Paternity default Order

CS 606.1

SUPERSEDES

CS 606.1, Paternity Default Order, January 11, 1998; February 2, 2000

REFERENCES

MCA §§ 40-5-231 - 40-5-237, and 40-6-101 - 40-6-118

Policy

Applicability

The procedures in this section apply when the alleged father in a single-allegation paternity case defaults on a CSSD order or notice by acting as described in one of the following situations:

1) The alleged father fails to timely respond to a properly served Notice of Parental Responsibility (NPR). To respond to an NPR the alleged father must either return a signed Statement Concerning Paternity or its equivalent denying paternity and requesting a hearing or return a signed Consent to Genetic Testing agreeing to submit to genetic testing, waiving the right to hearing, and agreeing to entry of an order declaring paternity if he fails to submit to testing as agreed.
2) The alleged father fails to appear for a properly scheduled CSSD hearing to determine whether there is reasonable probability he may be the natural father of the child.
3) The alleged father fails to submit to properly ordered genetic testing **and** there is reasonable cause to believe he may be the natural father of the child; failure to submit may be failure to appear for a properly scheduled drawing, or, upon appearance, failure to permit the drawing. The CSSD may order genetic testing based on a signed Consent to Genetic Testing with or without service of the NPR or through a Genetic Testing Subpoena.

Procedures for properly serving the NPR, determining timely response, scheduling a hearing, ordering genetic testing, scheduling the drawing for genetic testing, and determining reasonable cause are described in CS 605.2 Notice of Parental Responsibility—Single Allegation Cases, CS 604.1 Genetic Testing, and CS 602.2 Case Initiation Third-Party Obligee.

Note that in a multiple-allegation case the concept of default does not apply for proceeding against an alleged/presumed father in one of the above situations in a multiple-allegation case. However, if an alleged father in a multiple-allegation case acts as in 1), 2), or 3) above and the case is later reduced to a single-allegation case by exclusion of all other allegations, the procedures in this section for entering a default then apply.

Effect of Paternity Default Order

When the conditions in the preceding paragraphs are met, the CSSD will issue a Paternity Default Order. The order establishes paternity, the legal relationship of father and child, for all purposes in the same manner as if the matter had been decided by a district court trial. A CSSD default order is conclusive and, unlike a presumption of paternity, cannot be rebutted.

However, like a district court default judgment, this default order can be set aside under some circumstances. The basic circumstances for setting aside a CSSD paternity default are as follows:

1) Excusable neglect--the alleged father shows a good, reasonable excuse for his default for example, he was physically incapacitated at the time.
2) Fraud--the conditions for a default were fraudulently presented for example, the child's mother concealed the existence of other possible fathers who had not been excluded by genetic testing, and the CSSD proceeded with the default in the belief the case was a single-allegation case.
3) Lack of jurisdiction--the CSSD did not have proper jurisdiction over the alleged father for example, the alleged father resides out of state and has never been in the state, and the child was conceived out of state.
4) Improper or insufficient service--the CSSD's notice, order, or subpoena was not served on the alleged father in accordance with applicable law; or the CSSD cannot document or prove proper service for example, there is no sheriff's return in the file.
5) Prior judgment--the CSSD entered a default without the knowledge that a court had previously decided the issue of paternity the prior order takes precedence.

Procedures

Procedures for Caseworker

1. **Type of Default**. Upon identifying a situation where a paternity default would apply proceeds as follows:
    a. Default on NPR. If the alleged father has failed to timely respond to the Notice of Parental Responsibility (NPR), proceeds to step 2.
    b. Default on Genetic Testing. If the alleged father has failed to submit to ordered genetic testing by failing to appear for a scheduled drawing, or appearing but failing to permit the drawing, proceeds to step 3. Note if no CSSD order was issued for genetic testing, failure to submit to agreed testing does not constitute a default under this step. However, a default under step 1a may still apply.
    c. Default on Hearing. If the alleged father has failed to appear for a hearing requested by him under section CS 605.2, then, upon receipt of an order issued in step 4 dismissing the hearing request, proceeds to step 2. Note that failure to appear for a hearing requested by the CSSD under CS 605.3 Notice of Parental Responsibility—Multi. Allegation Cases does not constitute a default, as the hearing will proceed without the alleged father.
2. **Verifying Service of the NPR.** Verifies the case file contains documentation that the NPR was properly served. If so, proceeds to step 5. If not, returns to section CS 605.2 and follows the procedures for re-service of the NPR and subsequent CSSD actions.

    Documentation: The sheriff's return; the certified mail receipt; or a signed acknowledgment.

3. **Verifying Service of the Genetic Testing Order.** Verifies the case file contains **all** documentation as follows:

    1) That the CSSD issued and properly served an order for genetic testing.

       Documentation: A copy of the decision and order contained in the Consent to Genetic Testing, with the certificate of mailing; or a copy of the Genetic Testing Subpoena with proof of personal service or acknowledgment.

    2) That the CSSD notified the alleged father of the date, time, and place of the drawing.

       Documentation: A copy of the Genetic Testing Subpoena or Genetic Testing Scheduling Letter.

