

### SUPERSEDES

CS 201.7 Identifying Unenforceable Cases August 11, 2008

### REFERENCES

45 CFR 303.11; ARM 37.62.1122

### Introduction

Federal regulations at 45 CFR 303.11 provide case closure criteria. This section is concerned with §303.11(b) (1) of that regulation which states, "There is no longer a current support order and arrearages are under \$500 or unenforceable under state law." ARM 37.62.1122 is based on this federal regulation for establishing unenforceable case criteria.

### Applicability

The purpose of this section is to provide instruction for identifying arrears only cases for unenforceable closure criteria. A case may be considered unenforceable when it meets all of the criteria listed in ARM 37.62.1122, and all possible enforcement actions have been exhausted. All possible enforcement actions should include consideration of the following, real or personal property liens, motor vehicle liens, warrant for distraint (writ of execution), contempt, suspension of a professional license and/or driver's license. In addition to these enforcement actions, contact with the Non-TANF Custodial Parent (CP) or the Initiating State (TANF and non-TANF cases) for new information at least once in the last six months is required. In addition, a case must have been open with the CSSD and have been arrears only (no current support open) for at least two years.

### Policy

#### A case closed under unenforceable closure criteria

A case that is closed as unenforceable is eligible to be reopened and retains the accrued debt. For this reason, accounts should be closed with a closure code that leaves in the remaining balance.

#### Custodial Parent (CP) involvement

If a Non-TANF arrears only case meets the definition of unenforceable, the CP must be notified sixty-days in advance of case closure. If the CP requests the case remain open, it is CSSD policy to grant the request and not close the case.

### Definitions

**Unenforceable Case.** An arrears only case that meets the criteria expressed at ARM 37.62.1122.

**Arrears Only Case.** A IV-D case in which the only reason the case is open is to collect child or medical support arrearages owed to the family or to the state.

An arrears only case is defined as unenforceable when it meets all criteria in ARM 37.62.1122, and has been an open arrears only (no current support open) case with the CSSD for at least two years.

**ARM 37.62.1122**

DETERMINING UNENFORCEABLE CASE STATUS. (1) This rule establishes the criteria which a IV-D case must satisfy to be categorized as unenforceable. All of the following criteria must be met:

(a) No payments have been posted to the case in the last 12 months, and payments are not expected to be posted in the immediate future;

(b) No payments from the federal offset program have been received during the past two years;

(c) No payments from the state offset program have been received during the past two years;

(d) If payments have been made in the past two years, collected by methods other than federal or state offset, those payments do not exceed \$1,000.00;

**NOTE: ARM 37.62.1122(d). Cases where collected arrears are under \$1000.00 due to a CSSD Hardship Determination do not qualify as unenforceable under this ARM.**

(e) The CSSD has not identified any attachable financial institution accounts belonging to the non-custodial parent;

(f) The CSSD has not identified any executable assets belonging to the non-custodial parent;

(g) A credit bureau report accessed within the past six months indicates that income or asset information is unavailable.

(h) In a case involving Title IV-E funds, all of the children of the case have been emancipated, or parental rights of the non-custodial parent have been terminated.

**Cases that do not meet unenforceable case criteria**

1) **Locate status.** Cases in locate status should not be considered unenforceable and should not be closed under 45 CFR 303.11(b)(1). However, locate cases may, become eligible for case closure under 45 CFR 303.11(b)(7), if the Non-Custodial Parent's (NCP's) location is unknown and the CSSD has made diligent efforts in accordance with 45 CFR 303.3, all of which were unsuccessful in locating the NCP:

- i. over a two-year period when there is sufficient information to initiate automated locate efforts; or
- ii. over a one-year period when there is not sufficient information to initiate automated locate efforts.

More information on case closures in CS 201.5, Identifying Closed Case Status.

