



Empire Justice Center

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Child Support and Low Income Families

**Committee on Children and the Law
The Robert J. Shack Memorial Program**



January 27, 2006
New York Marriott Marquis
Majestic/Music Box Room, 6th Floor

Presenter:

Susan C. Antos
Empire Justice Center

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I.	Making Orders and Arrears Affordable.....	1
A.	Setting the Initial Order.....	1
B.	Special Issues for Non-Custodial Parents Receiving Means Tested Public Benefits.....	1
C.	Special Issues For Non-Custodial Parents Receiving Social Security Benefits.....	2
D.	Special Issues for Non-Custodial Parents with Children in Foster Care.....	3
E.	Special Issues when the Non-Custodial Parent is an Institutionalized Spouse.....	3
F.	Medical Support.....	4
G.	Effective Date of the Order when the Child is a Recipient of Public Assistance.....	4
H.	Medicaid Liability and Recovery Confinement Costs.....	5
I.	Income Executions and Levies.....	6
II.	Interplay with Public Assistance.....	7
A.	Assignment of Support Rights and Right of Refusal.....	7
B.	The \$50 Pass-Through.....	7
C.	Excess Support.....	8
D.	Practice Tips – Public Assistance Liens and Recoveries.....	8
III.	License Suspensions.....	9
A.	General Rules.....	9
B.	The Revocation Process.....	9
C.	The Reinstatement Process.....	10
D.	Restricted Licenses.....	11
IV.	Attachments	
A.	December 5, 2000 letter to local DSS Commissioners from the Division of Child Support Enforcement (Office of Temporary and Disability Assistance) and the Bureau of Medicaid Management.....	12
B.	Proposed Amendment to 18NYCRR 347.9.....	16
C.	Susan Antos, Just Whose Money is it Anyway?.....	20



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Albany ♦ Rochester ♦ White Plains

Child Support and Low Income Families

January 27, 2006 (New York Marriott Marquis, New York)

Majestic/Music Box Room (6th floor)

I. Making orders and arrears affordable

A. Setting the Initial Order

1. Non-custodial Parents with Income Below the Self-Support Reserve Family Court Act § 413(1)(d).

- a. If the support obligation would reduce the non-custodial parent's income below the poverty level, the child support guidelines provide for a minimum order of \$25 per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater. However, federal law requires that non-custodial parents be given the opportunity to rebut the presumption that they can afford to pay even this minimum amount. *Rose v. Moody*, 83 N.Y.2d 65 (1993). As a result of *Velazquez v. Blum*, 201 A.D.2d 413; 609 N.Y.S.2d 773 (First Dep't 1994).
- b. If the amount of the child support order would reduce the non-custodial parent's income below the self support reserve, the minimum order shall be \$50 or or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater.

B. Special Issues for Non-custodial Parents Receiving Means Tested Public Benefits

1. Treatment of Public Assistance and SSI

The child support guidelines apply a formula to parental income when determining the amount of a child support obligation. Any public

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assistance or Supplemental Security Income received is deducted from income. FCA §413(1)(a)(5)(vii)(E)(F).

Supplemental Security Income (SSI) benefits cannot form the basis of a child support award. *Matter of Allegany County Dept. of Social Servs.[Jennifer L.H.] v. Thomas T.*, 273 A.D.2d 916, 917,(2000). However, courts have imputed earnings to Supplemental Security Income (SSI) recipients where there has been a recent employment history. *Hurd v. Hurd*, 303 A.D.2d 928 (Fourth Dep't 2003), and have refused to modify awards downward for SSI recipients who do not have recent medical evidence documenting their disability. *Meyer v. Meyer*, 305 A.D.2d 756 (3rd Dep't, 2003).

New York has not joined a number of states which have squarely held that because SSI is protected by the anti-assignment provisions of federal law (see section I, below), the Supremacy Clause of the United States Constitution preempts states from ordering that SSI recipients pay child support.¹

C. Special Issues for non-custodial parents receiving Social Security Disability Benefits

1. Social Security Disability and Retirement benefits are counted as income when making guidelines calculations. FCA §413(1)(a)(5)(iii)(D).

Upon the retirement or disability of a parent, how are Social Security payments paid to the child treated

- as income to the parent, support paid to the child or a resource of the child?

In New York, Social Security disability payments received by a child as a result of a non-custodial parent's disability are not considered income to the non-custodial parent and are not credited against the child support

¹ *Marrocco v. Giardino*, 255 Conn. 617 (Sup. Ct. Conn. 2001); *Department of Public Aid v. Rivera*, 755 N.E. 2d 548 (App. Ct. Ill 2001); *Reyes v. Gonzales*, 22 S.W.3d 516 (Texas Ct. of App. 2000) *cert. denied* Texas v. Reyes, 121 S. Ct. 2550, 69 USLW 3687 (6/25/01); *Davis v. Office of Child Support Enforcement*, 341 Ark. 349, 205 S.W. 2d 273 (Ark. Sup Ct. 2000); *Brooks v. Jeffcoat*, 1995 WL 775058 (Del. Fam. Ct.); *Becker Co. Human Servs., re Becker Co. Foster Care v. Peppel*, 493 N.W.2d 573 (Minn. Ct. App. 1992); *Tennessee Dept. of Human Servs. ex rel Young v. Young*, 802 S.W.2d 594, 597 (Tenn.1990); *Langlois v. Langlois*, 150 Wis.2d 101, 441 N.W.2d 286 (1989), *but see Commonwealth v. Morris*, 984 S.W. 840 (Sup. Ct. Ky.1999).

obligation. In *Graby v. Graby*, 87 NY 2d 605 (1996), the Court of Appeals held that Social Security disability payments received by a child as a result of a non-custodial parent's disability are "financial resources" of the children that should be considered by the court AFTER the basic support obligation is calculated and only to determine if the award is "unjust or inappropriate" under FCA 413(l)(f).

New York is in the minority of states holding this position. Most states count the child's benefit as income to the non-custodial parent and again as an offset to child support.²

- D. **Special Issues for Non-custodial Parents with Children in Foster Care:** Child support guidelines apply. Hearing examiner may consider costs of child-parent visitation and maintaining a home to reduce the award to an amount which would not be "unjust or inappropriate." *Dutchess County Dept. of Social Services ex rel. Day v. Day*, 726 N.Y.S.2d 54, 57, 749 N.E.2d 733, 736, 96 N.Y.2d 149 (2001).
- E. **Special issues when the Non-custodial Parent is an Institutionalized Spouse:** "Community spouse" of institutionalized spouse who is a public charge with income from Social Security and a pension, may seek child support and is not limited to the allowances set forth in Social Services Law §366-c. Court should use the Child Support Standards Act, and apply the "any other factors that the court deems relevant" provision of FCA § 413(1)(f)(10). The court must balance competing interests of the children with the state interest in controlling Medicaid costs. *Lanzi v. Lanzi*,

