



## CHILD SUPPORT SERVICES DIVISION ENFORCING A SUPPORT ORDER

### Income Withholding Hardship Determination & Adjustment

CS 510.5

#### **SUPERSEDES**

CS 510.5 Income Withholding Hardship Determination & Adjustments, July 17, 2017

#### **REFERENCES**

MCA §§ 25-13-614, 40-5-206, 416; ARM 37.62.1113 – 1117; 15 U.S.C. 1671 et seq.

#### **Introduction**

Under Montana law, when income withholding is used to recover support debt, the Child Support Services Division (CSSD) has the authority to set a payment amount for settling arrears that is lower than the legal maximum. The maximum amount allowed by law is designed to pay all outstanding arrearages and interest, if any, within 2 years or 25% of the obligor's income. A reduction in the arrears payment may be granted if the obligor can show that substantial hardship would result if the maximum amount is implemented or continued.

#### **POLICY**

##### **Hardship Review Request**

One request for a hardship review is permitted for each claimed instance of a hardship. Subsequent requests are granted only if there are circumstances that did not exist at the time of the original hardship determination. Requests for a standard hardship review are accepted when a withholding for arrears is in place, or the arrears have been noticed.

##### **Screening Hardship Requests**

A hardship adjustment is granted at the discretion of the CSSD. There is a minimum monthly amount of \$50.00 per obligor-child. Consequently, when a withholding has been noticed or ordered for arrears, a hardship review is denied, especially if there is current support owed, and the amount allocated to the arrears is less than or equal to \$50.00. The existing withholding amount for arrears is deemed appropriate.

##### **Hardship Adjustment Worksheet**

Data for a hardship calculation is collected from known information and the Income Withholding Hardship Application completed by the obligor. Information is entered into the system's Hardship Adjustment Worksheet. Worksheet amounts are limited to income and support obligations.

##### **Income**

Income refers to all cash earned or received by the obligor. Common sources of income include salaries, wages, tips, commissions, bonuses, severance pay, interest, dividends, trust income, student subsidies, self-employment income, government benefits, disability benefits, cash public assistance, and child or spousal support.



## CHILD SUPPORT SERVICES DIVISION ENFORCING A SUPPORT ORDER

### Income Withholding Hardship Determination & Adjustment

CS 510.5

Income from these sources is reported as the gross amount. Gross self-employment income is defined as gross receipts minus the actual cost of goods sold and necessary business expenses. Details on income types and necessary business expenses are found in CS 404.1 Child Support Guidelines.

#### Variable Income Levels

Where an income level is expected to vary throughout the year due to temporary or seasonal employment or other factors, the monthly income for the purpose of a hardship adjustment may be calculated using either of the following methods or any reasonable combination of the two:

- Annualize the income by calculating the total income for one full year and dividing by 12. If a hardship adjustment is warranted, the adjustment should extend for the entire 12-month period, unless a change in circumstances occurs.
- Perform a separate hardship calculation for each period associated with a different monthly income level. If this method is used, the duration of any resulting adjustment should be limited to the period during which the corresponding income level will be in effect.

#### Excluded Income from Hardship Calculations

Income excluded from hardship calculations are deductions from income that **do not** include those required by law, as a condition of employment, and those necessary for the production of income. The following amounts are excluded from income when calculating a hardship:

- Non-cash benefits and imputed earnings.
- Benefits received in connection with the disability of a child.
- One-time unearned lump sums, such as gifts, inheritances, lump-sum disability payments, judgment awards, gambling winnings, and proceeds from loans or the sale of assets.
- Reimbursements, allowances, and other pass-through amounts. Payments received for specified out-of-pocket costs are excluded from income to the extent that the costs are actually incurred and proof of payment is provided. Amounts that exceed actual costs or are designated for general living expenses are not excluded. Examples of excluded amounts include reimbursements or advances for actual travel, medical, or training costs, and student subsidy amounts applied to tuition, books, and fees.

#### Support Obligation

For purposes of a hardship determination, expenses allowed for current support are those enforced for child support, spousal support, and medical support other than health insurance.

