

CASE MANAGEMENT

Temporarily Unworkable Cases

CS 201.4

SUPERSEDES

CS 201.4 Temporarily Unworkable Cases, August 10, 2017

REFERENCES

45 CFR 303.11, MCA § 53-4-248(3)

Policy

The CSSD considers a case temporarily unworkable if further action cannot be taken because of practical or legal constraints, and the case does not qualify for closure under federal regulation. Specifically, the CSSD recognizes dual public assistance, obligor incarceration, obligor is temporarily disabled, and obligor is a minor as temporarily unworkable cases. If federal case closure criteria are needed refer to CS 201.5 Identifying Closed Case Status.

Dual Public Assistance

When both the obligee and the obligor are receiving cash public assistance in Montana, by law the CSSD cannot establish or enforce a financial support obligation, nor can a support debt accrue, see MCA 53-4-248(3). These cases may be temporarily unworkable for purposes of establishment and enforcement, however, the CSSD can proceed to establish paternity. The following are scenarios, in which one or both parties receive public assistance.

Scenario 1:

The custodial parent (CP) is on public assistance in Montana. The non-custodial parent (NCP) is on a Temporary Assistance for Needy Families (TANF) grant in Montana.

It is not possible to establish a new order or to enforce an order that has already been established. In addition, no state debt can accrue.

Scenario 2:

The CP is on public assistance in Montana. The NCP is not on public assistance. It *is possible* for the CSSD to establish a support order for the NCP.

Scenario 3:

The CP is not on public assistance. The NCP is on a TANF grant in Montana. It *is possible* for the CSSD to establish a support order for the CP.

Scenario 4:

The CP is not on public assistance. The NCP is not on public assistance. It *is possible* to establish and to enforce a support order for the CP.

NOTE:

Public assistance money is exempt from execution. However, the obligor may have other assets/income that may be attachable, consult regional legal staff before pursuing.

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Obligor incarcerated

For purposes of this section, an obligor is considered incarcerated if he or she is an inmate of a state or federal prison, or is being held in a county jail, or other detention facility under a sentence of confinement of several months or more.

Cases involving an incarcerated obligor are considered temporarily unworkable except for review and modification actions or non-contestable actions, such as asset location or federal offset. In enforcement cases, arrears continue to accrue during the period of incarceration.

DISCUSSION: Except for review and modification actions, the CSSD does not serve notice of a contestable action on an incarcerated obligor.

ENFORCEMENT EXCEPTIONS: In cases where the CSSD served and resolved an income withholding notice before the obligor was incarcerated, the CSSD may proceed with the withholding action against available assets. Also, the CSSD may initiate an enforcement action upon a determination by regional supervisory and legal staff that the assets involved justify the resources needed to bring the action to a conclusion.

For purposes of the above enforcement exceptions, seizable or withhold able assets may include accounts held at the correctional institution that contain money earned by or deposited on behalf of the obligor during the incarceration, as well as regular "outside" accounts and other assets belonging or owing to the obligor.

PATERNITY EXCEPTION: In the case of an incarcerated alleged father who has refused voluntary genetic testing and whose participation is needed to resolve paternity in the case, the CSSD may pursue the paternity action through its legal unit. The CSSD staff attorney may file an action in district court, or may proceed with some other judicial or administrative method that is suitable to the facts of the case and that meets the requirements for due process, see **DISCUSSION** above, and security of the parties. The CSSD may, however, decide not to pursue paternity if it determines that further use of CSSD resources would not be beneficial in the case.

MODIFICATION EXCEPTION: If a party requests review of the support obligation while the obligor is incarcerated for at least 180 days, the CSSD may proceed with the action. Incarceration is not considered voluntary underemployment.

Obligor temporarily disabled

An obligor is temporarily disabled for purposes of this section if there is clear evidence that a temporary mental or physical disability deprives the obligor of the ability to earn income.

ESTABLISHMENT

An establishment case against a temporarily disabled obligor is considered temporarily unworkable and the CSSD will not establish a support obligation, if no income or assets can be identified that can be used in a guideline determination.