    3) That the alleged father did not appear for, or did not permit, the scheduled drawing.

       Documentation: none required--the caseworker's sworn statement prepared in step 5 suffices.

    4) That there is reasonable cause to believe the alleged father is the natural father of the child.

       Documentation: The signed and notarized Paternity Affidavit from the mother, or documentation showing some other basis for reasonable cause as described in section CS 602.2.

    If all the above documentation exists, proceeds to step 5. If not returns to CS 602.1 Case Initiation—Mother Obligee or 605.2 as appropriate and recommences procedures as necessary.

Procedure for Office of Fair Hearings (OFH)

4. **Dismissing the Hearing Request/Verifying Notification of Hearing.** Upon failure of the alleged father to appear for a hearing, deems the alleged father’s hearing request withdrawn and closes the hearing. Verifies the file contains documentation that the CSSD notified the alleged father of the hearing date, time, and place; upon verification, issues an order dismissing the hearing request, sends copies to the alleged father, the obligee and the caseworker, and proceeds to step 6.

    Documentation: The Notice and Order for Genetic Testing Hearing with the certificate of mailing to the alleged father's last known address.

Procedure for Caseworker

5. **Initiating the Paternity Default Order.** Completes forms CS-606.1A Application for Paternity Default Order and Paternity Default Order and forwards the forms to the OFH together with a certified copy of the abstract of the birth certificate, a copy of the NPR (if issued), and any SEARCHS stuffers required. Selects the appropriate language for an amended or substitute birth certificate, if appropriate refer to step 9, Updating Birth Records. Proceeds to step 10 or step 11 as appropriate.

Procedures for OFH

6. **Issuing the Paternity Default Order.** Upon receipt of the application and order, obtains the signature of the Administrative Law Judge (ALJ) on and issues the Paternity Default Order.

7. **Opportunity to Show Good Cause.** Mails copies of the Paternity Default Order to the alleged father, the obligee, the mother if she is not the obligee, and the caseworker. Calendars for 10 days following the date of ALJ signature.

   NOTE:

   Effective Date of Paternity Default Order. A default order does not become effective until 10 days following the ALJ signature to allow the alleged father an opportunity to show good cause for his failure to make a timely denial or for failure to appear at the hearing or to undergo paternity genetic testing. If the alleged father can show good cause for his failure, the order is withdrawn, and procedures will recommence at the appropriate step. Good cause is a determination made by the Administrative Law Judge on the facts of the case; it is generally a lesser standard than the excusable neglect standard necessary to set aside final orders and judgments.

8. **Processing a Good Cause Claim.** If the alleged father timely submits a sworn statement claiming good cause for the particular failure cited in the Paternity Default Order, obtains a written determination from the ALJ granting or denying the claim. Mails copies of the determination to the alleged father, the obligee, the mother if she is not the obligee, and the caseworker, and retains the original for the case file.

   If the claim is granted, takes action as follows:

   a. If the default was for failure to respond to the NPR or to appear for a scheduled genetic testing hearing, sets or resets a hearing date and issues a Notice and Order for Genetic Testing Hearing as in section CS 605.2.

   b. If the default was for failure to submit to genetic testing ordered by the CSSD, notifies the caseworker to reschedule the genetic testing appointments and to proceed with the paternity case as in CS 605.2; if the order for testing was a Genetic Testing Subpoena, also proceeds with the caseworker as in CS 605.2 to issue and serve a new subpoena.

   c. If the alleged father does not timely submit a claim for good cause, or if the claim is denied, proceeds to step 9.

9. **Updating Birth Records.** If the child's birth record is located in Montana, files a copy of the Paternity Default Order with the Montana Office of Vital Statistics; upon the request of the mother or father, also orders the Office of Vital Statistics to prepare an amended or substitute birth certificate consistent with the Paternity Default Order. Requests a substitute birth certificate if a different man’s name is currently shown; requests an amended birth certificate if no man’s name is currently shown.

   NOTE:

   No Change to Birth Records of Other State. The CSSD will not file the Paternity Default Order in another state. If the child's birth record is located in another state, the child's mother or father may elect to file the order there independently. The CSSD's failure to file the order in another state does not affect the validity or conclusiveness of the paternity determination.

Procedures for Caseworker

10. **Processing the Paternity Default Order.** Upon receiving a copy of the issued Paternity Default Order from the OFH, waits for the order to become final (10 days following the date of ALJ signature assuming no good cause is granted) then proceeds as follows:

    Performs the necessary SEARCHS processing on the CHL and CAP screens to establish the alleged father as the father; if applicable, notifies the public assistance agency of the paternity establishment. Proceeds to establish a support order as in CS 401.3 Notice and Order Concerning Support or CS 401.6 Subsequent Notice and Order Concerning Support, or to enforce any support order entered concurrently with the paternity order, see CS 605.2 for coordination of CSSD paternity and support orders.

11. **Proceeding from a Good Cause Determination.** Upon being notified by the OFH of a determination of good cause, follows the appropriate procedures in section CS 605.2 beginning with pre-hearing contact and preparation, or in section CS 604.1 beginning with genetic testing scheduling.