



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

Procedures

1. **Initial Review.** Upon determining that conditions for establishing a support order apply, proceeds as follows:

- a. Determines whether the CSSD has personal jurisdiction over the obligor as defined in MCA § [40-5-1008](#), and [40-5-231](#). If not initiates an interstate referral or proceeds as appropriate in CS 250.1 Native American Jurisdiction.

NOTE:

Out-of-State Oblige. The CSSD attempts to identify or obtain jurisdiction over an obligee in an incoming interstate case at the time of case opening; if that is not possible, the CSSD does not proceed with the interstate establishment case against the obligor.

- b. Determines whether either of the following exceptions for the parent obligee applies if so, proceeds in this section against the obligor only as if for a third-party case.
 - **If the custodial parent is under 18 years of age**, the CSSD may establish medical support against both parents. In this instance, the noncustodial parent is required to pay 100% of the uncovered medical expenses.
 - The CSSD does not have jurisdiction over the parent obligee based on applicable factors in CS 250.1 Native American Jurisdiction.
- c. In an interstate responding case where the CSSD has personal jurisdiction over the out-of-state parent obligee, adapts the procedures in the remainder of this section as necessary to provide due process for the parent while complying with all IV-D requirements for interstate case processing specifically,
 - in step 8., serves the notice directly on the parent; if direct service is not successful, obtains service through the initiating state.
 - in steps 17., 18., and 21. proceed as for a Montana parent obligee to conduct the pre-hearing contact, exchange hearing exhibits, and ensure the notice of hearing and scheduling order is sent; adjusts these procedures as necessary if the CSSD needs the assistance of the initiating state with the hearing, and at the completion of the establishment action notifies the initiating state according to regular interstate procedures.



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- d. Reviews available financial information for each obligated parent. Sources of information should include SEARCHS, the case application or referral, information on file from other actions, current wage publications, and any incidental information. If necessary and where practical, obtains additional information through informal contact with the parents or custodian.
- e. At the caseworker's option, requests financial information in advance of the formal notice process by preparing, and sending to the obligee parent CS 202.1A 10 Day Letter to CP requesting more Information asking the obligee to complete and return a financial affidavit, and provide other information if necessary, or CS 401.3H Cover Letter to CP with Financial Affidavits (return due in 10 days) asking the obligee to complete and return two Financial Affidavits, one with obligee information, and one with obligor information.

NOTE:

Information requested on the financial affidavit includes copies of federal income tax returns with all schedules filed and W-2 forms for the last three years. If a parent is self-employed, the request is for business returns, partnership, or corporation, for the last three years **in addition** to the individual returns.

- 2. Guidelines Calculation.** Unless the TANF exception applies, performs a guidelines calculation as in CS 404.1 Child Support Guidelines. Determine the support amount to be ordered based on the guidelines transfer payment, and the associated breakdown for each child.

Difference Due to Rounding. Where the amount in the support order will be a per-child amount as in most cases, and the total of the per-child amounts for all the children differs from the total transfer payment listed in Worksheet A because of rounding, the CSSD establishes the support obligation at the total of the per-child amounts. This aggregate amount is then used for all purposes in the child support case, including determining any judgment, setting up accounts, and ordering income withholding after the support order is entered.

- 3. TANF Amount.** If the TANF exception applies, enters a SEARCHS case note explaining why a guidelines calculation was not possible. Determine the obligor's monthly child support obligation per child as follows:

- TANF program identifies the public assistance grant amount corresponding to the number of children in this action, for amounts refer to [NOCS Bulletin--Non-Guidelines Amounts](#).
- Divides the grant amount by the number of children to get the per-child obligation.



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4. **Start/Effective Date.** The start and effective date is the same, the date the child support obligation begins to accrue on a NOCS or a Temporary NOCS (TNOCS). If an order includes a judgment period, the start date is the **first month of the judgment period**.

- a. Initially sets the start/effective date at the first day of the month following receipt of the enrollment for services or the TANF referral.

The start/effective date should be the month following receipt of the CSSD Enrollment for Services, intergovernmental request, or a referral from another agency, such as TANF, Medicaid, or Foster Care. If the date is more than 6 months old, the caseworker must substantiate in case notes why the proposed order should have a commencing date that is older than 6 months, and a supervisor or the legal team must provide a case note of approval for the caseworker to proceed with a retroactive date beyond those 6 months.

