

ESTABLISHING A SUPPORT OBLIGATION
Motion and Order Replacing Support Order

CS 401.5

SUPERSEDES

CS 401.5, Motion and Order Replacing Support Order, June 1, 2000

REFERENCES

MCA 40-5-225 through 40-5-227

Policy

Replacement vs. Modification

The CSED adjusts amounts due under a support obligation by replacing or modifying the support order. Replacement is available only for CSED orders that are not based on the Montana Child Support Guidelines for all the children in the case. Orders containing "guidelines" amounts for all the children can be adjusted only by modification, according to the procedures in section CS 408.3. Because of the CSED's transition from one-parent to two-parent establishment in 1997, certain CSED non-guidelines orders are not appropriate for replacement, but require modification to add the second parent's obligations.

Types of Replacement, Criteria

There are three types of CSED replacement actions. Replacement procedures in this section, Motion and Order Replacing Support Order (MORSO), apply when the case meets the following criteria:

- 1) The existing support order was entered by the CSED on or after July 1, 1997 (i.e., as the result of a Notice and Order Concerning Support under procedures in section CS 401.3).
- 2) The amounts contained in the order were based on Temporary Assistance to Needy Families (TANF) benefit amounts, or other non-guidelines amounts described in MCA 40-5-226(7)(b).
- 3) No children are being added to the order.

If the existing order was entered by a court or another state's IV-D agency, replacement is not available.

If the existing order was entered by the CSED before July 1, 1997 (i.e., as a result of a Notice of Financial Responsibility), replacement is accomplished through a Notice of Intent to Vacate (NOIV); procedures are available from the regional NOIV representative. The NOIV action replaces the support amount only; it cannot be used to change any other provisions of the order, or to add a child to the existing obligation.

If the CSED is seeking to establish support for an additional child in the case, then the replacement procedures in section CS 401.6, Subsequent Notice and Order Concerning Support, apply regardless of how the existing support amounts were determined or when the existing order was entered.

The following table shows which type of support adjustment is available for each combination of case facts. Note that the table applies to only CSED-issued support orders. Any change to a non-CSED order requires a modification.

ESTABLISHING A SUPPORT OBLIGATION
Motion and Order Replacing Support Order

CS 401.5

Case Facts
For CSED (Montana Administrative) Orders Only

Basis for Support Amount	No additional children, per-7/1997 order	No additional children, 7/1997 and order	Adding a child
Guidelines	Modification	Modification	Subsequent Notice and Order Concerning Support (SNOCS)*
Non-Guidelines	NOIV	MORSO*	Subsequent Notice and Order Concerning Support (SNOCS)*

*Further criteria may apply (see information in this section and in 401.6); if a MORSO or SNOCS is not available, a modification or separate NOCS may be required.

Procedures for Caseworker

1. After entry of a support order containing TANF amounts, proceeds as in steps 1a and 1b below.
 - a. Upon receiving both (1) a request from an obligated parent for replacement of the order and (2) financial information sufficient to perform a guidelines calculation, proceeds to step 1b. (At the caseworker's option, deems the parent's request in (1) upon discovering the necessary financial information.)
 - b. Determines whether replacement of the existing order is appropriate. Replacement applies only when both of the following conditions are met:
 - 1) The existing order was entered according to procedures for the Notice and Order Concerning Support in section CS 401.3.
 - 2) The existing order obligates any current parent obligee.

If replacement is appropriate, proceeds to step 2. (In arrears-only cases, negotiates a lump-sum settlement wherever possible. In cases where there is an enforceable current support obligation, the obligor or obligee must apply for CSED services before the CSED can begin replacement procedures.)

If replacement is not appropriate, proceeds in step 1c.

- c. Where replacement is not appropriate, provides an opportunity for review and modification of the order as follows:
 - i. If an actual request was received in step 1a, informs the requestor that the order can be changed only by modification; proceeds to step 1c(iii).