² **Alabama** [*Harbison v. Harbison*, 688 So.2d 876, 877-78 (Ala.Civ.App.1997)]; **Alaska** [*Miller v. Miller*, 890 P. 2d 574 (Alaska 1995)]; **Arizona** [*Clay v. Clay*, 92 P. 23d 426, 428 (Ariz. Ct. Of Appeals, 2004)]; **Iowa** [*Matter of Hilmo*, 623 N.W. 2d 809 (Sup. Ct. Iowa 2001)]; **California** [*In re Marriage of Robinson*, 65 Cal.App.4th 93, 76 Cal.Rptr.2d 134, 136-37 (1998)]; **Connecticut** [*Jenkins v. Jenkins*, 243 Conn. 584, 704 A.2d 231 (Conn. Jan 27, 1998)]; **Florida** [*Wallace v. Dep't of Revenue ex rel. Cutter*, 774 So.2d 804, 807-08 (Fla.Dist.Ct.App.2000)]; **Iowa** [*In re Marriage of Hilmo*, 623 N.W.2d 809, 813 (Iowa 2001)]; **Kansas** [*Matter of Marriage of Williams*, 21 Kan.App.2d 453, 900 P.2d 860, 861-62 (1995)]; **Kentucky** [*Miller v. Miller*, 929 S.W.2d 202, 205 (Ky.Ct.App.1996)]; **Louisiana** [*Lamkin v. Flanagan*, 865 So.2d 916, 921 (La.Ct.App.2004)]; **Massachusetts** [*Rosenberg v. Merida*, 428 Mass. 182, 697 N.E.2d 987 (Mass. 1998)]; **Missouri** [*Weeks v. Weeks*, 821 S.W.2d 503, 507 (Mo.1991)]; **Nebraska** [*Gress v. Gress*, 257 Neb. 112, 596 N.W.2d 8, 14 (1999)]; **New Jersey** [*Sheren v. Moseley*, 322 N.J.Super. 338, 731 A.2d 52, 54-56 (Ct.App.1999)]; **New Mexico** [*Romero v. Romero*, 101 N.M. 345, 682 P.2d 201, 202-03 (Ct.App.1984)]; **Ohio** [*Williams v. Williams*, 88 Ohio St.3d 441, 727 N.E.2d 895, 897-98 (2000)]; **Oklahoma** [*Merritt v. Merritt*, 73 P.3d 878, 884 (Okla.2003)]; **Oklahoma** [*Nazworth v. Nazworth*, 931 P. 2d 86, 89 (Okla. Ct. App. 1996)]; **Pennsylvania** [*Children & Youth Servs. v. Chorgo*, 341 Pa.Super. 512, 491 A.2d 1374, 1381 (1985)]; **Rhode Island** [*Pontbriand v. Pontbriand*, 622 A.2d 482, 484 (R.I.1993)]; **South Dakota** [*Crago v. Donovan*, 594 N.W.2d 726, 730 (S.D.1999)]; **Virginia** [*Mosley v. Mosley*, 30 Va.App. 828, 520 S.E.2d 412, 416 (1999)]; **West Virginia** [*Farley v. Farley*, 186 W.Va. 263, 412 S.E.2d 261, 264 (1991)]; **Washington** [*In re Marriage of Maples*, 78 Wash App. 696, 899 P. 2d 1, 4 (1995)];

298 A.D. 2d 53, 56 (Second Dep't 2002). See *Cuthbert S. V. Linda S.*, 161 Misc. 2d 372 (Kings Co. 1994)(court awarded tuition payment so that child of institutionalized spouse could finish high school, but said that private education for younger child was inappropriate in light of state interest in controlling Medicaid costs).

F. Medical support:

1. Medicaid is not medical insurance. Fact that father obtained a medicaid card for his child does not absolve father of obligation to provide medical support. *Cicccone v. Cicccone*, 287 A.D. 2d 563 (Second Dep't 2001); *O'Neil v. Raymond XX*, 288 A.D. 2d 736 (Third Dep't 2001).
2. Once medical support is ordered, respondent without medical insurance may be liable to the Department of Social Services if the child's medical expenses are paid by Medicaid. Father earning \$23,000 per year (no health insurance) and responsible for \$78/week in child support as well as "reasonable and necessary medical expenses, not covered by health insurance" was sued by Essex County to recover \$538.58 in medical expenses, paid by Medicaid. Respondent was also supporting his girlfriend, their two children and a child who was not his own. His own children were enrolled in Child Health Plus and Medicaid as a result of his income. He asserted the defense that he was "without sufficient income and resources," (based on *Steuben Count v. Deats*, discussed in section H, below) which was rejected by the Third Department, because such costs were not, like the confinement costs in *Deats*, being recovered under an implied contract theory. *O'Neil v. Raymond XX*, 288 A.D. 2d 736, 737(Third Dep't 2001).

G. Effective Date of the Order When Child Is in Receipt of Public Assistance:

Family Court Act §449(2) provides that where the subject child receives public assistance, the order of support is retroactive to the date the child became a recipient of public assistance. *Davis v. Swain*, 281 A.D. 2d 545 (Second Dep't 2001).

Any support which accrues before the filing of the petition seeking support is known as retroactive support and is treated differently than arrears in some situations, such as license revocation, discussed in section III, to avoid the situation of being in "instant arrears" status.

Matter of A.S. v. J.G., 162 Misc. 2d 10 (Rockland Co. Fam. Ct. 1994) held that where a child has been on and off assistance, only the most recent date that the public assistance case opened applies.

At least one Court has held that a 3 year statute of limitations pursuant to CPLR 214(2) applies to local social services district claims for retroactive support, where the county sought an order for 13 years of retroactive support. *Matter of Commissioner (Westchester Co.) v Adamson*, (Family Court, Westchester Co.) NYLJ (7/22/02).

H. Medicaid Liability and Recovery -Confinement Costs(FCA 514 and 545)

1. The seminal case: *Matter of Steuben County Dept of Social Services v.Deats*, 76 N.Y. 2d 451 (1989): Established that father of a child born out of wedlock is responsible for the mother's medical expenses under a theory of third party liability under federal medicaid law. 42 U.S. C. § 1396a(a)(25); 42 CFR §433.136. Unwed father's liability for the birth related expenses paid on behalf of the child are determined by the father's ability to pay at the time of the child's birth.

2. Post *Deats* cases:

LePage o/b/o Christine L. v. Glen L., 242 A.D. 2d 105 (Third Dep't 1998); *Commissioner of Social Services v. Bernard B.*, 87 N.Y. 2d 61 (1995) : Unwed father's liability for the mother's birth-related expenses is measured by his ability to pay at the time of the support hearing. Thus, if no ability to pay at the time of the hearing, petition should be dismissed. The decision in *LePage*, which involved a respondent on SSI, expressly rejected the notion that father was strictly liable for the expenses and that collectability could be revisited if the father's fortune's improved.

Commissioner of Social Services (Franklin County) v. Ronald QQ., 86 NY 2d 751, affirming, 209 A.D. 2d 905 (Third Dep't 1994): Hearing officer has discretion to dismiss petition for confinement costs when father resides with child at issue, and was member of the same household of mother of medicaid eligible child when the expenses were incurred.

Costello v. Geiser, 85 N.Y. 2d 103 (1995): Confinement costs sometimes exceed the amount that an individual would be billed by a hospital because medicaid costs include statutory surcharges. *Costello* held that a municipality's subrogation rights do not extend to an amount above and beyond the actual costs of medical services provided, relying on Social

Services Law §367-a(2)(b). Although one short Fourth Department decision, (*Wayne County Department of Social Services v. Petty*, 273 A.D. 2d 943 (2000)), holds that itemized expenditures for medical services are not necessary because a subsequent amendment to Family Court Act 514 over-ruled the holding in *Costello*, *Costello* was based on Social Services Law §367-a(2)(b) which has not been amended since the *Costello* case was decided.