NOTE:

The start date may turn out to be the first month of the current support account on SEARCHS, or the first month of an arrears judgment, depending on when the ALJ signs the order. Receipt of the ALJ's signature allows the caseworker to set up the current support account. If the order is signed, and accounts are set up in the same month as the NOCS is issued, current support will begin with the start date, and the judgment will be \$0.

If an order is signed by the ALJ at the end of a month, and the accounts cannot be set up until the month following the ALJ's signature, that month is not included in the judgment, however support for that month should be included in the arrears account.

A start date other than what is identified above should be discussed with a supervisor or CSSD the legal team before implementation.

- a. Adjust the month of the start date as necessary to comply with the following restrictions:
 - If the enrollment for services, intergovernmental request or TANF referral is over 6 months old.
 - The period from the start date to the present must not exceed 2 years if rights to support were assigned to the state for any month.
- b. Identify any support payments the obligor can prove having made to the obligee for the months from start of the obligation.



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5. Preparing the First NOCS. Prepare CS-401.3A Notice and Order Concerning Support (NOCS):

- a. Enters the amount of the obligor's monthly child support obligation from the Guidelines Calculation, or TANF Amount. This amount should be entered in the per child field unless non-per child language applies.
- b. Enters the start date determined in Start/Effective Date.
- c. Selects options for the NOCS document according to the facts of the case:
 - Selects third-party language if the obligee is not a parent.
 - If support amounts are being established on behalf of both a parent obligee, and a non-parent (third-party) obligee, two separate NOCS documents are required: one (standard language) for the amount owed the parent obligee, and the other (third-party language) for the amount owed the non-parent obligee.
 - For each obligated parent, selects the option to send a Financial Affidavit if an affidavit is not on file. This selection applies even if the amounts in the notice are guidelines amounts, or if it is likely the support order will be based on the return of the obligee's financial affidavit.
 - Selects consent language only if Financial Affidavits have been received for all obligated parents; amounts in the notice must be based on the guidelines.
 - Selects non-per child language if the amounts in the guideline worksheet are not the same, or are not owed by the same parent, for each child. Enters the total monthly payment for all the children in the not-per-child field.
 - Selects non-guidelines language if the amounts in the notice are not based on the guidelines.
 - Selects temporary obligation language only in conjunction with the procedures in CS 401.4 Establishment of Temporary Support Obligation.
 - Selects the judgment for genetic testing fees if applicable; adjusts the amounts if necessary.
 - Does not select the income withholding exception. This option is available only under specific conditions in an amended NOCS.



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- Does not select the amended notice; this option is available only for an amended NOCS.
 - Adjusts the language of the support order where applicable to reflect the requirements of CS 404.1 for rebutted presumptions, variances, and anticipated changes in circumstance, state the amount, if any for payments already received. Specifically, the statement containing the start date should be adjusted to read as follows,

"In addition, the Obligor shall pay child support for the months from [start date] through the month prior to the date the Administrative Law Judge signs the ENTRY OF ORDER, at the amount per month stated in this paragraph, *less \$[4c amount] for payments already received*".
 - Accommodate other special facts of the case, with the advice of the staff attorney.

NOTE:

Previously Established Medical Support. In rare cases medical support provisions contained in the NOCS may duplicate the medical support obligation already established for a particular parent-child pair. It is not necessary to adjust the support order in this situation; standard language in the NOCS provides that any duplication of medical support caused by entry of the proposed support order does not increase the parent's medical obligation with respect to the duplicated provision.

- e. If there is a **domestic violence indicator on SEARCHS** for the NOCS subcase (obligee and obligor), check to make sure the certificate of mailing does not include an address for the person who is listed as the alleged victim.
6. **NOCS Package.** Generate and sign the original NOCS, and prepare a NOCS package for each obligated parent comprising:
- A copy of the signed NOCS.
 - Copies of any guideline worksheets prepared in Guidelines Calculation attached to the NOCS.
 - If applicable, CS-404.6A Financial Affidavit.

In a third-party case sends a copy of the NOCS--with the hearing request removed--and any guidelines worksheets to the obligee by regular mail.



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- 7. Paternity Coordination.** If the obligor's paternity is established or not at issue, proceed with service on the obligated parents. Note that if paternity has been established by presumption via Paternity Acknowledgment signed within the last 60 days, the presumption will become irrebuttable upon entry of the support order.

If the obligor's paternity is not established, for each alleged father combines service of the NOCS package with service of the Notice of Parental Responsibility (NPR), and coordinates resolution as appropriate. In multiple-allegation cases serves multiple NOCS packages on the mother obligee.