- If the order gave credit for other child support, then we would not allow additional credit to be given.



## CHILD SUPPORT SERVICES DIVISION ENFORCING A SUPPORT ORDER

### Income Withholding Hardship Determination & Adjustment

CS 510.5

- If the order did not originally give credit for other child support, then a supervisor or regional can update the "less current support" to include the additional child support.

#### Subsistence Allowance

The subsistence allowance is equal to 1.3 times the U.S. Poverty Guidelines amount for one person.

#### Hardship Payment Calculation

##### Formula

Gross monthly income – 1.3 times the Poverty Index Guidelines – Less Current Support Obligation  
= **Amount Subject to Hardship.**

##### Application

The withholding percentage shown in the table below is used to calculate a hardship arrears payment. If the adjusted arrears amount exceeds the currently ordered arrears amount, the withholding percentage remains unchanged.

The withholding percentages shown in the table below are used to calculate a hardship arrears payment. If the calculated hardship amount is higher than the amount currently ordered, the existing ordered amount remains unchanged same since it is already more advantageous than the calculated hardship amount.

#### Hardship Adjustment Bands & Percentages

Income Available (\$)	Hardship percentage when current & arrears are owed	Hardship percentage when only arrears is owed
0.00 - 750.00	10%	20%
750.01 - 1500.00	15%	25%
1500.01 - 2250.00	20%	30%
2250.01 - 3000.00	30%	35%
3000.01 - 3750.00	35%	40%
3750.01 - 4500.00	40%	45%
4500.01 - 999,999.00	50%	50%

#### Garnishment Limitations

Montana statutes regarding garnishment limitations work in accordance with the Federal Consumer Credit Protection Act (CCPA), which limits the ability to garnish a debtor's earnings. Generally, only 25% of a debtor's disposable earnings may be garnished. However, there are exceptions to this



## CHILD SUPPORT SERVICES DIVISION ENFORCING A SUPPORT ORDER

### Income Withholding Hardship Determination & Adjustment

CS 510.5

limitation. For CSSD purposes, the most applicable exception is garnishment for child support. Depending on the circumstances, the CCPA allows garnishment of up to 65% of an individual's disposable earnings for child support obligations. Given the variety of circumstances that may arise, the CSSD has established 50% as the maximum garnishment amount.

When determining if a garnishment limitation applies, it is necessary to review the type of money being garnished. Money that does not fit the definition of earnings in 15 USC 1672(a) are not subject to the garnishment limitation.

#### Minimum Hardship Payments

The monthly arrears payment is calculated using the hardship adjustment formula and is subject to a minimum monthly hardship amount of \$50.00 per obligor-child unit. For obligors with multiple cases involving the same child(ren) but different custodial parents, the \$50 hardship amount will be allocated among all cases involving the obligor and child(ren).

If a new withholding case opens or an existing withholding case is closed after a hardship adjustment has been implemented, the new circumstances will be reviewed in conjunction with all of the obligor's cases.

Case #	Obligor	Children	Obligee	\$50 Minimum Hardship Amount
1	H. Tuna	Charlie	Gladys Tuna (Mother)	\$50 ÷ 1 = \$50 applied to arrears*
		Kahuna		
2	H. Tuna	Charlie	Moona Tuna (GParent)	\$50 ÷ 2 = \$25 applied to arrears*
		Kahuna		
3	H. Tuna	Charlie	Ahi Tuna (Aunt)	\$50 ÷ 3 = \$16.67 applied to arrears*
		Kahuna		

\* The amounts provided are for illustrative purposes only. Actual amounts distributed to a case may vary.

#### A Temporary Hardship Adjustment

In instances where an Income Withholding Order (IWO) has not been issued, a temporary hardship may be granted. This temporary hardship is dependent upon the obligor initiating contact with the caseworker and providing employment information, such as the name of the employer and estimated monthly income. Upon receipt of this information, a hardship calculation can be performed based on the verbal employment information provided by the obligor. If an employer is discovered through a new hire report during process, an IWO must be issued within a two-day period following the new hire notification.