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NOTE:

For a permanently disabled obligor in an establishment case. If the obligor's sole source of income is Supplemental Security Income (SSI), or a concurrent income of SSI and Social Security Disability Insurance (SSDI), or a concurrent income of SSI and Social Security Retirement (SSR) the obligor can be deemed permanently disabled. Refer to CS 201.5 Identifying Closed Case Status. If the obligor has income from SSI and SSDI or SSR along with other forms of income that can be used in a guidelines calculation such as part-time wages, and the guidelines calculation would result in a zero order, the obligor would also be deemed permanently disabled. The guidelines calculation must be kept in the case file.

ENFORCEMENT

An enforcement case against a temporarily disabled obligor is considered temporarily unworkable if no income or assets can be identified that can be seized or attached for support. The possibility of a federal or state offset does not represent seizable income or assets. Arrears continue to accrue during the period of disability.

NOTE:

Benefits Income Subject to Restrictions. Disability-related benefits may or may not be available for guidelines calculations or for execution by seizure. Please see the Benefits Bulletin and Table at the beginning of section CS 200 for additional information. When an obligor is receiving SSI, or concurrent SSI and SSDI payments, or concurrent SSI and SSR payments it is prohibited to undertake a Financial Institution Data Match (FIDM) action against the obligor's financial accounts or from garnishing these concurrent benefits.

Upon determination by the agency that a FIDM action has been taken or an income withholding order has been issued for funds that are SSI, or concurrent SSI and SSDI, or concurrent SSI and SSR benefits, indicating the noncustodial parent's financial account has been incorrectly garnished; funds are returned to the noncustodial parent within 5 business days.

MODIFICATION

In the case of a request for review where the obligor is temporarily disabled, the CSSD follows regular procedures in sections CS 408.3 Review and Modification of Support Order, and CS 404.1 Child Support Guidelines in determining whether to grant the review and, if the review is granted, in applying the Montana Child Support Guidelines according to the facts of the case.

PATERNITY

In a paternity case against a temporarily disabled alleged father, the CSSD proceeds with the paternity action despite the alleged father's disability.

Obligor is a minor

Since the CSSD does not establish a support obligation against a parent who is under the age of majority, establishment cases where the obligor is a minor are considered temporarily unworkable. The same principle applies to establishment of a medical support obligation against a minor obligor or a minor obligee.

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In addition, the CSSD does not enforce a support obligation established by another tribunal against a minor obligor. However, the CSSD will proceed to establish paternity against a minor alleged father; this action calls for specially adapted procedures, as explained in section CS 605.2 Notice of Parental Responsibility—Single-Allegation Cases.

Procedures

Procedures for Caseworker

1. Identify a temporarily unworkable case. Identify a temporarily unworkable case according to specific conditions in the policy of this section. Change the case status to "inactive" on SEARCHS; enter a case note stating the case is temporarily unworkable and give the basis for the unworkable status. Refrain from taking any restricted actions while the unworkable status applies.

Note:

System-initiated interfaces and Passive enforcement remedies continue for inactive cases. Regular, system-initiated locate interfaces, as well as passive enforcement remedies such as federal and state offset, credit bureau reporting, debt publication, and obligor billing, will continue for inactive cases unless suppressed by the caseworker. These actions may or may not be restricted, depending on the reason for the inactive status. For example, state offset and credit bureau reporting involve an opportunity for a contested case hearing; because the hearing can be in person if the obligor requests it, the CSSD cannot pursue these remedies against an incarcerated obligor, see policy above.

2. Regularly monitor the unworkable case status. Regularly monitor the case for changes in the unworkable status; set system ticklers for six-to-twelve-month intervals, or the date circumstances are expected to change, whichever is sooner. In the case of an incarcerated obligor, contact the parole or probation officer or the correctional institution to identify an expected date of parole or release. Other changes affecting temporarily unworkable status could include:
 - Obligor recovery from the disability
 - Minor obligor reaches the age of majority
 - The CSSD discovers usable income or assets
 - Cash public assistance to one or both participants is discontinued
3. Reinstate active status in the case when indicated by case facts.