Rationale for sending each alleged father a NOCS and an NPR, is the timeline to establish an order runs concurrently with establishing paternity. For example, there is a new case involving 2 alleged fathers (AFs), one is located, and one is not. If based on information provided by CP, it is likely that AF01 is dad, it would make sense to send and serve NPR and NOCS at same time on AF01. Then if he either admits paternity or blood test confirms paternity, the caseworker can immediately move on to finalize the NOCS since he has already been served with it. In this scenario, the order gets finalized faster.

CSSD policy sections addressing the NPR:

[CS 605.2 Notice of Parental Responsibility \(NPR\)—Single Allegation](#)

[Cases or 605.3 NPR—Multiple Allegation Cases](#)

If the obligor is the mother, proceeds with establishment of a support obligation against the mother as for a third-party case.

- 8. Service and Response Time.** For each obligated parent, serve the NOCS package and monitor for a response.
- Send the package by certified mail, return receipt requested, restricted delivery. Monitor for response within 3 mailing days plus 20 calendar days after mailing, or 20 days after the date the parent signs the return receipt, whichever allows for later response.
 - Arrange for personal service of the package through the sheriff or a civil process server. Monitor for response within 20 calendar days of the date on the return of service.
 - Prepare CS-405.1 Notice and Acknowledgment of Receipt of Administrative Notice. Enclose with the NOCS package the original and one copy of the acknowledgment form; sends the package by regular mail. If a signed acknowledgment is not returned within 20 calendar days after the mailing date, immediately arranges for service by sheriff or civil process server.

NOTE:

In addition to sending the Notice and Acknowledgment form to each obligated parent retain copies of the form in the case file. Replace the copies of the acknowledgment form with the *signed* originals upon their return.



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9. Failed Service on a Parent. If service is obtained on the obligor, but cannot be obtained on the parent obligee by either acknowledgment, or certified restricted mail, an attempt must be made by sheriff or private process server before one of the following is appropriate:

- If there will be a public assistance debt, regardless of whether a new obligee opens a case, amends the NOCS to the third-party version as in step 14 Preparing and Issuing an Amended NOCS.
- If there will not be a public assistance debt, attempts to contact the obligee to inquire if child support services are still wanted. If services are no longer wanted, dismisses the NOCS and begins closure of the obligee’s non-public assistance case. If contact cannot be made with the obligee, amends the NOCS to the third-party version as in step 14 Preparing and Issuing an Amended NOCS.

If service cannot be obtained on the obligor, take the necessary steps to locate the obligor, including but not limited to monitoring automatic interfaces. If within one year from the date the NOCS is issued the obligor is located arranges for service of the original NOCS. If not located dismiss the notice. When the obligor is located, issue a new NOCS for the same payment amounts, and the same start date as in the original NOCS.

10. Dismissing and Not Dismissing the Notice. If in response to service of the NOCS an obligated parent timely contacts the CSSD, and proves that either no support obligation exists, or a support order for the child support obligation already exists prepares CS-401.3F Motion and Order to Dismiss Administrative Notice, and forwards the motion to the Office of Administrative Hearings (OAH) for execution and notification of the parties.

If an obligated parent proves a prior support action is pending in district court, amend the notice to include temporary language and follow the procedures in CS 401.4 Establishment of Temporary Support Obligation .

If an obligated parent claims non-paternity, and CSSD records show paternity has been established or was never at issue, explains the CSSD will proceed with establishment of the support obligation. The parent may request a hearing on the NOCS and contest the existence of a paternity presumption or order at that time, and/or may petition the district court for relief on the paternity issue.

If the obligee changes after the NOCS is served on at least one obligated parent, maintain the NOCS action for the original obligor and obligee except,

- if the original obligee is a parent and cannot be served, amend, or dismisses the notice according to the Failed Service on a Parent instructions.
- if the new obligee is a parent, the original obligee was a third party, at the caseworker’s discretion dismisses the notice, and issues a new NOCS for the two obligated parents.



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- 11. Medical Support Enforcement.** If in response to service of the NOCS, the obligor contacts the CSSD objecting to or questioning the proposed health insurance requirement, explain how the requirement will be enforced. If appropriate, perform a preliminary medical hardship determination using information available from the case file or provided by the obligor. Inform the obligor of the tentative results; explain the results from a final determination when the case actually reaches enforcement may be different, as personal information is verified or corrected.
- 12. Resolving the NOCS, proceed as applicable.**
- Prepare the NOCS: if a hearing is not timely requested by an obligated parent, and no new information has been provided, no amendment is required. Prepare the support order.
 - Prepare and Issue an Amended NOCS if:
 - An obligated parent, or other person provides new information that changes the amounts, terminates a noticed obligated parent, or timely provides information ***that changes the amounts used in the guideline calculation, such as income, day care, etc., but does not change the child support amount in the NOCS.***
 - The parties timely contact the CSSD and prove that conditions for the exception to income withholding apply.
 - No hearing is timely requested by any obligated parent.