A temporary hardship lasts for 30 days from the date it is granted. To extend the hardship beyond this period, the obligor must return a signed Income Withholding Hardship (IW) Application, along with proof of income and a signed Hardship Notification Letter, before the end of the temporary thirty-day period. Income information can be in the form of an employer's statement or pay stubs.



## CHILD SUPPORT SERVICES DIVISION ENFORCING A SUPPORT ORDER

### Income Withholding Hardship Determination & Adjustment

CS 510.5

#### Duration of a Hardship or a Temporary Hardship Adjustment

A hardship adjustment remains in effect, as long as the conditions on which it is based continue to exist. The duration is determined on a case-by-case basis and is limited to a maximum of twelve months without an informal review. A formal review is required every three years.

#### Post-Incarceration Hardship Adjustment

A post-incarceration hardship adjustment is available to an obligor who has been incarcerated for at least 180 days. This hardship is automatically granted upon notification to the caseworker of the obligor's release. It is available for six consecutive months within the first 12 months following release. If the caseworker is unaware of the obligor's release, the obligor may contact the caseworker to request this hardship for up to 12 months after their release date. After the six-month post-incarceration hardship adjustment ends, the standard hardship process becomes available to the non-custodial parent, as outlined in this section.

This hardship adjustment reduces arrears payments to a minimum monthly amount of \$50.00 per obligor-child unit. If the obligor has multiple cases involving the same child or children but different custodial parents, the \$50 hardship amount will be allocated among all cases involving the obligor and the child(ren). A post-incarceration hardship adjustment supports the obligor's transition and reintegration into society, providing a pathway for the obligor to meet child support obligations while maintaining self-sufficiency.

#### Informal Hardship Review

An informal hardship review is required every twelve months or whenever there is a change in circumstances, such as a significant change in income that affects the hardship adjustment. A thorough review must be conducted and documented in the system. Quarterly wages and other relevant interface resources should be considered and documented during the informal hardship review. The review should clearly explain why the hardship adjustment remains appropriate.

If, during the informal review, it is discovered that the obligor's income has changed by 30%, the review will be converted to a formal review. The hardship adjustment amount will not change at this time; it will only be adjusted after the formal review is completed.

#### Formal Hardship Review

A formal hardship review is required every three years or whenever there is a change in circumstances, such as a new employer. A hardship cannot be carried over to a new employer without conducting a formal review. The need for a formal review does not delay the issuance of an income withholding order resulting from a new hire hit or a new employer. Along with the signed IW Hardship Application, the obligor must provide proof of income sufficient to make a decision regarding the current gross income. Examples of proof include a letter of employment or recent pay



## **CHILD SUPPORT SERVICES DIVISION ENFORCING A SUPPORT ORDER**

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### **Income Withholding Hardship Determination & Adjustment**

**CS 510.5**

stubs. A new calculation should be performed based on the updated information to determine whether the hardship should continue and if an adjustment to the hardship amount is appropriate.

#### **Requirement for Supplemental Remedies and Statute of Limitations Waiver**

Because a hardship adjustment reduces the percentage of arrears the CSSD can collect through income withholding, the CSSD must pursue debt reduction through other enforcement remedies whenever possible. Supplemental remedies are especially important in cases where the hardship adjustment causes a significant loss in collection potential.

The CSSD also requires the obligor to waive any statute of limitations defenses with respect to the total arrears. A waiver included in both the IW Hardship Application and the Hardship Notification Letter preserves the CSSD's ability to pursue all possible enforcement remedies in the future.



## CHILD SUPPORT SERVICES DIVISION ENFORCING A SUPPORT ORDER

### Income Withholding Hardship Determination & Adjustment

CS 510.5

## PROCEDURES

### Receipt of Hardship Adjustment Request

#### Caseworker

Receives a written or verbal request for a hardship adjustment from the obligor. Proceeds below depending on whether an IWO has been issued to the obligor's current employer.