ESTABLISHING A SUPPORT OBLIGATION
Motion and Order Replacing Support Order

CS 401.5

- ii. If the CSED deemed the request in step 1a, determines whether the case meets the criteria in section CS 408.3 for modification initiated by the CSED; if so, follows procedures in that section for initiating a review, and takes no further action in this section. If CSED-initiated review does not apply, contacts the parent and explains the order may be eligible for review and possible modification based on the new financial information; proceeds to step 1c(iii).
 - iii. If the requestor (or deemed requestor) wishes to proceed, prepares and sends form CS-408.3A, Request for Review, and follows procedures in section CS 408.3, Review and Modification of Support Order. Takes no further action in this section.
2. Determines the amounts to be included in the replacement support order as in steps 2a through 2d below.
- a. Performs a guidelines calculation and determines the child support amount to be ordered, as in section CS 404.1, Child Support Guidelines.
 - b. If the child support amount determined in step 2a represents a decrease in the support obligation, determines whether retroactive relief is appropriate. Generally retroactive relief is appropriate when the obligor is currently willing to work with the CSED in setting a more reasonable monthly amount, and the obligor's current inability to pay the ordered amount extends back, continuously, through prior months.
 - c. Determines the effective month for the replacement order as follows:
 - i. If retroactive relief is appropriate, the effective month may be any prior month relating to an applicable development or condition in the case (for example, the month in which the obligor contacted the CSED to cooperate in determining a reasonable amount; or the first month in which the amount due was unreasonable in relation to the obligor's ability to pay).
 - ii. If retroactive relief is not appropriate, the effective month is the current month. (If the obligor will have overpaid the current month based on the new support amount, the effective month should be the next month; any judgment in step 2d should then include the current month.)
 - d. Determines the child support judgment amount to be included in the replacement order as follows, where
 - A = the total child support obligation from commencement of the obligation through the previous month, using the new amounts determined in 2a for the effective and following months, and
 - B = total child support payments through the previous month:Sets the judgment amount at A minus B. If A minus B equals a negative amount, adjusts the effective month in step 2c as necessary to retain a total obligation greater than or equal to the payments received. The judgment period extends through the previous month.

ESTABLISHING A SUPPORT OBLIGATION
Motion and Order Replacing Support Order

CS 401.5

Procedures for Caseworker

3. Prepares form CS-401.5, Motion and Order Replacing Support Order (MORSO) as follows:
 - a. If the existing order is for a third-party case, selects the third-party option. If the third-party custodian has changed, adjusts the document off-SEARCHS to ensure the custodian in the existing order is retained as the "obligee." (CAUTION: The replacement process is not appropriate for cases where the existing order is for a third-party case but the obligee is now a parent (see step 1b).)

Does not select the third-party option in cases where the existing order obligates both parents, even if the case is now a third-party case. The replacement order must continue to obligate both parents.
 - b. Enters the date of entry of the existing support order. Enters the effective date of the replacement support order (the first day of the effective month from step 2c).
 - c. Enters the child support amount from step 2a, selecting the non-per child language if applicable.
 - d. Enters the judgment amount and ending month from step 2d. If the judgment amount includes payments by the obligor, adds a statement to the standard judgment language in the MORSO explaining that the total judgment includes a payment of \$[amount].
 - e. If there is a domestic violence indicator on SEARCHS for the MORSO subcase (obligee and obligor), checks to make sure neither certificate of mailing includes an address for the person who is listed as the alleged victim.
 - f. Does not select the amended motion option for the first MORSO; amended motion language is available for subsequent motions only (see step 6).
 - g. Adjusts the language of the replacement order as required in section CS 404.1 for variances or other contingencies.
 - h. If the existing support order includes a provision for immediate enrollment (this provision was added to the NOCS establishment process in January 2002), revises the obligor health insurance paragraph in the MORSO to read as follows:

"The Obligor shall provide health insurance when it is available, whether individually or through an employer or other group, at a reasonable cost. When dependent health insurance is available through the Obligor's employer or payor, immediate enrollment applies, and the CSED may order the employer or payor and the plan administrator to withhold premiums and enroll the children (and the Obligor if necessary) in a health plan available to the Obligor's dependents."