NOTE:

If amounts used in the guideline calculation change, an Amended NOCS needs to be issued, regardless of whether the child support amount in the NOCS changes. An accurate guidelines calculation needs to be attached to the order entered. This is important for a subsequent modification action to determine whether a significant change of circumstances has occurred.

- Hearing request received. If any obligated parent timely requests a hearing, proceeds to step 17.

13. Preparing and Issuing an Amended NOCS.

To Amend the NOCS do all of the following as is necessary:

- Update the noticed terms or amounts in the NOCS.
- Update the amounts used in the guideline calculation.
- Amend to a third-party, or temporary version, correct an error in case information.

If these changes apply, but the original NOCS has not been served on any obligated parent, recall the original notice, and begin again with the Initial Review.



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Do not amend the NOCS solely to add a judgment for genetic testing fees.

Prepare the amended NOCS according to the following instructions:

- Do not change the start date determined for the original NOCS
- Select the income withholding exception at the obligated parent’s request only if the conditions for good cause, or alternative arrangements apply. Exceptions must be approved by the supervisor, and for an alternative arrangement exception consent language should be selected. All obligated parents must have submitted Financial Affidavits.
- Document the support amount due for the period from the start date through the month in which the amended NOCS is issued. If payments have been received prior to the amended NOCS adjust the statement in the in it to contain the start date and to show the amount paid. Prepare, and attach CS-401.3E Exception to Income Withholding.
- In the case of a conversion to a third-party case because of failed service on a parent obligee, select third-party language, retain the same obligee in the heading as in the original NOCS.
- If the parent obligee was successfully served with the original NOCS, but now cannot be located, do not amend the NOCS to the third-party version, instead refer to 9. Failed Service on a Parent.
- Selects amended notice language in all cases.
- Send the amended notice package to the obligated parents by regular mail; enter a case note for the type of service.
 - In a third-party case send a copy of the amended NOCS with the hearing request removed, and any guidelines worksheets to the obligee by regular mail.
 - Monitor for response within three mailing days plus 20 calendar days after mailing.

14. Resolving an Amended NOCS. If no hearing is requested by any obligated parent, and no hearing is pending on the original NOCS, resolve the notice by preparing the NOCS. Additional notices beyond the first NOCS and one amended NOCS are generally not appropriate, unless one or both Financial Affidavits are produced in response to the amended NOCS.

If a hearing was requested on the first NOCS and the requestor has not withdrawn the request, or consented to the amended NOCS, at the discretion of the caseworker contact the obligated parents. Inform them the hearing will proceed, explain the possible consequences of a request for hearing after an amended NOCS has been issued.

When a parent requests a hearing in response to a NOCS, and the NOCS is amended the request for hearing automatically applies to the amended NOCS. The hearing is not vacated unless all obligated parents sign the Consent to Support contained in the amended NOCS, or the requesting parent withdraws the request, or signs a consent to the amended NOCS. Other conditions apply, they are discussed under step 22.



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15. Preparing the Support Order. Where no obligated parent has timely requested a hearing, prepares the appropriate support order, and assemble the package below:

- Consent Only. If all obligated parents have returned signed consents,
 - in a two-obligation case prepare CS-401.3B Entry of Support Order and attach both NOCS documents containing the parents' signatures. Add the guidelines worksheets, any form cs 401.3E Exception to Income Withholding.
 - in a third-party case, add the NOCS document containing the obligor's signature to the package.
- Default Only. If no obligated parent has returned a signed consent, retrieves the original NOCS from the case file and complete the certificate of service and response; add the NOCS to the package.
- Consent and Default. If one obligated parent has returned a signed consent, and one obligated parent has not, uses the document containing the original signature of the consenting parent to complete the certificate of service and response; add the document to the package.
- Assembling the Package. Assembles the support order package and submits it to the supervisor for expedited review. upon approval, immediately sends the original package to the OAH, retains a copy for the case file, and enters a case note.

16. Entry of the Support Order. Following submission of the support order package, or participation in the hearing, monitors for receipt of a copy of the final order signed by the ALJ.