#### Income Withholding Order Has Been Issued

1. When an IWO is in place with the obligor's current employer, sends CS 510.5E IW Hardship Application. This does not delay any income withholding actions already in progress for the full withholding amounts.
2. Proceeds to Income Withholding Hardship Application below.

#### Temporary Hardship Income Withholding Order Has Not Been Issued

A temporary hardship is available when an IWO has not been issued to the obligor's current employer. An obligor who initiates contact with the caseworker and provides employment and credible income information may be granted a temporary hardship. Additionally, an obligor may receive a temporary hardship adjustment if employment and income information is provided during contact initiated by the caseworker.

1. Performs a hardship calculation based on verbal employment information provided by the obligor.
2. Attempts to negotiate an arrears amount less than 1/24 of the total arrears, but consistent with the CSSD goal of providing for the children while they are minors.
3. Issues the IWO for the verbally agreed-upon amount, which should not be less than the hardship calculation amount. Concurrently, sends CS 510-5E IW Hardship Application.
4. Sets a tickler for the temporary hardship expiration date (a temporary hardship does not exceed 30 days). Proceeds to Review of Temporary Hardship below.



## CHILD SUPPORT SERVICES DIVISION ENFORCING A SUPPORT ORDER

### Income Withholding Hardship Determination & Adjustment

CS 510.5

#### Income Withholding Hardship Application

##### Unsigned Income Withholding Hardship Application

1. If there is no hardship adjustment currently in place, contacts the obligor and explains that a hardship determination cannot be performed until the application is signed. Proceeds to Signed IW Hardship Application below once the required signature is obtained.
2. If a hardship adjustment is currently in place and the obligor has timely requested a renewal, this does not delay the hardship determination process. Instead, contacts the obligor for the required signature. Concurrently, proceeds as in Signed Income Withholding Hardship Application below.
3. The obligor should return the signed application within 10 days, plus an additional 3 mailing days, for the hardship adjustment to be renewed; otherwise, the hardship adjustment will be terminated at that time.

##### Signed Income Withholding Hardship Application

- **Obligor Is Eligible for a Hardship Adjustment**

- a. Performs a hardship calculation upon receipt of the signed 510.5E IW Hardship Application and income documentation. Issues an amended IWO if necessary.
- b. Determines the duration of the hardship adjustment if the obligor is eligible. A hardship adjustment remains in effect as long as the conditions on which it is based continue to exist. The duration is determined on a case-by-case basis and is limited to a maximum of twelve months without an informal review. A formal review is required every three years.
- c. Sets the total withholding for arrears at the adjusted amount or the minimum monthly hardship amount of \$50 per obligor-child unit. Proceeds to Results of Hardship Adjustment Determination below.

- **Obligor Is Not Eligible for a Hardship Adjustment**

If the obligor is not eligible for a hardship adjustment, proceeds to Results of Hardship Adjustment Determination below.



## CHILD SUPPORT SERVICES DIVISION ENFORCING A SUPPORT ORDER

### Income Withholding Hardship Determination & Adjustment

CS 510.5

#### **Temporary Hardship Income Withholding Application**

##### **Unsigned IW Hardship Application for Temporary Hardship**

Serves an amended IWO on the obligor's current employer for 1/24th of the arrears amount when the IW Hardship Application is unsigned or the income documentation is incomplete.

##### **Signed IW Hardship Application for Temporary Hardship**

1. Reviews for the required income withholding documentation.
2. If the income documentation differs from the initial or verbal income withholding information, performs a new calculation based on the returned information.
3. Proceeds to Results of Hardship Adjustment Determination below.

#### **Post-Incarceration Hardship Adjustment**

During the first 12 months after release from incarceration lasting 180 days or more, the obligor is eligible for a six-month post-incarceration hardship.

