

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



December 15, 2004

CSS LETTER: 04-28

ALL IV-D DIRECTORS
 ALL COUNTY ADMINISTRATIVE OFFICERS
 ALL BOARDS OF SUPERVISORS

SUBJECT: INCOME WITHHOLDING ORDERS

Final regulations at Title 22, Division 13, Chapter 6, Subchapter 6.1 of the California Code of Regulations concerning income withholding orders for child support were adopted by the Department of Child Support Services (DCSS) effective May 4, 2004. Local child support agencies (LCSAs) have requested clarification and further guidance for various factual situations that they encounter when preparing income withholding orders. The purpose of this letter is to provide clarification and additional direction to LCSAs for preparing income withholding orders.

Current Support and No Arrears

If there is a current support order and no arrears balance, the amount of the current support order is to be listed on the wage assignment. Because there are no arrears, do not list an amount for payment on arrears.

Current Support and Arrears

If there is a current support order and an arrears balance (any support outstanding for 30 days) and there is a court order for payment on arrears, list current support and the court ordered payment on the arrears.

If there is a current support order and an arrears balance and there is no court order for monthly payments toward arrears or additional arrears have accrued since the court order for payment on arrears, the LCSA will specify an amount not to exceed 25 percent of the current support order as the payment on the arrears. The current support order combined with the payment on arrears cannot exceed 50 percent of the obligor's disposable income as specified by Division 13, Chapter 6, Subchapter 6.1 of the California Code of Regulations Section 116100(a)(3).

Reason for this Transmittal

- State Law or Regulation Change
- Federal Law or Regulation Change
- Court Order or Settlement Change
- Clarification requested by One or More Counties
- Initiated by DCSS

Changes to Income Withholding Orders as Current Child Support Terminates

If the LCSA is terminating enforcement of current support due to a termination of the current support order by operation of law and arrears are still due, the LCSA shall prepare and serve on the employer an amended wage withholding order that specifies an arrears payment equal to the combined amount of the current support order that was terminated and the prior monthly payment on arrears whether a court ordered amount or administrative percentage. This results in the obligor paying the same total amount towards arrears as was being paid when current support was due until the arrears are paid in full.

If there are multiple children for whom the support order applies and current support is no longer being enforced due to emancipation or operation of law for one of the children, and the court order for support is severable, or the last child on a non-severable order, the monthly current support amount that is no longer being enforced will be added to the monthly payment on arrears, whether a court ordered amount or administrative percentage, until the arrears are paid in full. This results in the support obligor paying the same total amount for current support and arrears until the arrears are paid in full.

The following illustrates this calculation when there are multiple children on a support order and the support order for one child terminates:

Court order:		Order after termination of current support for one child:		Order after termination of current support for remaining children:	
Child A current	\$100	Child B current	\$200		
Child B current	\$200	Child C current	\$300		
Child C current	\$300				
TOTAL CURRENT	\$600	TOTAL CURRENT	\$500	TOTAL CURRENT	\$ 0
+ Arrears*	\$150	+ Arrears**	\$150	+ Arrears**	\$150
TOTAL	\$750	+ Child A terminated support	\$100	+ Child A terminated support	\$100
		TOTAL	\$750	+ Child B terminated support	\$200
				+ Child C terminated support	\$300
				TOTAL	\$750

* 25 percent of current support or court ordered amount.

** The arrears amount is calculated by taking 25 percent of the total for all of the children's current support amount from the last court order for current child support which included all three children or the amount ordered by the court.

Note that these calculations for continued income withholding when support for a child terminates are different than the calculations specified in Section 116100 (a)(3)(A) of Title 22 of the California Code of Regulations. To the extent that the instructions in this letter conflict with that section, the instructions in this letter supersede Section 116100(a)(3)(A). DCSS will be amending Section 116100 to reflect the requirements in this letter.

Arrears Only

If only arrears are owed and the court has made an order for the monthly arrears payment, then the amount specified in the order for liquidation on arrears shall be listed on the income withholding notice. If the obligor is current on arrears payments the LCSA may review these orders and apply to the court to modify the monthly amount when appropriate. If additional delinquency has accrued since the court issued an order the LCSA may list an amount for liquidation of the arrears that is appropriate given the obligor's disposable income and the needs of all children reliant upon him/her for support.

If there was only a lump sum judgment for retroactive support and an order was never made for current child support, determine the total amount of support due, including principal and interest, at the time of the income withholding and multiply by 1.7 percent (.017). The resulting amount will be the monthly payment on the arrears. The LCSA may increase or decrease this amount as the financial circumstances of the obligor and the needs of all children reliant upon him/her for support warrant.

Court Ordered Changes to Arrears Payments

Family Code Section 5246 provides for a procedure for support obligors to request that the court change the arrears payment if the obligor believes that he/she is unable to pay the amount specified in the income withholding order. If the court orders a modification of the income withholding, the LCSA must modify the income withholding order accordingly within 10 business days. The LCSA may stipulate to a modified monthly payment on welfare arrears. The LCSA may stipulate to a modified monthly payment for non welfare arrears only with the consent of the custodial party to whom the support is due.

Prospective Application Only

The requirements for income withholding orders set forth in the regulations and in this letter apply only to income withholding orders that are issued by the LCSA after the date of this letter.

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LCSAs are not required to amend existing income withholding orders that were previously issued unless the court order for current support or payment of arrears is amended or the LCSA agrees to an amended amount as specified above.

If you have any questions or concerns regarding this matter, please email your questions to Policy.Branch@dcss.ca.gov.

Sincerely,

SANDRA O. POOLE
Deputy Director
Child Support Services Division