NOTE:

Replacement to Retain Provisions of Existing Order. Because the MORSO process is a replacement action and not a modification action, the replacement support order must retain all the provisions of the existing support order except the support amount. This requirement applies to the provisions for income withholding, immediate enrollment, shared medical costs, and all other provisions not related to the actual dollar support amount.

ESTABLISHING A SUPPORT OBLIGATION
Motion and Order Replacing Support Order

CS 401.5

4. Generates and signs the MORSO; completes and signs the first certificate of mailing, leaving the second certificate dates and signature blank (for later use by the OALJ); generates two extra sets of stuffers. Prepares a MORSO package for each addressee in the first certificate of mailing; the package contains:
 - MORSO (original for OALJ, copies for others),
 - guidelines worksheet prepared in step 2 (attached to MORSO),
 - form CS-401.3M, Child Health Insurance Premiums, and
 - stuffers (one set, in OALJ package only).

In a third-party case strikes through the OBJECTION section on the copy of the MORSO sent to the obligee. (The non-parent obligee cannot object; the copy is a courtesy copy only.) Retains a copy of the package and one set of stuffers for the case file.

5. Sends the packages by regular mail; monitors for timely response from the parents. Timely response may occur any time before the replacement support order is signed in step 8 or 10.
 - a. If the packages to parents are not returned, presumes delivery and proceeds to step 6.
 - b. If a package for an obligated parent is returned, alerts the OALJ and attempts to obtain an updated address for that parent.
 - i. If a new address or information leading to a new address is found within 10 working days of alerting the OALJ, sends the returned MORSO to the new address; advises the OALJ, enters a SEARCHS case note, and proceeds to step 6.
 - ii. If a new address or information leading to a new address cannot be found within 10 working days of alerting the OALJ, completes form CS-405.1B, Efforts to Locate for Service, documenting the first attempt at service (regular mail) and subsequent attempts to obtain a new address; sends a copy to the OALJ. Continues with the procedures in this section as if service had been obtained.
6. If in response to the MORSO an obligated parent timely contacts the CSED and provides additional information that changes the amounts in the replacement support order, amends the MORSO to show the new amounts, and prepares and sends the amended MORSO packages as in steps 3 through 5. If the information does not produce a change in the amounts, reminds the parent of the opportunity to submit an objection. (If the response occurs after the order is signed in step 8 or step 10, proceeds as in step 14.)

ESTABLISHING A SUPPORT OBLIGATION
Motion and Order Replacing Support Order

CS 401.5

Procedures for Caseworker

7. If in response to the MORSO an obligated parent submits an objection to the motion, proceeds as applicable in steps 7a through 7c below.
 - a. If the objection is received directly in the regional office and
 - the objection is timely, immediately faxes the objection (and mails the original) to the OALJ; proceeds to step 7b.
 - the objection is not timely, mails the objection to the OALJ and proceeds to step 13.
 - b. Upon receipt of a copy of the objection from the OALJ, promptly informs the OALJ of any dates the caseworker will be unable to attend the objection hearing.
 - c. Researches any issues raised in the objection, and contacts the obligated parents. Identifies and attempts to resolve the parents' issues according to procedures for the pre-hearing contact in section CS 401.3. Depending on the results of the contact,
 - dismisses the motion as in section 401.3; or
 - amends the motion as in step 6, this section; or
 - obtains the requestor's withdrawal of the objection (the requestor can withdraw the objection by submitting a written request to the OALJ); or
 - issues a hearing checklist as in section 401.3 (adapting the document to address the elements of the MORSO case), and proceeds in step 9, this section.