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- 2) **Non-Custodial Parent is incarcerated, Institutionalized, or Disabled.** When an arrears only case has a non-custodial parent, who is not making child support payments because of incarceration, institutionalization, or disability, the case should not be closed as unenforceable. These cases may be considered temporarily unworkable cases, or possibly qualify for case closure. Refer to CS 201.4 Temporarily Unworkable Cases and CS 201.4 Identifying Closed Case Status.
- 3) **Native American Cases.** A Native American case that has not received a payment due to a jurisdictional issue is not considered an unenforceable case. Jurisdictional issues are not contributing factors in whether or not a Native American Case meets the unenforceable closure criteria in ARM 37.62.1122. See, Cases Involving a Native American Non-Custodial Parent below, and to CS 250.1 Native American Jurisdiction.

#### Policy related to specific case circumstances

Caseworker discretion is necessary when reviewing a case for unenforceable case closure. The following are instances in which discretion is necessary:

1. **Multiple cases.** When a NCP has multiple cases that include an arrears only case, check for the last payment received on *any* of the cases. If the CSSD has received a support payment within the last two years that applied to *any* of the NCP's cases, none of the cases should be considered unenforceable.

**NOTE:**

All sub-cases in a multiple CP case must meet the criteria of an unenforceable case *before* the case can be considered for case closure.

2. **Financial Institution Data Match (FIDM).** A FIDM provides an efficient method for locating financial assets. Issuing a warrant for distraint in response to a FIDM is an enforcement tool that should not be overlooked. A case is unenforceable only if no executable assets belonging to the NCP have been identified. Identification of assets includes investigation and follow-up of FIDM information in SEARCHS.

**NOTE:**

It is important to remember a FIDM interface showing an account balance of \$0 does not mean a seizure will fail. The balance showing is the balance at the time of reporting. The balance may have increased by the time the seizure occurs.

Some financial institutions do not provide a balance. When this occurs the FIDM (FDM) screen will show, "BALANCE NOT PROVIDED". Accounts containing this message often have funds.

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3. **Montana Interstate Initiating Cases.** Montana Interstate Initiating cases are cases in which the NCP resides in another state. These cases should not be closed as unenforceable until it is proven that no jurisdiction over the NCP or the employer can be established that allows for direct income withholding to the other state. The CSSD may have jurisdiction over a non-custodial parent and/or the employer when the parent works outside Montana. Refer to CS 510.1 Withholding Action—With Notice and CS 510.3 Withholding Action Without Notice or to your regional legal staff for guidance.

Document in case notes that research of the jurisdictional issue was completed, and Montana is unable to send a direct income withholding before determining that this type of case is unenforceable.

4. **License Suspension.** When a NCP is under license suspension, careful consideration should be taken before closing the case as unenforceable. Due to a suspended license some arrears only cases receive payments after an extended period of time.
5. **Cases involving a Native American Non-Custodial Parent** Cases involving Native American participants are subject to all CSSD actions and services, as long as the CSSD has jurisdiction. The ability of the CSSD to provide services is based on jurisdiction, and is determined on a case-by-case basis. For this reason, a case that has not received a payment due to a jurisdictional issue is not considered an unenforceable case.

Before determining that a Native American Case is unenforceable, location and source of income or assets should be investigated. Consult CS 250.1 Native American Jurisdiction for detailed assistance on seizure of income and assets. When a possible seizure exists, obtain guidance from regional legal staff regarding the seizure.

When an inability to proceed exists due to jurisdiction, the case should continue to be monitored for changes in residence, employment, and other sources of attachable income. Jurisdiction is not a contributing factor in whether or not a Native American Case meets the unenforceable closure criteria in ARM 37.62.1122.

#### **NOTE 1:**

**Assets** subject to CSSD authority and available for use in *all* CSSD cases: state unemployment benefits, state worker's compensation benefits, and most state-issued licenses.

#### **NOTE 2:**

**Cases Involving a Tribal Employer.** In accordance with policy in CS 250.1 Native American Jurisdiction, if an NCP *is not* a tribal member, *but is employed by a tribal employer* an Order to Withhold Income (OWI) should not be issued. When this occurs, a case should not be closed as unenforceable. This is a jurisdictional issue preventing payment, and does not qualify it for unenforceable case closure.

#### NOTE 3:

**New hire match and emergency fire fighters.** A Federal New Hire containing a mailing address, and nothing but zeroes in the employer FEIN may be an indication that the NCP is an emergency firefighter. Often this is the only notification that the NCP is engaged in this type of employment. For further information on whether or not to send an OWI, contact the CSSD Employer Relation Liaison.

