

§2304. Administrative establishment of parental support obligation; debt for past support; obligation to provide health insurance coverage

When a support order has not been established, the department may establish the responsible parent's current parental support obligation pursuant to chapter 63, establish the responsible parent's debt for past support, including medical expenses, and establish the responsible parent's obligation to maintain health insurance coverage for each dependent child or to pay a proportionate share of health insurance premiums. The department may proceed on its own behalf or on behalf of another state or another state's instrumentality, an individual or governmental applicant for services under section 2103 or a person entitled by federal law to support enforcement services as a former recipient of public assistance. The department acting on behalf of another state, another state's instrumentality or a person residing in another state constitutes good cause within the meaning of Title 5, section 9057, subsection 5. Notwithstanding any other provision of law, a parental support obligation established under this section continues beyond the child's 18th birthday, if the child is attending secondary school as defined in Title 20-A, section 1, until the child graduates, withdraws, is expelled or attains 19 years of age, whichever occurs first. For purposes of this section, "debt for past support" includes a debt owed to the department under section 2301, subsection 1, paragraph A, a debt owed under section 2103 and a debt that accrues under sections 1504 and 1554. [PL 2001, c. 264, §12 (AMD).]

1. Notice of support order. The department shall serve the responsible parent with a notice that it intends to establish a support order and a blank income affidavit. The notice must state:

- A. The names of both parents and the names of each dependent child; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]
- B. The department's intention to establish a support order, which may include a periodic payment for current support, a debt for past support, including medical expenses, and an obligation to provide health insurance coverage; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]
- C. That the responsible parent must submit a completed income affidavit to the department within 30 days; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]
- D. That the department calculates a proposed support order based on the State's child support guidelines using all available information and, if there is a lack of sufficient reliable information about a parent's actual earnings for a current or past period, the department presumes for the purpose of establishing a current support obligation or a debt for past support that the responsible parent has or had an earning capacity equal to the average weekly wage as determined by the Department of Labor statistics for the applicable years; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]
- E. That the department will send to the responsible parent by regular mail a copy of the proposed support order and the department's child support worksheets; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]
- F. That the responsible parent may request a hearing in writing within 30 days of the date of mailing of the proposed support order; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]
- G. That, if the department does not receive a timely request for hearing, it will issue a decision that incorporates the findings of the proposed support order and will send a copy of the decision to both parents by regular mail; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]
- H. That, after a decision is issued, the department may enforce the decision by any lawful means, including immediate income withholding, lien and foreclosure, administrative seizure and

disposition, order to withhold and deliver and tax refund intercept; and [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

I. That, if the department establishes a debt for past support, the department may report the responsible parent and the amount of the debt to a consumer credit reporting agency. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

2. Proposed support order. After serving notice upon the responsible parent in accordance with subsection 1 and after more than 30 days have elapsed, the department shall calculate the responsible parent's parental support obligation and debt for past support pursuant to chapter 63. Based on its calculations under the support guidelines, the department shall issue a proposed support order. The proposed support order must include the department's calculations and state the amount of the responsible parent's current parental support obligation and debt for past support, including medical expenses, and must state the responsible parent's obligation to provide health insurance coverage for each dependent child and to pay a proportionate share of uninsured medical expenses. The department shall send a copy of the proposed support order to the responsible parent by regular mail, along with a copy of the department's child support worksheet. The proposed order must be accompanied by a notice that states:

A. That the responsible parent has the right to request a hearing within 30 days of the date of mailing of the proposed support order and that, if a hearing is requested, the department will send the responsible parent a notice of hearing by regular mail at least 30 days before the date of the hearing, along with a statement of the hearing rights described in subsection 3, paragraph A; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

B. That, if the department does not receive a timely request for hearing, the department will issue a decision that incorporates the findings of the proposed support order into the department's decision and will send a copy of the decision to both parents by regular mail; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

C. That, if the department issues a decision that establishes a responsible parent's support obligation, the department may enforce the decision by any lawful means, including immediate income withholding, lien and foreclosure, administrative seizure and disposition, order to withhold and deliver and tax refund intercept; and [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

D. That, if the department establishes a debt for past support, the department may report the responsible parent and the amount of that debt to a consumer credit reporting agency. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

3. Hearing. The hearing must be conducted according to rules adopted by the commissioner.

A. At the hearing, the responsible parent may present testimony, cross-examine witnesses and be represented by an attorney or other person. In rendering a decision, the department may not consider evidence that was not presented at the hearing. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