3. **OTDA Guidance:** Review of December 5, 2000 letter to Local DSS Commissioners from the Division of Child Support Enforcement (Office of Temporary and Disability Assistance) and the Bureau of Medicaid Management (Department of Health) - Attached.

I. Income Executions and Levies

1. Social Services Law §137 makes "public assistance and care" exempt from assignment, income execution or installment payment order. SSL§ 137-a(2) includes SSI in the definition of "public assistance and care." See also CPLR §5241(a)(6) which excludes SSI from the definition of income.
2. Federal law makes the income of SSI and SSD recipients exempt from "execution, levy, attachment, garnishment or other legal process." 42 U.S.C. §407 (OASDI); 42 U.S.C. §1383(d)(1) (SSI).
4. 42 U.S.C. §659(a) says that § 407 does not protect OASDI benefits from legal process for the collection of child support and/or alimony. Thus, as far as child support is concerned, the exemption in §407 protects only SSI. See *Mariche v. Mariche*, 758 P. 2d 745 (Sup.Ct., Kansas, 1988).
5. CPLR §5241(g)(1) imposes limits on the amount of support that can be deducted from wages. Withholdings may not exceed 50% of the earnings of a debtor who is currently supporting a spouse or a dependent child, unless arrears are more than 12 weeks old in which case withholdings may not exceed 55%. Where a debtor is not currently supporting a spouse or child, withholdings may not exceed 60%, unless arrears are more than 12 weeks old in which case withholdings may not exceed 65%.
6. **Administrative Add-on:** CPLR §5241(b) permits an undefined additional amount of support to be added to any income execution when there are arrears. Social Security Disability benefits are not immune from the additional amount provisions.

When the current support obligation is \$50 per month or less, state

regulations limit the additional amount to 50% of the support obligation at the same frequency of payment 18 NYCRR § 347.9(e)(i);

When the support obligation is more than \$50 per month, the additional amount is the greater of \$50 per week 50% of the support obligation at the same frequency of payment 18 NYCRR 347.9(e)(ii);

Where no support obligation exists for current support, the additional amount is \$50 per week. 18 NYCRR 347.9(e)(iii)

Where the additional amount is being deducted from unemployment benefits, it is limited to \$10 per week. 18 NYCRR 347.9(e)(iv).

Note: On September 7, 2005, the Office of Temporary and Disability Assistance proposed to amend 18 NYCRR 347.9 to delete these caps. The amended regulation would require that the Support Collection Unit lift any additional amount imposed where the debtor provides documentary proof that the imposition of an additional amount would lower his income below the self support reserve (135% of poverty for a household of one, currently \$12,920 per year). NYS Register, Volume XXVI, Issue 36, pp. 16-19(9/7/05), attached.

II. Interplay with public assistance

A. Assignment of Support Rights and the Right of Refusal

An application for Family Assistance operates as an assignment of support right to the state and local social services districts. Social Services Law § 348. All applicants and recipients of cash public assistance must also cooperate in establishing paternity for any child receiving assistance and obtaining support. Social Services Law § 349-b.

An applicant or recipient for public assistance who refuses to cooperate in establishing paternity or in obtaining or enforcing a support order, and who does not have good cause for such refusal, shall have the assistance provided to her household reduced by 25%. Social Services Law § 131(16).

B. The \$50 Child Support Pass-through

All child support collected on behalf of public assistance recipients, except for the first \$50 of current support paid in the month when it is due, is retained by the local social services district to pay itself back for public

assistance paid to the family. The \$50 that is passed through to the family is disregarded when determining the household's eligibility and degree of need for public assistance. Social Services Law §131-a(8)(v); 18 NYCRR 347.13(b).

C. Excess Support

If the support collection unit collects more in support than it pays out in public assistance, it must refund this "excess support" to the family. 18 NYCRR 347.13(b), (e).

Remedy: A person who feels that they have been wrongly denied the \$50 pass through or excess support should request a desk review by the Office of Administrative Hearings, Desk Review Unit, New York State Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201.

D. Former public assistance recipients: The collection and distribution of child support for former public assistance recipients is very complicated. A guide to the distribution rules is attached in the article, "*Just Whose Money is it Anyway: A Guide to the Distribution of Child Support Arrears to Former Public Assistance Recipients.*"

E. Practice Tip - Public Assistance Liens and Recoveries

Public assistance is a loan. The local social services district can recover public assistance paid by asserting liens against real property, personal injury awards, lottery winnings or other windfalls. Social Services Law §§ 104, 104-b, 106, 131-r. Because the computer that keeps track of public assistance paid to a family is on a different computer than the computer that keeps track of child support collections, when local social services districts execute on a lien to recover public assistance paid, they often forget to credit child support collections although they are required to do so by law. Social Services Law §§ 104(4), 104-b (14), 106(4), 131-r(2).

Attorneys representing former or current public assistance recipients at closings or in personal injury action where the local social services district is asserting a lien, should ask for the social services district for CSMS (Child Support Management System) and a WMS (Welfare Management System) printouts to determine just how much public assistance paid out was reimbursed by child support collections.

III. License suspensions

A. General Rules

Sources of Law: N.Y. Dom. Rel. § 244-b, Fam. Ct. Act § 454, 458-a, Social Services Law § 111-b(12); Vehicle and Traffic Law § § 510(4-e), 522(7), 530 (5), 530(5-a); 18 NYCRR 346.12.

Trade, Business, Professional Licenses: DRL §244-c; FCA § 115, FCA § 458(b); Education Law § 6509-b; Judiciary Law §90(2-a).

Recreational licenses: N.Y. Dom. Rel. § 244-d, Fam. Ct. Act § 458-c.

License should not be suspended unless non-custodial parent is four months behind in child support payments.

License may not be suspended based upon the existence of retroactive support; however, once there are 4 months worth of arrears, retroactive support may be collected as part of the license revocation process.

License may not be suspended unless there is a current order of support. *Kennedy v. Kennedy*, 251 A.D. 2d 407 (Second Dep't 1998); *Greco v. Greco*, 176 Misc. 2d 27 (Nassau Co. Fam. Ct. 1998)

When support payments are being received by income execution, the non-custodial parent is not subject to license suspension, even where arrears are owed. Social Services Law § 111-b(12)(b(3)); 18 NYCRR 346.12(c)(1); *Karen B. V. Willie B.*, 5 Misc. 3d 327 (Queens Co. Fam. Ct. 2004).

B. The Revocation Process

License suspension can be done judicially, by bringing an enforcement action in Family or Supreme Court, or administratively through the support collection unit

Support Collection Unit Process - 18 NYCRR 346.12:

1. The child support office issues a notice to the owing parent that unless he or she either complies with child support or challenges the arrears owed within 45 days, his or her driver's license will be suspended. This notice must be by first class mail to the support obligor's last known address.
2. The owing parent may avoid suspension by making satisfactory

payment arrangements; showing that he or she is a recipient of public assistance, SSI, or has income below the self-support reserve; or by paying in full.