Office of the Administrative Law Judge (OALJ)

8. Upon receipt of the MORSO from the caseworker, sets a tickler for three mailing days plus 10 working days after the date in the first certificate of mailing. If advised by the caseworker that the MORSO has been resent to a new address for any obligated parent, adjusts the tickler to extend the response time for that parent. If deemed service of process applies (step 5b(ii)), does not adjust the response time.
 - a. If no objection is timely received, obtains the signature of the Administrative Law Judge in the deemed consent section and proceeds to step 11.
 - b. If a timely objection is received, schedules a hearing on the motion according to the procedures in section 401.3; also follows the procedures in that section for vacating the hearing if applicable.
 - c. If an amended MORSO is received from the caseworker, resets the tickler and follows the procedures in this step (8a or 8b) as for an original MORSO. If a hearing was scheduled on the first MORSO, automatically applies the request to the amended MORSO. If the requestor withdraws the request, follows the procedures in section CS 401.3 as applicable for vacating (or not vacating) the hearing.

ESTABLISHING A SUPPORT OBLIGATION
Motion and Order Replacing Support Order

CS 401.5

Procedure for Caseworker

9. Prepares testimony for the hearing as in section CS 401.3. Note that the prima facie case in the replacement action comprises the following elements:
 - 1) The CSED's authority to proceed, personal jurisdiction over the obligated parents, and service of the MORSO.
 - 2) The existence of a previously entered CSED financial support order that is not based on the guidelines, and the lack of any existing financial support order based on the guidelines.
 - 3) The parents' obligation to support the children.
 - 4) The parents' financial ability to support the children according to the guidelines determination.

Prepares and submits exhibits, arranges for witnesses, and participates in the hearing as a witness, as in section CS 401.3, Notice and Order Concerning Support, including pursuit of any judgment listed in the MORSO.

Procedure for Administrative Law Judge (ALJ)

10. Conducts a hearing on the CSED motion, issues a proposed decision and order, considers any motion for review, and issues a final decision and order, as for a NOCS hearing in section CS 401.3.

Procedures for OALJ

11. Upon obtaining the signature of the ALJ on the final replacement support order in step 8 or 10, enters a SEARCHS case note for the final decision and order signed; signs and dates the appropriate certificate of mailing (for deemed consent, uses the second certificate of mailing in the MORSO). Mails copies of the replacement support order to the obligated parents, any third-party obligee, and the caseworker, retaining the original for the file. Abstracts the order to the appropriate district court, enters a SEARCHS case note, and mails copies of the filed abstract to the people who received copies of the order. Monitors for receipt of a petition for judicial review.
12. If an objection is received after the order is signed in step 8 or 10, prepares, obtains the ALJ's signature on, and processes an order denying the hearing for an untimely objection.

Procedures for Caseworker

13. Upon notification that the final replacement support order is entered, adjusts the SEARCHS accounts, updates the SOD screen, and proceeds with enforcement. (Because of the judgment in the MORSO, a withholding notice for new arrears amounts is not required). In the case of oral notification at the hearing, enters the appropriate SEARCHS case note and monitors for receipt of the written copy.

In cases where income withholding is currently in place for arrears adjudicated under the withholding process, and replacement is retroactive, or replacement is prospective and the MORSO judgment includes months not included in the last SNOI, updates the monthly withholding for arrears to 1/24th of the total child support judgment in the MORSO. (Montana statute does

ESTABLISHING A SUPPORT OBLIGATION
Motion and Order Replacing Support Order

CS 401.5

not address this situation; the requirement to update the withholding for arrears is based on CSED policy and case law.)

If replacement is prospective and the MORSO judgment does not include new months, the monthly withholding for arrears may be maintained at the existing amount.

14. If contacted by a parent dissatisfied with a replacement order entered in step 8 or step 10, proceeds as applicable in section CS 401.3. For an order entered by deemed consent in step 8, the "default set-aside" option in section 401.3 applies. (Note that judicial review is available after a MORSO hearing because the decision and order represents a final agency action.)