Immediately upon receipt of the final order take action to:

- Review the terms of the support order.
- Update the Support Order Summary (SOS) and Support Order Detail (SOD) screens.
- Set up the applicable accounts in the system.
- Accounts required for enforcement include the current support accounts, and accounts for any judgment period created by the support order. The judgment period includes the months from the start date through the month before the accounts are set up. If the support order is signed and accounts are set up in the same month as the start date, there is no judgment.
- Begin enforcement by any appropriate means. Enforcement methods include income withholding, enrollment for medical support, and various remedies for enforcement of arrears. In the case of income withholding and medical enrollment, the time frames for initiating enforcement apply.

NOTE:

Oral Bench Ruling Not a Final Order. For purposes of the CSSD's authority to enforce support a bench ruling, takes the place of a proposed decision and order only. The caseworker cannot proceed to update SEARCHS or enforce the decision until a written final order is obtained.



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Expediting Support Enforcement

To comply with the intent of both federal regulations, and state law concerning system data reliability and immediate effectiveness of support, it is essential that current support accounts be available for collection immediately upon completion of service of the NOCS, or amended NOCS on all obligated parents, and receipt of the final support order signed by the Administrative Law Judge.

For this reason, the caseworker must take every opportunity to expedite case processing from the day the service response period expires through the day enforcement begins. This includes efficient preparation, and submission of the NOCS package to the OAH, as well as close monitoring for return of the signed final order from the OAH.

- If the support order is for has used non-guidelines amounts, monitor for receipt of information sufficient to determine guidelines amounts. Upon receipt proceeds with a replacement action. Information on a replacement action found in [CS 401.5 Motion and Order Replacing Support Order](#).
- If contacted by a person dissatisfied with the support order, explain the applicable remedy(ies) below, and take described action at the request of the contacting party:
 - Judicial review. For a support order entered as the result of a hearing, upon timely request to the district court. Send a pro-se judicial review packet and enter a case note. Continue enforcement regardless of any petition for judicial review unless the Administrative Law Judge (ALJ), or the district court stays the CSSD order.
 - Set-aside. For an order entered by default, upon a written motion to the OAH showing good cause for the default. Provide the address of the OAH.
 - Replacement. For a non-guidelines order, proceeds as described in CS 401.5 Motion and Order Replacing Support Order.
 - Review for modification. For a guidelines order, upon a showing of significant change of circumstances or that 36 months has passed since the order was entered. Prepare and send CS-408.3A Request for Review and follow procedures in CS 408.3 Review and Modification of Support Order.
- If other children are added to the case, follow procedures in CS 401.6 Subsequent Notice and Order Concerning Support. END OF PROCESS



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17. Immediate Steps upon Receiving a Hearing Request. If any obligated parent timely requests a hearing, and the hearing request is received first in the regional office, immediately scan, and securely email the request to the OAH; enter a case note for the request received and forwarded.

Respond to the hearing request upon receipt of a copy from the OAH, within 3 working days. Inform the OAH of any dates the caseworker will be unable to attend a hearing. In a case involving two obligated parents, if the CSSD has not yet obtained service on the non-requesting parent, monitor for service, and if applicable proceed in step 18.

At the same time, contact the obligated parents without waiting for the return of the notice and order for hearing from the OAH, research the issues raised in the hearing request, and contacts all obligated parents. In cases with two obligated parents, the contact may be combined in a single interview at the discretion of the caseworker.

In the course of the discussion with each parent identify and attempt to resolve any issues cited in the hearing request or raised separately. Specifically, conduct the interview(s) as outlined regardless of which parent requested the hearing.

Defenses

If a parent claims an absolute or affirmative defense, elicits the parent's reasons, or the supporting facts and proceed with the following **before** proceeding to Contested Elements.

If the defense is proved to the satisfaction of the caseworker, dismisses the action, refer to 10. Dismissing and Not Dismissing the Notice; includes in the motion to dismiss a request to vacate the hearing as well.

If the defense is not proved, or if further information will be required to determine the validity, proceeds to Contested Elements. Request the parent provide any information still needed as soon as possible. Consult with the CSSD staff attorney on all questionable cases.

NOTE 1:

Absolute Defenses Defined. Absolute defenses are defenses that need no further proof and, if true, prevent the CSSD from proceeding with the NOCS action. Absolute defenses may include (1) the CSSD served the NOCS on the person by mistake, intending to serve another person or (2) there is a current court order or irrebuttable presumption establishing another man as the father or (3) the CSSD does not have subject matter jurisdiction to establish support.