3. "Satisfactory payment arrangements," mean that the debtor signs a confession of judgement, completes a verified statement of net worth, agrees to keep the support collection unit apprised of his or her current address, and enters into an income execution or payment arrangement.
4. Failure to maintain "satisfactory payment arrangements" will result in another notice of license suspension being issued, which can only be cured if the respondent pays 50% of all arrears owed, unless, the respondent can show that he or she has a modification petition pending. A failure to maintain "satisfactory payment arrangements" more than once within a 12 month period will result in another notice of license suspension being issued, which can only be cured if the respondent pays 100 % of all arrears owed, unless, the respondent can show that he or she has a modification petition pending.
5. If the owing parent does not challenge the arrears or make "satisfactory payment arrangements" within the allotted 45 days, the child support office sends a notice to the DMV directing suspension of that parent's driver's license immediately.
6. If the owing parent wishes to challenging the arrears calculation, that challenge must be filed with 45 days of the date of the notice. The support collection unit must issued its determination with 75 days of the date of the notice. Upon receipt of an adverse decision, the obligor will have 30 days from the date of the SCU notice to comply or to file objections with Family Court. The child support unit will not direct suspension of the license until 15 days after the entry of a Family Court judgment denying the objections.

C. Driver's License Reinstatement Following Suspension Due to Support Arrears

1. **Judicial Reinstatement:** The court will order the DMV to reinstate the driver's license when it is satisfied that the owing parent has complied with the child support requirements. This could mean either partial or full payment of the arrears.
2. **Administrative Reinstatement**

The child support unit will notify the DMV to reinstate the driver's license within five days of the obligor coming into compliance.

Compliance means either full payment of all arrears or a satisfactory payment arrangement.

Restricted licenses: the obligor may apply to the DMV for a restricted use license to get to and from work, educational activities, or medical appointments.



New York State
Office of Temporary and Disability Assistance
40 North Pearl Street – Albany, NY 12243-0001

George E. Pataki
Governor

Brian J. Wing
Commissioner

December 5, 2000

To: DSS COMMISSIONERS
MEDICAID DIRECTORS
CSEU COORDINATORS

Dear Colleague:

We are writing to provide clarification with regard to two issues that have been raised by local districts and have been reviewed by OTDA's Division of Child Support Enforcement and the New York State Department of Health's Office of Medicaid Management.

ISSUE 1: RECOVERY of CONFINEMENT EXPENSES and PREGNANCY RELATED EXPENSES

In seeking recoveries local districts need to consider the following:

- 1) Confinement recoveries must not be pursued during a woman's pregnancy, during the 60-day period beginning on the last day of the pregnancy or during the remainder of the calendar month in which the 60th day occurs.
- 2) The father's liability for confinement expenses depends on his legal relationship with the mother and child and on the father's financial circumstances at the appropriate time.
 - a) If the father is **married** to the mother then he is not liable to pay confinement expenses for the mother and child if:
 1. the father's income was considered available in determining the pregnant woman's/mother's Medicaid eligibility; or

2. the father's income and resources were at or below Medicaid standards at the time of birth; or
3. he was in receipt of TANF or Medicaid at the time of birth (refer to Social Services Law Section 366 (3)(a)).

If any of the above circumstances apply, the father cannot be held liable for confinement expenses.

- b) If the father is **not married** to the mother then his liability for the mother's confinement expenses may be determined as the court, in its discretion, may deem proper **at the time of the hearing to establish paternity and support**. (Refer to Family Court Act Sections 514 and 545). However, no confinement expenses should be pursued if the eligibility worker determines that the father currently has income and resources at or below the applicable Medicaid standards or is currently on TANF or Medicaid. If paternity and responsibility for prospective medical support has already been established and it is determined that the father's financial circumstances do not warrant pursuit of confinement expenses, the eligibility worker should not refer the case to the Division of Child Support Enforcement (DCSE).
- c) If the father is not married to the mother, then his liability for the child's expenses are evaluated in the same manner as explained in 2 (a) (1) through (3).

The following chart summarizes the legal relationship and the applicable statutory authority.

Marital status:	Expenses of:	When ability to pay measured:	Statutory basis:
Married	Mother	Time of Birth	SSL 366
Married	Child	Time of Birth	SSL 366
Unwed	Mother	Time of Hearing	FCA 514&545
Unwed	Child	Time of Birth	SSL 366

NOTE: This chart only deals with the recovery of Medicaid furnished for the mother's confinement expenses and the child's birth related expenses paid for the child before the child leaves the hospital. Regardless of marital status, there is legal authority to pursue an order of medical support prospectively against the absent father of a child receiving Medicaid.

- 3) Where the father is not in receipt of Medicaid or TANF and his income and resources are unknown and cannot be determined for the relevant period of time, the child support worker should pursue confinement expenses. This will

allow the court to conduct an inquiry into the father's financial circumstances.

- 4) When an eligibility worker refers a case to child support for reasons that include recovery of confinement or pregnancy related expenses, the referral must include documentation of such expenses to the child support program in a format acceptable as evidence to the court. In such instances where testimony is needed to establish liability for or the amount of confinement costs, the local district must arrange for qualified staff to testify regarding the Medicaid expense record. These Medicaid expense records are not needed to establish paternity or pursue prospective medical support.

The issue of pursuing the recovery of birth related costs is currently under review by the federal government. If the laws or regulations change, you will be notified in the future.

ISSUE 2: MEDICAID-ONLY APPLICANT/RECIPIENT COOPERATION WITH CHILD SUPPORT

As a condition of eligibility for Medicaid, individuals applying for medical assistance must cooperate with the State in establishing paternity and obtaining medical support.

There are, however, circumstances in which exceptions to the child support cooperation requirement must be made:

- 1) A woman during pregnancy and during the 60 day postpartum period does not have to cooperate with establishing paternity and obtaining medical support from the father of the unborn child or of a child born out-of-wedlock (refer to Social Services Law Section 366 (3) (a-c);
- 2) Where a parent is applying only for their child and not for him or herself, it is not a condition of the child's eligibility for the parent to cooperate. This does not preclude the support collection unit from filing a petition to establish paternity or from utilizing civil process to compel the parent to provide evidence or testimony in court proceedings if the parent or legal guardian has been given the opportunity to claim good cause and has not done so, or
- 3) If an individual has good cause for refusing to cooperate with child support requirements.

It is important that information about the child support program be made available to all Medicaid-only applicant/recipients at the Medicaid office or at facilitated enrollment sites. This is a key opportunity to make parents aware of the benefits to the family and the legal and financial benefits that come to the child when paternity and support is established. One way to accomplish this is to make available to each Medicaid-only applicant/recipient a copy of the child support services brochure developed by the Division of Child Support Enforcement and available through Document Services by ordering PUB. #1950.

In addition, all Medicaid-only applicant/recipients referred to the child support program must receive an explanation of the good cause exception. DSS Form 4279 “Notice of Responsibilities and Rights For Support” and the DSS 4148A Booklet “What You Should Know About Your Rights And Responsibilities” provide information about the good cause exception and should be used to inform clients.

If you have questions about the Medicaid policy please contact your county liaison in the Office of Medicaid Management’s Bureau of Local District Support at (518) 474-9130 for upstate and (212) 268-6855 for New York City. If you have questions about the specific child support policy, please contact your child support county representative in the Division of Child Support Enforcement at 1-800-343-8859.

We hope this information is helpful to you.

Sincerely,

MB

KK

Margot Bean, Acting Deputy Commissioner
Division of Child Support Enforcement
Office of Temporary and Disability
Assistance

Kathryn Kuhmerker, Deputy Commissioner
Office of Medicaid Management
Department of Health

Proposed action: The Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, the petition of New York Water Service Corporation for authority to issue \$12,590,000 of long-term debt.