B. When deciding the amount of the current parental support obligation, the debt for past support and the availability of health insurance coverage, the official conducting the hearing shall consider at least the following criteria:

- (1) Each child's needs;
- (2) The responsible parent's income and real and personal property;
- (3) The responsible parent's ability to borrow;

- (4) The responsible parent's ability to earn;
- (5) The responsible parent's needs;
- (6) Whether the responsible parent has a duty to support other dependents. In any case, each child for whom support is sought must benefit as much as any other dependent from the income and resources of the responsible parent;
- (7) Whether the responsible parent has voluntarily incurred subsequent obligations that have reduced that parent's ability to pay support. This condition does not relieve the responsible parent of the duty to provide support;
- (8) Whether employer-related or other group health insurance coverage is available to the responsible parent; and
- (9) Whether the responsible parent's existing health insurance coverage may be extended to include each dependent child. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

4. Decision. If a hearing is held, the department shall render a decision based on the hearing record and applicable state laws and rulemaking. If a request for hearing is not made in a timely manner or if the responsible parent does not appear at the hearing, the department shall issue a decision that incorporates the findings of the department's proposed support order. The department shall send a copy of the decision to both parents by regular mail. The decision must establish and state:

A. The responsible parent's duty to provide support, the amount of the current parental support obligation, the amount of any debt for past support including medical expenses, the obligation of the responsible parent to maintain health insurance coverage for each dependent child and to pay a proportionate share of uninsured medical expenses and that the responsible parent must provide written proof to the department of health insurance coverage that is required by the decision within 15 days of the responsible parent's receipt of the decision; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

B. If an obligation for current support is established, an order for immediate income withholding is issued and made a part of the decision; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

C. That, 30 days after the decision is issued, the department may enforce the decision by any lawful means, including immediate income withholding, lien and foreclosure, administrative seizure and disposition, order to withhold and deliver and tax refund intercept; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

D. That, if the department establishes a debt for past support, the department may report the responsible parent and the amount of the debt to a consumer credit reporting agency; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

E. That, if the responsible parent does not maintain health insurance coverage when required to do so by the department, the responsible parent may be held liable for all medical expenditures made by the department or the custodial parent on behalf of each dependent child; and [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

F. That the responsible parent may appeal the decision within 30 days of the date of mailing of the decision by requesting the department to hold an administrative appeal hearing. The decision must also state that the resulting appeal hearing must be based on the evidence submitted at the underlying hearing, if any. Evidence not part of the hearing record may be considered at the appeal hearing only if the evidence was offered but incorrectly excluded at the underlying hearing. [PL 2005, c. 352, §9 (AMD).]

[PL 2005, c. 352, §9 (AMD).]

5. Collection action. The department may initiate collection action 30 days after the date of mailing of a decision. If a decision includes an immediate income withholding order, the department may implement the withholding order to collect current support immediately after the decision is issued. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

6. Subsequent order. A decision under this section remains in effect until superseded by a subsequent support order. [PL 1997, c. 466, §18 (AMD); PL 1997, c. 466, §2 (AFF).]

7. Request to set aside. Within one year of the mailing of a decision, the responsible parent may request the department to set aside the decision if the responsible parent shows good cause why the responsible parent did not request a hearing or did not appear at a hearing and presents a meritorious defense to the decision. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

8. Amendment. A responsible parent may request an administrative hearing to amend a decision issued under this section prospectively based on a substantial change of circumstances. The department may seek to amend a decision issued under this section prospectively, based on a substantial change of circumstances, by using the same process permitted by this section for establishing a support obligation. When proceeding to amend a decision issued under this section, the department shall state in its notice of hearing that the purpose of the proceeding is to amend the responsible parent's support obligation based on a substantial change of circumstances.

Modification and termination of child support orders are governed by section 2009. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

9. Enforcement. A decision under this section establishes a support obligation for purposes of enforcement under section 2103. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

10. Provisions supplemental. The provisions of this chapter are in addition to other laws and rules that enable the department to establish child support obligations. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

PL 1995, c. 694, Pt. B, §2 (NEW). PL 1995, c. 694, Pt. E, §2 (AFF). PL 1997, c. 466, §§17, 18 (AMD). PL 1997, c. 466, §28 (AFF). PL 2001, c. 264, §12 (AMD). PL 2005, c. 352, §9 (AMD).

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