NOTE 2:

Affirmative Defenses Defined. Affirmative defenses are defenses that, if not raised before the hearing, cannot be raised at a later time. Affirmative defenses to the NOCS action may include (1) the custodian has waived the right to receive child support, (2) a court has declared any of the children emancipated, (3) a support order for the financial support of the children already exists against the obligor, or (4) the CSSD lacks personal jurisdiction over the parent to establish a support order.



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Contested Elements

Review the elements of the case with the parent, identify any elements the parent intends to contest at hearing. Where necessary explain specific CSSD procedures or calculations, confirm the CSSD's authority to act, and gives or obtains any other information relating to issues raised.

Note that in cases involving two obligated parents, either parent can contest any element of the case, regardless of whether the element applies to the contesting parent or the other parent. For example, the obligor can contest the CSSD's jurisdiction over the obligee. In identifying elements that may be contested, the caseworker must be sure to specifically address all possible combinations.

Results of Contact with Obligated Parent(s)

Upon completion of the required interview(s), take an appropriate action:

- **Withdrawal.** If the requesting parent is satisfied with the explanation, and no longer wishes to contest the notice, explain the procedures for withdrawing the hearing request, or if applicable consenting to the notice. Emphasizes any withdrawal must be in writing and signed by the requesting parent; if the request is not properly withdrawn the hearing will proceed.
- If applicable, explains the rights of the non-requesting parent refer to step 22. Vacating the Hearing, if necessary, begins again at step 12. Resolving the NOCS or proceeds to step 18. Hearing Preparation as applicable.
- **Amended Notice.** If a contacted parent provides information that changes the amounts used in the guideline calculation, regardless of whether the child support amount in the NOCS changes.
- **Hearing Checklist.** If a contacted parent maintains or timely initiates a request for hearing, prepares CS-401.3J Hearing Checklist (Notice and Order Concerning Support), documenting the contact(s) and results, and specifying any issues the caseworker expects to be contested at hearing. If both parents were contacted, enters the information for both parents on a single copy of the form. Before the date of the hearing, send a copy of the form to each obligated parent, and the OAH. Place a copy for the case file.

Failed Attempts to Contact

If unable to contact an obligated parent before the hearing date despite repeated attempts, document the attempts on the Hearing Checklist, and send copies of the completed checklist to the parties and the OAH.



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18. **Hearing Preparation.** Prepare evidence and arrange testimony as instructed below:

- Exhibits and Witnesses. Identify and arrange for the appearance of witnesses. Prepare the state's exhibits, and CS-405.11A Witness and Exhibit List and makes the necessary copies.

Important: The Witness and Exhibit List must include name, addresses and telephone numbers for all of the witnesses, including the CSSD and caseworker. If the CSSD is aware that a witness, or a child in the witness' custody is an alleged victim of domestic violence related to the NOMS sub case, replaces the name, address, and telephone number for the witness with the words, "in care of the Child Support Enforcement Division".

Mail the list and exhibits directly to each obligated parent (copies) and sends the OAH (originals), to be received on or before timeframes in scheduling order; retain one copy for the case file, send copies of exhibits and witness list to other parties.

NOTE:

In an interstate responding case where the CSSD has personal jurisdiction over the out-of-state custodial parent, proceed as for a Montana custodial parent to conduct the pre-hearing contact, exchange hearing exhibits, and ensure the notice of hearing and scheduling order is sent. Adjust these procedures as necessary if the CSSD needs the assistance of the initiating state with the hearing.

- Caseworker Testimony. Prepare caseworker testimony under the general direction of the CSSD staff attorney. Provide information about the prima facie case including at a minimum, the CSSD's authority to proceed, the lack of any existing medical support order, the existence of a paternity presumption or order, the service of the administrative notice, and the CSSD's jurisdiction over the subject matter.
Important: For purposes of evidence of paternity, the caseworker should prepare testimony stating by what method paternity was established, or presumed rather than introducing actual paternity documents, which may be subject to strict confidentiality regulations.
- Judgment for Arrears. Determine the arrears accrued from the start date through the hearing month; prepare a request for a judgment to be presented at the hearing.
- Third-Party Cases. Where applicable, prepare a request asking the ALJ to take official notice of the methods described in CS 404.3 Child Support Guidelines—Third-Party Cases for adapting the guidelines.
- Continuances or Delays. Except in unusual situations, or as noted below do not request a continuance of the hearing, or a delay in submitting the exhibits once the respective dates are set. If a continuance applies, prepare CS-405.7A Motion for Continuance; obtain the approval of the supervisor, and send the motion to the OAH; monitor for the rescheduled date.