Statutory authority: Public Service Law, section 89-f

Subject: Authority for New York Water Service Corporation to issue \$12,590,000 in long-term debt.

Purpose: To issue \$12,590,000 in long-term debt.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the petition of New York Water Service Corporation to issue, through December 31, 2005, up to \$12,590,000 in Water Utilities Revenue Bonds. If approved by the Commission, \$5,520,000 of the debt would be used to refinance existing debt that matures in December 2005 and \$7,070,000 of the debt would be tax-exempt securities used to finance new construction.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/F96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaelyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-W-0986SA1)

receives notice of the income source from the State New Hire Directory or other source, unless:

(i) the court finds and sets forth in writing the reasons that there is good cause not to require immediate income withholding. For purposes of this paragraph, good cause means substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income execution does not constitute good cause; or

(ii) when the child is not in receipt of public assistance, a written agreement providing for an alternative arrangement has been executed by the parties. A written agreement may include an oral stipulation made on the record in court which results in a written order.

For the purposes of this paragraph (1), any finding that there is good cause not to require immediate income withholding must be based on at least:

(a) a written determination that, and explanation by the court why, implementing an immediate income withholding would not be in the best interests of the child; and

(b) proof of timely payment of previously ordered support in cases involving the modification of support orders.

(2) issue and process an income execution as follows:

(i) use the income execution form developed by the State [Office] Division of Child Support Enforcement ([O] D CSE) and provided to the district through the [Child Support Management System (CSMS)] CSMS;

(ii) serve the income execution upon the debtor's employer or income payor, and provide a copy of the income execution to the debtor. Service must be by regular mail or in the same manner as a summons may be served; the debtor's copy may be mailed to the debtor's last known residence or such other place where the debtor is likely to receive notice;

(iii) correct any error made in the issuance of an income execution which is to the detriment of the debtor, within 30 days after notification by the debtor of such error; and

(iv) include the following information on the income execution form:

(a) the caption of the order of support;

(b) the date that the order of support was entered;

(c) the court in which the order of support was entered;

(d) the amount of the periodic payments specified in the order of support;

(e) the total amount of any arrears;

(f) the names of the debtor and creditor;

(g) the name and address of the employer or income payor from whom the debtor is receiving or will receive income;

(h) the amount of the deduction to be made from the debtor's income to satisfy the court-ordered support obligation;

(i) the amount of income to be deducted in accordance with subdivision (e) of this section, of any additional deduction to be made from the debtor's income, to satisfy any accrued arrears/past due support;

(j) a statement that:

(1) the deductions will apply to current and future income;

(2) the income execution will be served upon any current or subsequent employer or income payor; [and]

(3) the income execution is binding until further notice; and

(4) the procedures available for contesting the withholding and that the basis for contesting the withholding is a mistake of fact.

(k) a statement that:

(1) no employer is permitted to discharge, lay off or discipline an employee or refuse to hire a prospective employee because one or more wage assignment or income executions have been served upon such employer or a former employer against the employee's or prospective employee's wages, and that a violation of this provision is punishable as a contempt of court by fine or imprisonment or both;

(2) each payment remitted by an employer or income payor must include, in addition to the [identity] name and social security number of the debtor and the debtor's CSMS account number, the date and amount of each withholding of the debtor's income included in the payment. Date of withholding means the date on which the income would otherwise have been paid or made available to the debtor if it were not withheld by the employer or income payor.

(3) an employer or income payor served with an income execution is required to commence deductions from income due or thereafter due to the debtor no later than the first pay period that occurs 14 days after service of the execution, and is required to remit payments to the creditor within [10] seven business days of the date that the debtor is paid;

(4) an employer or income payor is liable to the creditor for failure to deduct the amounts specified; provided, however, that deduction

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Enforcement of Support Obligations and Issuance of Income Executions

I.D. No. TDA-36-05-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of section 347.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 111-a

Subject: Enforcement of support obligations and issuance of income executions.

Purpose: To implement State and Federal laws concerning the process for issuing income execution orders in child support cases and change the method for calculating the amount of any additional deductions to be withheld from an employee's income if the employee owes child support arrears or past due child support.

Text of proposed rule: Section 347.9 is amended to read as follows:

§ 347.9 Enforcement of support obligations and issuance of income executions.

(a) Immediate issuance of income executions. For any child support or child and spousal support court order issued under the provisions of [article 3-A or] section 236 or 240 of the Domestic Relations Law, or article 4, 5, [or] 5-A or 5-B of the Family Court Act, which directs payments to the Support Collection Unit (SCU), the local child support enforcement unit through its SCU must:

(1) immediately issue and process an income execution for support enforcement within 15 calendar days of the date the support order is received if the employer's address is known or, if unknown, within two business days of the date the Child Support Management System (CSMS)

of the amounts specified by the employer or income payor does not relieve the debtor of the underlying obligation of support;

(5) if the employer or income payor fails to pay the creditor, the creditor or the debtor may commence a proceeding against such person for accrued deductions, together with interest and reasonable attorney's fees;

(6) if the money due to the debtor consists of salary or wages and the debtor's employment is terminated by resignation or dismissal at any time after service of the execution, the levy will thereafter be ineffective and the execution will be returned, unless the debtor is reinstated or reemployed within 90 days after such termination;

(7) an employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last known home address and the name and address of the new employer, if known, *and the reason for separation from employment*; and

(8) where the income is compensation paid or payable to the debtor for personal services, the amount of the deductions to be withheld are not permitted to exceed the following:

(i) where a debtor is currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be withheld may not exceed 50 percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld (hereinafter referred to as disposable earnings), except that if any part of such deduction is to be applied to the reduction of arrears which have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction cannot exceed 55 percent of disposable earnings;

(ii) where a debtor is not currently supporting a spouse or dependent child other than the creditor, the amount of the deduction to be withheld may not exceed 60 percent of the disposable earnings, except that if any part of such deductions is to be applied to the reduction of arrears which have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction cannot exceed 65 percent of disposable earnings [.] ;

(9) upon a finding by the family court that the employer or income payor failed to deduct or remit deductions as specified in the income execution, the court shall issue to the employer or income payor an order directing compliance and may direct the payment of a fine not to exceed five hundred dollars for the first instance and one thousand dollars per instance for the second and subsequent instances of employer or income payor noncompliance; and

(10) when an employer or income payor receives an income withholding issued by another state, the employer or income payor shall apply the income withholding law of the state of the debtor's principal place of employment in determining:

(i) the employer's fee, if any, for processing income withholding;

(ii) the maximum amount permitted to be withheld from the debtor's income;

(iii) the time periods within which the employer must implement the income withholding and forward the child support payments to the other state;

(iv) the priorities for withholding and allocating income withheld for multiple child support creditors; and

(v) any withholding terms or conditions not specified in the withholding instrument.

(b) Issuance of income executions upon default. For any child support or child and spousal support court order issued prior to November 1, 1990 the local child support enforcement unit, through its support collection unit (SCU), must maintain an effective system for identifying those debtors who become delinquent in meeting their court-ordered support obligation(s). The following action must be taken against those respondents who have been identified as being delinquent:

(1) For those debtors who have failed to pay up to two required weekly court-ordered support payments or one biweekly court-ordered support payment, districts should attempt to obtain voluntary resumption of support payments.

(2) For those debtors who have failed to remit three payments when due in the full amount directed by an order of support, or if the accumulation of arrears is equal to or greater than the amount directed to be paid for one month, local district SCUs must issue and process an income execution as follows:

(i) Use the income execution form developed by [O] DCSE and provided through CSMS.

