.
2. The agreement provides sufficient security to ensure compliance with the arrangement. Examples of possible security include bonds, prepayment of support at least one month ahead, military allotments, or other automatic draws on the obligor's bank account or paycheck.
3. Support payments for amounts in the NOCS are made through the CSSD.
4. No arrears are owing, and the obligor has paid in full any judgment listed in the NOCS.

If an exception is recommended and the supervisor approves, an amended NOCS is issued that includes the exception. A written determination is attached to the NOCS that describes the exception and the basis for it.

If the CSSD denies a parent's request for an exception, the caseworker declines to recommend an exception, or the supervisor does not approve, the obligated parent can request a hearing on the NOCS to contest the issue.

Time Frames for Establishing a Support Obligation

Two federal time frames apply to the procedures in this section:

1. Within 90 calendar days of locating the obligor the CSSD must serve notice of the establishment action.
2. Within 6 months of serving the notice in the time frame above on all obligated parents, the CSSD must enter the support order or dismiss the action.

To ensure compliance with the 90-calendar time frame the CSSD serves the notice for the support action at the same time as any notice of a paternity action.

The total time allowed in either time frame includes any time used to establish paternity, negotiate support amounts, issue amended notices, schedule and hold a hearing, or obtain the signature of the ALJ.