1. Receives notification or discovers that the obligor has been released. Updates all current income withholding orders in the system to reflect the \$50 per obligor-child unit withholding. Updates the hardship end date to the last day of the month six months prospective, and issues Order(s) to Withhold as appropriate
2. Sends CS 510.5C Hardship Notification Letter to notify the obligor of the post-incarceration hardship.
3. Sets a tickler for five months from the start date of the hardship. When the tickler is due, sends CS 510-5E IW Hardship Application. If the hardship application is returned, refers to Income Withholding Hardship Application above and proceeds to the appropriate step based on the completeness of the application.

#### **Results of Hardship Adjustment Determination**

After reviewing the completed Income Withholding Hardship Application, takes action based on the determination results.

##### **Hardship Adjustment Granted**

1. Sends CS 510.5C Hardship Notification Letter to notify the obligor that the hardship adjustment has been granted. If applicable, it lists the adjusted withholding amount for arrears and the duration of the hardship adjustment.



## CHILD SUPPORT SERVICES DIVISION ENFORCING A SUPPORT ORDER

### Income Withholding Hardship Determination & Adjustment

CS 510.5

2. Serves an amended IWO on the obligor's current employer. Refers to CS 510.3 Income Withholding Action: Immediate Withholding.
3. Enters the hardship expiration date in the system and sets a tickler for 30 days before the expiration. Since the duration of a hardship adjustment is on a case-by-case basis, the tickler may be set for an earlier date to allow for checking any changes in circumstances.
4. Proceeds to Request for Further Review, or Hardship Expiration Review, whichever is applicable.

#### **Hardship Adjustment Denied**

Sends CS 510.5C Hardship Notification Letter to notify the obligor that the hardship adjustment has been denied, and that income withholding for the arrears will continue in the full amount authorized by law.

#### **Request for Further Review**

If, at any time after being notified of the results of a hardship adjustment, the obligor requests a further review in writing, takes the following actions:

1. Promptly contacts the regional manager for the final determination. Ensures the following information is available in the system or case record:
  - Obligor's returned request for further review.
  - CS 510.5E IW Hardship Application and income documentation.
2. Most recent hardship calculation. Monitors for the regional manager's determination.

#### **Final Hardship Review**

##### **Regional Manager**

1. Promptly reviews the hardship determination and reaches a final decision.
2. Sends the obligor CS 510.5G Final Hardship Review notifying them of the results. If the hardship is granted, lists the amount and duration of the hardship.
3. Sends a copy of CS 510.5G to the caseworker.
4. Enters an event that includes text describing the basis for the decision.



## CHILD SUPPORT SERVICES DIVISION ENFORCING A SUPPORT ORDER

### Income Withholding Hardship Determination & Adjustment

CS 510.5

## Hardship Expiration Review

### Caseworker

An informal review is required annually, and a formal review is required every three years, **at least** 30 days before an existing hardship expires. Proceeds to one of the options below based on the type of review to be conducted.

#### Informal Hardship Review

1. Reviews the case for evidence that the hardship should continue and that the adjustment amount remains appropriate.
  - If there has been a 30% change in income, proceeds to Formal Review below.
  - If there has been no change in income, enters a case note citing the basis for the renewal.
2. Saves the hardship calculation in the system and resets the expiration date in the system.

#### Formal Hardship Review

1. Reviews the case for evidence that the hardship should continue. If there is no evidence that the hardship should continue or if a different adjusted amount is necessary, sends the obligor CS 510.5D Hardship Expiration Letter and CS 510.5E IW Hardship Application.
  - If the obligor returns the signed IW Hardship Application and the required income documentation before the existing hardship expires, refers to Results of Hardship Adjustment Determination above.
  - If the obligor does not return the IW Hardship Application and the required income documentation before the hardship expires, serves an amended IWO on the obligor's current employer for 1/24th of the arrears amount.
2. Sends CS 510.5C Hardship Notification Letter to the obligor that the hardship has been denied.

## Evaluating the Effect of Hardship

For any hardship granted or renewed evaluates the effect of the decreased withholding on the total debt collection. If the hardship results in a significant shortfall, investigates other avenues for debt reduction and pursues as appropriate. Possible actions may include identifying and executing on additional assets and receivables, filing seek-work motions, suspending licenses, and negotiating lump-sum settlements.