(ii) Serve a copy of the income execution upon the debtor, by regular mail or in the same manner as a summons may be served, at the debtor's last known residence or such other place where the debtor is likely to receive notice.

(iii) If a mistake of fact is alleged by the debtor, determine the validity of such claim and provide written notice of such determination within 45 days after notice to the debtor of the intent to serve the income execution on the employer or income payor. If the mistake of fact is disallowed, the written notice must state that the income execution will be served on the employer or income payor, and the time that deductions will begin.

(iv) If no mistake of fact is alleged by the debtor, or if a determination if made by the SCU that the alleged mistake of fact is not valid, proceed with the expeditious implementation of the income execution by serving the income execution upon the debtor's employer or income payor.

(v) Include the following information on the income execution form:

- (a) the caption of the order of support;
- (b) the date that the order of support was entered;
- (c) the court in which the order of support was entered;
- (d) the amount of the periodic payments specified in the order

of support;

- (e) the total amount of the arrears that gave rise to the implementation of the income execution;
- (f) the nature of the default;
- (g) the names of the debtor and creditor;
- (h) the name and address of the employer or income payor from whom the debtor is receiving or will receive income;
- (i) the amount of the deduction to be made from the debtor's income to satisfy the court-ordered support obligation;
- (j) the amount, determined in accordance with subdivision (e) of this section, of the additional deduction to be made from the debtor's income, that is to be applied to the reduction of the arrears/past due support that gave rise to the income execution;
- (k) a statement of the manner in which a mistake of fact may be asserted;

- (l) a statement that:
 - (1) the deductions will apply to current and future income;
 - (2) the income execution will be served upon any current or subsequent employer or income payor, unless a mistake of fact is asserted within 15 days and;
 - (3) if the debtor claims a mistake of fact, a determination of the validity of such claim will be made within 45 days after notice to the debtor is provided and the debtor will receive written notice of:
 - (i) whether or not the income execution will be served; and
 - (ii) the date when deductions will begin;
 - (4) the income execution is binding until further notice;
- (m) and the statements set forth in clause (k) of subparagraph (a)(2)(iv) of this section.

(3) With regard to debtors who have defaulted on their court-ordered support obligations and who are unemployed, social services districts should proceed as follows:

(i) If the amount in default is not sufficient for the implementation of an income execution, an attempt should be made to obtain a written voluntary agreement to support, whereby the Department of Labor would be authorized to withhold the amount agreed upon from the debtor's unemployment insurance benefits and remit such amount to the SCU[.] ; or

(ii) If the amount in default is sufficient for the implementation of an income execution, action should be taken as set forth in paragraph (2) of this subdivision.

(c) In cases in which attempts to enforce a support order have been unsuccessful, the child support enforcement unit, at the time such attempts fail, must examine the reasons for the failure and determine when, in the future, it would be appropriate to take enforcement actions and, at that time, take such actions.

(d) Additional Enforcement Action. The child support enforcement unit, in addition to following the procedures set forth in subdivisions (a) and (b) of this section, must employ all appropriate statutory support enforcement remedies, within 30 calendar days of identifying a failure to comply with the support provisions of the order, or of locating the absent parent, whichever occurs later. If service of process is necessary prior to initiating an enforcement action, such service must be completed and enforcement action taken or the child support enforcement unit must document on CSMS unsuccessful diligent efforts to serve process, as

defined in section 347.7 of this Part, no later than 60 calendar days after identifying a failure to comply with the support provisions of the order or of locating the absent parent, whichever occurs later.

(e) Calculation of the amount of additional deduction for income execution. (1) When an income execution is issued under subdivision (a) or (b) of this section for a debtor who owes arrears/past due support, the SCU must set the amount of the additional deduction to be made from the debtor's income. Such deduction must be in addition to the amount withheld to ensure compliance with the support obligation directed in the order of support. The amount of the additional deduction must be set as follows:

(i) [If the current support obligation is \$50 per month or less, the amount of the additional deduction must be one-half the amount of the support obligation at the same frequency as that of the support obligation.] *If the income from which deductions are to be made represents wage, salary, commission, draws on commissions, pension, or retirement income, or other periodic payments, including but not limited to workers' compensation, disability, social security, or unemployment insurance benefits income, the amount of the additional deduction shall be one-half (50%) of the amount of the current support obligations, at the same frequency as the current support obligation. Where a support obligation no longer exists the additional amount shall be one and one-half (150%) of the amount of the most recent support obligation greater than zero, at the same frequency as the most recent support obligation. Where no support obligation ever existed for current support but support arrears were established by the court, the additional amount shall be the amount of the arrears divided by 12, payable in monthly installments.*

(ii) [If the support obligation is greater than \$50 per month, the amount of the additional deduction must be \$50 per week or one-half the support obligation at the same frequency as the support obligation, whichever is greater.] *If the income is from a source not identified in subparagraph (i) of this paragraph including, but not limited to, lump sum payments of bonuses, interest, dividends, workers' compensation, disability, Social Security, or unemployment insurance benefits income, the amount of the additional deduction shall be the total amount of arrears/past due support. Provided, however, that two or more periodic payments of workers' compensation, disability, Social Security, or unemployment insurance benefits income disbursed to a debtor as a single payment shall not be considered a lump sum payment, but shall be treated as separate periodic payments, each subject to deduction pursuant to subparagraph (i) of this paragraph.*

[(iii) Where no support obligation exists for current support, the amount of the additional deduction is \$50 per week.

(iv) Where an income execution is issued to the Department of Labor for deduction from the debtor's unemployment insurance benefits, the amount of the additional deduction is \$10 per week.

(v) Notwithstanding the above subparagraphs, the imposition of the additional deduction cannot cause the total amount to be withheld from the debtor's income to exceed 40 percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld ("disposable income"). To the extent that the additional deduction would otherwise cause the total amount withheld to exceed 40 percent of the debtor's disposable income, the amount of the additional deduction must be adjusted so as to ensure that the amount withheld does not exceed 40 percent of the debtor's disposable income.]

(2) [The amount of the additional deduction for an income execution must be eliminated by the SCU upon satisfaction of the arrears/past due support. In addition, where] *Where the debtor provides documentary proof to the SCU that the imposition of the additional amount [SCU determined that the additional deduction] would reduce the debtor's remaining income below the self-support reserve, the SCU must eliminate or [modify] reduce the amount of the additional deduction as appropriate to ensure that the debtor's remaining income does not fall below the self support reserve. [When the debtor's remaining income would no longer be less than the self-support reserve, the amount of the additional deduction must be set in accordance with paragraph (1) of this subdivision. Social services districts must maintain on CSMS appropriate documentation of any action to eliminate or modify the amount of the additional deduction] Thereafter, the SCU must increase the amount of the additional deduction to the amount calculated pursuant to paragraph (1) of this subdivision at such time as its application would no longer reduce the debtor's remaining income below the self-support reserve.*

(3) *Where the debtor provides documentary proof to the SCU that the debtor has custody of the children, and a current support obligation no longer exists, the SCU may modify the amount of the additional deduction*

after taking into account the debtor's income and ability to support children in such debtor's custody.