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NOTE:

Continuance for Service on a Party. In a case where the hearing date is approaching, and an obligated parent has not yet been served, but efforts to serve the parent are continuing and are likely to be successful, CSSD policy allows for continuance of the hearing as needed. This is to allow a reasonable time between service of notice, and hearing.

19. **Hearing Participation.** Participate in the hearing as a witness; present any special requests prepared in step 18. Provide prepared testimony as needed to prove the elements of the case; proof is not needed where the parties stipulate to an element during the status conference in step 23. If appropriate, perform live guidelines calculations during the telephone hearing concurrently with the calculations performed by the ALJ.

Except in unusual situations do not request the hearing record be held open. In special situations involving unfamiliar points of law, request the ALJ set a briefing schedule as needed. Due dates for briefs are not subject to the CSSD time frames for the hearing process.

Upon receiving a copy of the proposed decision and order from the OAH in step 24., review the proposed order carefully for accuracy, and general conformance with CSSD practices, specifically check the judgment amount and months, these need not be the same as in the NOCS, and check the first payment date. The first payment date should be set at the first of the month following the ALJ's signature on the final order.

If the above or any other elements of the proposed order are inconsistent with CSSD data reliability requirements, or with the evidence and discussions of the hearing consult the CSSD staff attorney concerning a possible motion to review. Do not set up accounts or begin enforcement of the proposed decision and order. Upon receipt of the final order signed by the ALJ, refers back to step 16. Entry of the Support Order.

Procedures for Office of Administrative Hearings

20. **Processing Non-Hearing Orders.** Upon receipt of a support order package prepared by the caseworker in step 15., obtains the signature of the ALJ, enters a SEARCHS case note for the consent or default order signed, and proceeds to step 25.

NOTE:

Expedited Processing Required. CSSD policy requires that processing in this step and step 25. be completed as quickly as possible either on the day the package is received or, at the latest on the next business day, certain exceptions for corrections or extraordinary circumstances may apply.



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21. **Hearing Scheduling.** Upon receipt of a timely request for hearing from an obligated parent, immediately sends a copy of the request to the caseworker to identify any unavailable dates. In a two-obligation case also prepares and sends to the non-requesting parent a notice of requested hearing asking the parent to notify the OAH within 10 days of the dates, and times the parent will be available for the hearing.

Schedules the hearing and sets any appropriate due dates. Obtains the signature of the ALJ on a notice of hearing and scheduling order. The notice and scheduling order must include the hearing date, hearing instructions, and due dates set by the OAH for witness and exhibits lists, exhibits, and requests for discovery. Mails copies to the caseworker, all obligated parents, and any third-party obligee; retains the original in the hearing file.

22. **Vacating the Hearing.** If before the hearing is held a requestor withdraws the request in writing, proceeds below. Send copies of any order vacating the hearing to the obligated parents, any third-party obligee, and the caseworker, retaining the original in the hearing file.

- In a third-party case, prepares an order vacating the hearing, obtains the ALJ's signature then issues the order.
- In a two-obligation case, in which a parent has requested a hearing, deems the request to withdraw denied, and proceeds with the hearing. The parent withdrawing the request does not receive written notification of the deemed denial rather, the original notice of hearing and scheduling order continues to apply.
- In a case where the requesting parent withdraws the request, and the non-requesting parent has signed a consent, issues order vacating hearing and refers back to step 20. Processing Non-Hearing Orders.

If the non-requesting parent has not signed the consent, the non-requesting parent is given the opportunity to request a hearing. The OAH prepares the hearing request, and obtains the signature of the ALJ, and sends to the non-requesting parent an order on the hearing request. This order notifies the non-requesting parent that the previous request for hearing has been withdrawn, and that the ALJ will vacate the hearing unless the non-requesting parent requests a hearing in writing within 10 days. If the hearing date is less than 10 days away, the OAH continues the hearing without date while awaiting the non-requesting parent's response.

If the non-requesting parent timely requests a hearing, refers back to step 16. Entry of the Support Order, or step 18. Hearing Preparation as appropriate, rescheduling the hearing date if necessary. If the non-requesting parent does not timely request a hearing, issues an order vacating the hearing.

Exception: If the parent requesting the hearing withdraws the request three days, or fewer before the hearing date the OAH will proceed with the hearing as ordered. At the hearing the ALJ will ask the other parent if he, or she wants to request a hearing. If the other parent requests a hearing, the hearing will proceed; if not, the ALJ will orally vacate the hearing, and sign the default order as in step 20 and will issue a written order vacating the hearing.