Jurisdictional charts in CS 250.1 Native American Jurisdiction provide assistance in determining jurisdiction.

#### Other arrears only case types

**Foster Care.** ARM 37.62.1122(h) refers specifically to IV-E Foster Care, however, all Foster Care cases (IV-E and CWS) should be closed as unenforceable *only* when the criteria in paragraph (h) of the ARM is met.

#### NOTE:

When reviewing Foster Care cases for other case closure criteria it can be useful to coordinate efforts with the Foster Care Liaison.

**Montana Interstate Responding cases (Region 08)** CSSD Interstate Responding cases may be considered for closure under Montana's unenforceable criteria. Sixty days prior to closure, the initiating state must receive notice of the CSSD's intention to close the case. If the initiating state requests the case remain open, it is the policy of the CSSD to grant the request and not close the case.

#### Procedures for Caseworker

1. **Review arrears only case.** Upon review of an arrears only case for unenforceable case closure refer to criteria in ARM 37.62.1122. Completes the checklist for determining an unenforceable case. If a case qualifies for closure as unenforceable, document findings in case notes. The checklist is located in SEARCHS Online CSSD Additional Documents.
2. **Document findings in case notes**
  - a. Document facts substantiating the case meets unenforceable closure criteria, and that all possible enforcement actions have been exhausted. Remedies should include consideration of the following:
    - Real or personal property liens
    - Motor vehicle liens
    - Warrant for distraint (writ of execution)
    - Contempt
    - Suspension of driver's license and/or professional license

Included with exhausting enforcement actions, contact with the Non-TANF Custodial Parent (CP) or the Initiating State, this includes TANF and non-TANF cases, for new information at least once in the last six months is required. Also, a case must have been open with the CSSD and have been arrears only (no current support open) for at least two years.

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- b. Submit the case with completed Unenforceable Cases Checklist to supervisor for approval before proceeding to step 3.

### 3. Issues 60-Day Closure Letter

- a) If no debt is owed to the custodial parent, immediately proceed with case closure.
- b) If debt is owed to custodial parent issue CS 201.5B 60-Day Closure Letter. CSSD policy requires notification of the custodial parent in writing sixty calendar days prior to closure of the CSSD's intent to close the case.
  - If no information is received in response to the notice by the end of the sixtieth day, which could lead to CSSD action, the case can be closed.
  - If information in response to the notice is received on or before the sixtieth day, which could lead to the next CSSD action, or if the custodial parent requests that the case not be closed, the case should remain open.

**NOTE:** Verify that CS 201.5B 60-Day Closure Letter has been issued to the recipient of services' current or last known address at the time of closure on recipient's portion of the case.

- c) When debt is owed to another state, (Region 08/Interstate Responding) notifies the initiating state, in writing sixty calendar days prior to closing the case.
  - If no information is received in response to the notice by the end of the sixtieth day, which could lead to CSSD action, the case can be closed.
  - If information in response to the notice is received on or before the sixtieth day, which could lead to the next CSSD action, or if the Initiating State requests that the case not be closed, the case should remain open.

#### **NOTE:**

A case closed under the unenforceable case criteria *can* be re-opened. The accounts should be closed with a closure code that leaves a balance.

Montana Interstate Responding cases (Region 08) cases may be considered for closure under Montana's unenforceable criteria. Sixty days before closure, the initiating state must receive notice of the CSSD's intention to close the case. If the initiating state requests the case remain open, it is the policy of the CSSD to grant the request and not close the case.

#### **Outstanding CSSD Actions/Proceedings**

Upon case closure, review the file for any outstanding administrative actions or judicial proceedings that must be terminated prior to closure. Examples include, but are not limited to canceling of stale dated warrants, releasing liens, terminating withholding orders and orders to enroll, dismissing health insurance penalties (restrictions apply), releasing clerk-of-court redirections, and terminating license suspensions actions.

#### **Retaining Case Records**

The CSSD must retain all records of a closed case for a minimum of three years, in accordance with 45 CFR 303.11(e).