(4) *The amount of the additional deduction for an income execution must be eliminated by the SCU upon satisfaction of the arrears/past due support.*

(5) *The SCU must maintain on CSMS a record of any action to eliminate or modify the amount of the additional deduction.*

(f) Issuance of income executions upon request. Upon request of the debtor the SCU must issue an income execution pursuant to subdivision (a) of this section. Upon receipt of a written revocation of the debtor's request for an income execution, the SCU must notify the employer or income payor that the income execution is no longer effective and that it must be returned to the SCU.

Text of proposed rule and any required statements and analyses may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions of the former Department of Social Services concerning child support programs were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance within the State. Section 122 of Part B of Chapter 436 of the Laws of 1997 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 111-a of the SSL requires the OTDA to promulgate regulations necessary to obtain and retain approval of its child support state plan, required to be submitted to the Department of Health and Human Services by Part D of Title IV of the Federal Social Security Act.

2. Legislative Intent:

It was the intent of the Legislature in enacting the above-referenced statutes that OTDA establish rules, regulations and policies so that child support enforcement services are provided to eligible persons to ensure that to the greatest extent possible parents provide financial support for their children.

3. Needs and Benefits:

The proposed regulatory amendments implement Sections 314 of the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (P.L. 104-193) and the provisions of Chapter 398 of the Laws of 1997 that amended section 5241 of the Civil Practice Law and Rules (sections 20 through 28). The federal and State laws implemented by these amendments concern the process for issuing income execution orders in child support cases and the penalties to be imposed on employers for failing to comply with such orders.

The proposed amendments also add provisions affecting the method for calculating the amount of any additional deductions to be withheld from an employee's income if the employee owes child support arrears or past due child support. These provisions will enable child support arrears or past due support to be collected faster than is currently the case and are consistent with the intent of the child support enforcement program. The proposed amendments give the persons owing the additional deductions the opportunity to present proof that the amount of the additional deductions should be reduced or eliminated.

4. Costs:

The proposed amendments will not result in increased costs for the State or social services districts. The proposed amendments concerning the amount of any additional deductions to be taken from an employee's salary will enable the State to recover child support arrears or past due support at a faster pace than the State is currently able to recover such arrears or past due support. This could result in past due child support or child support arrears being collected that would otherwise not be collected because the debtor becomes disabled and is not able to work or dies.

5. Local Government Mandates:

Social services districts will be required to comply with the proposed amendments concerning the issuance of income executions in child sup-

port enforcement cases and to issue a new form to employers to enable the employers to calculate the amount of any additional child support deductions to be withheld from an employee's salary.

6. Paperwork:

The proposed amendments will require OTDA to revise the form sent to employers to enable the employers to determine the amount of any additional deductions to be withheld from an employee's salary as a result of the employee owing past due support or the existence of child support arrears.

7. Duplication:

There would be no duplication of other State or federal requirements.

8. Alternatives:

The proposed regulatory amendments concerning the issuance of income execution orders are consistent with the provisions of section 314 of P.L. 104-193 and Chapter 398 of the Laws of 1997. Therefore, no alternatives were considered. The provisions concerning additional deductions for income executions are reasonable and consistent with the purpose of the child support enforcement program. Therefore, no alternatives were considered for these provisions.

9. Federal Standards:

The proposed regulatory amendments do not exceed federal standards concerning the process for withholding income in child support enforcement cases and would comply with section 314 of P.L. 104-193.

10. Compliance Schedule:

The proposed regulatory amendments will be implemented no later than 30 days after becoming effective.

Regulatory Flexibility Analysis

1. Effect on Small Business and Local Governments:

The regulatory amendments will have minimal impact on small businesses. The impact will relate to the calculation that must be made by employers to determine the amount of any additional deductions that must be withheld from an employee's salary as a result of any outstanding child support arrears or past due support. The 58 social services districts will be required to forward a new income execution form to employers. The form will have amended instructions on how to calculate the amount of any additional deductions from employee salaries as a result of an employee owing child support arrears or past due support.

2. Compliance Requirements:

Social services districts will be required to comply with the proposed amendments concerning the issuance of income executions in child support enforcement cases. Small businesses will use a different method to calculate the amount of any additional deductions to be taken from an employee's salary if the employee owes child support arrears or past due support based upon the new provisions. The amendments are necessary in order to implement section 314 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) and section 5241 of the Civil Practice Law and Rules, as amended by Chapter 398 of the Laws of 1997. The federal statute concerns the process for withholding income in child support enforcement cases. The State statute concerns the process for obtaining income executions in such cases. The proposed regulations will not impose new reporting or recordkeeping requirements on small businesses or social services.

3. Professional Services:

The regulations will not require small businesses or social services districts to hire new staff or require them to obtain new professional services.

4. Compliance Costs:

The proposed amendments will not result in increased costs for small businesses social services districts. The proposed amendments concerning the amount of any additional deductions to be taken from an employee's salary will enable the State to recover child support arrears or past due support at a faster pace than the State is currently able to recover such arrears or past due support.

5. Economic and Technological Feasibility:

The social services districts and small businesses have the economic and technological ability to comply with the proposed regulations.

6. Minimizing Adverse Impact:

The proposed regulations will not have an adverse impact on social services districts or small businesses.

7. Small Business and Local Government Participation:

The regulatory amendments are necessary to implement section 314 of the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 and section 5241 of the CPLR. Although small businesses and social services districts were not involved in the development of the proposed regulations, social services districts have been informed of the

provisions of section 314 of P.L. 104-193 and section 5241 of the CPLR. The only impact the proposed regulations will have on small businesses is that they will be use a different method to calculate the amount of any additional deductions to be taken from employees' salaries as a result of the employees owing child support arrears or past due support. This Office currently has an employer outreach program and a helpline to assist employers determine the amount of any additional deductions owed by employees. The proposed changes to the provisions concerning the calculation of the additional deductions will not affect the ability of small businesses to obtain assistance from this Office in calculating the amount of the additional deductions.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

There are 44 social services districts in rural areas that will be affected by the proposed regulations. The number of businesses in rural areas that will be affected by the proposed amendments is unknown.

2. Reporting, Recordkeeping and other Compliance Requirements; and Professional Services:

Social services districts, including those in rural areas, will be required to comply with the proposed amendments concerning the issuance of income executions in child support enforcement cases. Businesses in rural areas will use a different method to calculate the amount of any additional deductions to be taken from an employee's salary if the employee owes child support arrears or past due support based upon the new provisions. The amendments are necessary in order to implement section 314 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) and section 5241 of the Civil Practice Law and Rules, as amended by Chapter 398 of the Laws of 1997. The federal statute concerns the process for withholding income in child support enforcement cases. The State statute concerns the process for obtaining income executions in such cases. The proposed regulations will not impose new reporting or recordkeeping requirements on social services districts or businesses in rural areas and will not require those social services districts or businesses to hire additional professional staff.

3. Costs:

The proposed regulations will not result in increased administrative costs for social services districts or businesses in rural areas. The proposed amendments concerning the amount of any additional deductions to be taken from an employee's salary will enable the State to recover from employees in rural areas child support arrears or past due support at a faster pace than the State is currently able to recover such arrears or past due support from such employees.

4. Minimizing Adverse Impact:

The proposed regulations will not have an adverse impact on social services districts or businesses in rural areas.