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Be aware if the timing in this exception applies, the non-requesting parent may, before the hearing date, submit a written statement declining the new opportunity to request a hearing. Upon receipt of the statement the OAH will inform the requesting parent, issue a signed default order as in step 20., and issue an order vacating the hearing.

NOTE 1:

Consent Signed by Parent Requesting Hearing. If the parent requesting the hearing later signs the Consent to Support contained in the NOCS, in a third-party case the CSSD deems the hearing request withdrawn and vacates the hearing. In a two-obligation case the CSSD deems the hearing request withdrawn and vacates the hearing only if the other parent also signs a consent.

NOTE 2:

Amended NOCS Issued after Request for Hearing. If a parent requests a hearing in response to a NOCS and the NOCS is then amended, the request for hearing automatically applies to the amended NOCS. The hearing is not vacated unless all obligated parents sign the Consent to Support contained in the amended NOCS; or the requesting parent withdraws the request or signs a consent to the amended NOCS, and the conditions for vacating above apply.

At the hearing, the ALJ will determine the support order based on the evidence presented. If the evidence refutes any of the terms of the amended NOCS, the final order entered in the action will be different from the order in the amended notice.

Procedures for Administrative Law Judge

23. Conducts of the Hearing. Conducts the hearing and determines the support obligations as in ARM 37.62.941 through 37.62.945, and MCA § 40-5-226. If necessary, limits the hearing to issues submitted in writing by the obligated parents prior to the hearing.

Before taking formal evidence and testimony, conducts a status conference to identify the specific issues being contested. As appropriate, obtains stipulations from the obligated parents to uncontested issues.

NOTE 1:

Bench Ruling. Following the close of testimony and any closing statements of the parties, the ALJ may, at his or her discretion, issue a bench ruling on the record, orally announcing the proposed decision and order. The bench ruling is in lieu of a written order, and states that any motion for review of the proposed decision, and order must be filed within 20 days after the announcement of the bench ruling. The ALJ enters a case note for a bench ruling issued, and responds to any motion to review, or failure to file a motion to review as in step 24.below.



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NOTE 2:

Failure to Appear. If the parent who requested the hearing fails to appear, the ALJ proceeds according to the number of obligated parents in the case. In a third-party case (one obligated parent), upon a showing of valid service the ALJ may enter a default decision, and order declaring the amount stated in the notice to be final. In a case involving two obligated parents the ALJ will proceed with the hearing and will determine the support obligations based on the notice, information available to the CSSD, and evidence provided at the hearing by the appearing parties.

TERMINOLOGY NOTE:

In steps 24. through 27. Below, the terms final decision and order, and final order are used as in ARM 37.62.901 through 37.62.965 to mean a determination that exhausts CSSD administrative remedies for the action in question. The term does not necessarily imply the availability of judicial review. For example, a final decision and order that establishes TNOCS, see CS 401.4 is not subject to judicial review.

24. Proposed Decision and Order, Final Decision and Order. Following the close of the hearing, issues and signs a proposed decision and order establishing the support obligations.

- If within 20 days after service of the proposed decision and order in step 25. an obligated parent files a motion to review the order setting out any of the grounds for review in ARM 37.62.951, proceeds to consider the motion. Affirms, corrects, amends, or modifies the proposed order. Issues a final decision and order setting the first payment date as described above or enacts the proposed decision and order as a final order.
- If no obligated parent files a motion as in step 24. above, enacts the proposed decision and order as a final CSSD order.

Signs the final decision and order, ensuring the order is issued or enacted within 60 days after the close of the hearing; enters a case note for the final decision and order signed.

Procedures for Office of Administrative Hearings

25. Processing the Proposed and Final Decision and Order. For consent or default order signed in step 20., or any proposed, or final decision and order signed in step 24., sends copies to the caseworker, the obligated parents, and any third-party obligee by regular mail; enters a SEARCHS case note for the order mailed, and retains the original for the file.

In the case of a proposed decision and order, monitors for receipt of a motion to review within 3 mailing days plus 20 calendar days after the date the proposed decision and order is mailed. Forwards the motion to review to the ALJ for a determination under step 24.



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26. **Abstracting and Monitoring Final Orders.** Abstracts a final order processed in step 25. to the appropriate district court, enters a case note, and mails copies of the filed abstract to the people who received copies of the final order.

For a final decision and order from a hearing, monitors for receipt of a petition for judicial review.

Exception: Judicial review is not available for a final order establishing a temporary support obligation.