5. Rural Area Participation:

The regulatory amendments are necessary to implement section 314 of the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (P.L. 104-193) and the amendments made to section 5241 of the Civil Practice Law and Rules (CPLR) by Chapter 398 of the Laws of 1997. Although there was no rural area participation in the development of these regulatory amendments, social services districts, including those in rural areas, have been informed of the provisions of section 314 of P.L. 104-193 and section 5241 of the CPLR. The only impact the proposed regulations will have on businesses in rural areas is that they will be use a different method to calculate the amount of any additional deductions to be taken from employees' salaries as a result of the employees owing child support arrears or past due support. This Office currently has an employer outreach program and a helpline to assist employers determine the amount of any additional deductions owed by employees. The proposed changes to the provisions concerning the calculation of the additional deductions will not affect the ability of businesses to obtain assistance from this Office in calculating the amount of the additional deductions.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the job of the worker making the decisions required by the proposed amendments will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.



Greater Upstate Law Project, Inc.

Just Whose Money is it Anyway?

A Guide to the Distribution of Child Support Arrears to former Public Assistance Recipients

November 2000

by Susan C. Antos⁽¹⁾

Mary Jones was just able to scrape by on her minimum wage job and child support payments of \$100 per week. When her ex-husband stopped paying child support, she was able to make ends meet by working overtime. After two years of not receiving child support, Mary's boss cut her hours to 25 per week, and she was no longer able to support her family without help. She applied for welfare, and as a condition of receiving cash benefits, Mary had to assign her rights to child support to the county department of social services. She received welfare for one year and then was able to find a job that enabled her to close her public assistance case. After she closed her case, her ex-husband, a man not known for his truthfulness, insisted that he had made some support payments to the Child Support Enforcement Unit in the year that she was on assistance, but was only able to do so sporadically.

Was Mary entitled to the support collected while she was on assistance?

Rule one:

Support collected while Mary is on public assistance is retained by the state and local social services districts⁽²⁾ so that they can reimburse themselves for assistance paid (and 50% of that is passed on to the federal government). **However, if any "current" support is paid, the first \$50 dollars paid in any month goes to Mary.** This is called the \$50 pass-through in most of the state, but is known as the "\$50 bonus" in New York City. Current support is support paid in the month when it is due.

If Mary's ex paid no support while she was on assistance, she was not entitled to the pass through. If he did pay support during the year that she was on assistance, she would be entitled up to \$50 of any current support paid in the month when due.

Rule two:

When in doubt, request a desk review. If Mary has any reason to suspect that her ex-husband is telling the truth, she should request a "desk review" by writing to the Office of Administrative Hearings, New York State Office of Temporary and Disability Assistance, Desk Review Pass-Through,

P.O. Box 1930, Albany, New York 12201 or call 1-800-342-3009 and press # or zero for operator⁽³⁾. The state is required to review all support collections and pass-through payments made during the year of the request and the preceding year. If an error has been made, Mary will get a corrective payment. Be sure to include any relevant documentation.

After Mary's public assistance case is closed, she learns that the child support collection unit has intercepted a bank account belonging to her ex-husband. Mary is looking forward to finally getting all the back support that she is owed. Just how much money will Mary receive?

Rule three:

With the exception of the federal tax intercept (more on that later), **all collections are first treated as the collection of current support.** Thus, if no other support payments have come in that month, the first \$430 of the bank account (\$100/week support order x. 4.3 = \$430, the total of the current payments for the month) will go to Mary. The rest is considered "arrear," and how that is distributed depends on when Mary signed her child support assignment and when the arrears were collected.

Rule four:

After October 1, 1998, all collections (except the federal tax intercept) made after a family leaves assistance, must first be treated as current support (Rule 3). Anything left over must be used to pay any arrears owed to the family which accrued after they left public assistance.

Rule five:

If the assignment was made on or before September 30, 1998, the pre-assistance and during- assistance arrearages are "permanently assigned" to the state, up to the amount of unreimbursed assistance provided to the family.

Rule six:

If the assignment was made after September 30, 1998, only the arrears that accrued while the family was on assistance are "permanently assigned" to the state, and the arrears that accrued before the family began to receive assistance, are only "temporarily assigned" to the state, except if there is a collection by federal tax intercept.

Rule seven:

The right to "temporarily assigned arrears" goes back to the family when the family leaves assistance, except if there is a collection by federal tax intercept.

So does Mary get the bank account?

Scenario A:

If Mary's assignment was signed before October 1, 1998, the proceeds of the bank account will be distributed as follows: Mary will be paid current support and the arrears that accrued after she went off of public assistance. Then, the proceeds from the bank account will be used to pay the state its permanently assigned pre-and during assistance arrears. (Remember, however, that the state can not keep more than it has paid out in assistance.) If there is any money left, Mary will be paid for any remaining pre-assistance arrears. The unjust result of this scenario is that Mary's ex-husband could conceivably pay off all the pre-assistance arrears owed to Mary, and she would never see a cent of it because the state gets to keep pre-assistance arrears up to the amount of unreimbursed public assistance paid to Mary and her children.

Scenario B:

If Mary's assignment was signed after September 30, 1998, the intercepted bank account will pay her current support, any arrears that accrued after she went off of public assistance, and then the arrears that accrued before she went on assistance. If there is any money left, it will be kept by the state for the during assistance arrears that have been permanently assigned. (Again remember, that this is limited to the amount of assistance paid to the family. Once this is paid off, the excess must go to Mary.) Note: this rule only applies to former recipients. If the bank account had been intercepted while Mary was on assistance, the county could keep the pre-assistance arrears to reimburse themselves for public assistance paid even if Mary had signed the assignment after September 30, 1998.

Mary has now learned that the child support collection unit has intercepted her ex-husband's federal and state tax refunds. Can Mary finally get all that support that she is owed?

Rule eight:

The state gets first dibs on federal, but not state, tax intercepts. For both families on assistance and families no longer on assistance, federal tax intercepts go to the state to pay it back for public assistance paid to the family.⁽⁴⁾ The distribution of the state tax refund, however, follows the same rules as the seized bank account.

Thus, Mary will not get any of the federal return unless the intercepted bank account paid off all of the public assistance she and her children received when they were on assistance. Whether or not she receives any of the state return depends on how rules 4-7 are applied to Mary.⁽⁵⁾

For More Information

1. 12/29/98 letter from Richard Spiers (Director of the New York State OTDA Systems Operations, Office of Child Support Enforcement) to "All CSEU coordinators." (Available on GULP's web site, www.gulpny.org in the Public Benefits/Child Support section).

2. "Child Support Distribution and Disbursement," by Paula Roberts, Center on Law and Social Policy (10/1/00). Available on their web site at <http://www.clasp.org/>.
3. HHS Action Transmittal 98-24.
4. HHS Action Transmittal 97-17.

(1) The author gratefully acknowledges the invaluable assistance of Paula Roberts of CLASP for her patient and repeated explanation of these rules, and her editorial suggestions.

(2) Hereinafter, this article will refer to the state retaining support, but collected support is in fact shared with local social services district.

(3) The state will soon be issuing regulations changing the desk review process to a two-step process, allowing a county level review before the state review.

(4) H.R. 4678, which was passed by the United States House of Representatives on September 7, 2000 and is pending in the Senate as S.3189, would require that federal tax intercepts be treated as other support collected.

(5) Federal tax intercepts can only be used to collect arrears that have been certified for collection. This certification is done annually in the fall. If the bank account was seized after the arrears were certified and the proceeds of the bank account were applied to the arrears owed to the state, the refund would be returned to the respondent, unless the arrears owed to Mary were also certified.

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