

Strategies for Helping Low Income Families & Arrears Management

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MFSRC, September 2010

Goals of SHLIF

- To improve voluntary current support collections and to help low income obligors overcome obstacles to paying support.
 - Arrears management
 - Arrears prevention

Guiding Principals

- Similar cases treated similarly
- Improve financial well-being of children
- Treat each case based on facts of case
- Consider all of obligor's cases

...from all angles

- Get the order right and keep it right
- Give new obligors the information they need
- Early intervention
- Review arrears for equitable adjustments
- Connect with stakeholders

- Use PRISM codes
- What's on the horizon?
 - Mind the Gap
 - Consistent statewide policies

Legal Perspective

Minn. Stat. § 518A.62

- This statute explicitly authorizes child support debt and arrearage management.
 - To reduce and manage arrearages
 - A party may compromise debts or arrearages owed to that party
 - This includes the public authority when arrears are assigned

The Social Security Act requires:

- States have laws that make a child support order a judgment
 - Our law: Minn. Stat. § 518.048, Subd. 1a makes past due child support a judgment by operation of law.

The Social Security Act requires:

- Child support orders not be subject to retroactive modification
 - Our Law: Minn. Stat. § 518A.39 does not allow retroactive modifications.

42 U.S.C.A. § 666(a)(9)(A) and (C); 45 C.F.R § 303.106.

History of Social Security Act Requirement

- These requirements were a result of Congress' recognition that in some states child support orders had less stature than other money judgments.

Specifically...

- Some states allowed courts to reduce or wipe out arrears by reducing the amounts owed for past period.
- Some states did not reduce child support debts to judgments as the payments became due. Thus, the child support debts were not entitled to full faith and credit in other states.

- The law was enacted to assure that child support debt was treated no differently than other types of state debt.

54 C.F. 15757 (April 19, 1989).

• Commentators suggested the rule be revised to permit retroactive modification if there was agreement by the parties.
OSCE responded:
• Child support is a judgment with the full force, effect and attributes of a judgment.

• Judgment may, however, be compromised or satisfied by specific agreement of the parties.

54 C.F. at 15763.

Arrears - Defined
Arrears are amounts that accrue pursuant to an obligor's failure to comply with a support order. Past support and pregnancy and confinement expenses contained in a support order are arrears if the court order does not contain repayment terms.

Minn. Stat. § 518A.26, subd. 3.

Arrears - Defined

Arrearages include arrearages for child support, medical support, child care, pregnancy and birth expenses, and unreimbursed medical expenses as defined in § 518A.41.

Minn. Stat. § 518A.60(a).

- Arrears are assigned to the State for families on public assistance
- Under the Social Security Act, when a family receives TANF, the custodial parent must assign to the state the right to collect both current child support payments and past due child support. 42 U.S.C.A. § 608(a)(3)(A).
- Minn. Stat. § 256.741, Subd.2 requires assignment of support rights for the individual receiving public assistance.

Arrearages assigned to the State are State debt.

Debt is defined in the Minnesota Debt Collection Act under Chapter 16D:

an amount owed to the state directly, or through a state agency on account of...an assignment to the state including assignments under section 256.741, the Social Security Act, or other state or federal law, recovery of costs incurred by the state, or any other source of indebtedness to the state.

Minn. Stat. § 16D.02, Subd. 3.

- Child support debt has priority
- Minn. Stat. § 16D.05, Subd. 3 requires that money collected (other than under a lien) must first apply to the satisfaction of any debts for child support as opposed to other state debt.

Child Support Debt May Be Written Off

- Minn. Stat. § 16D.09, Subd. 1 permits debt that is uncollectible to be written off. It states the debt is considered uncollectible when:
 - all reasonable collection efforts have been exhausted.
 - the cost of further collection action will exceed the amount recoverable,

Child Support Debt May Be Written Off
(continued)

- the debt is legally without merit or cannot be substantiated by evidence,
- the debtor cannot be located,
- the available assets or income, current or anticipated, that may be available for payment of the debt are insufficient,

Child Support Debt May Be Written Off

(continued)

- the debt has been discharged in bankruptcy,
- the applicable statute of limitations for collection of the debt has expired, or
- it is not in the public's interest to pursue collection of the debt.

- The statute states that determination of the uncollectibility of a debt must be reported by the state agency along with the basis for that decision as part of its quarterly reports to the commissioner of finance. Determining that the debt is uncollectible does not cancel the legal obligation of the debtor to pay the debt.

Child Support Debt May Be Compromised

- Minn. Stat. § 16D.15 states:
 - Unless expressly prohibited by other federal or state law, a state agency may compromise debts owed to the state, whether reduced to judgment or not, where the state agency determines that it is in the best interests of the state to do so.

Practical Applications

Considerations

- Inappropriate order
- History of incarceration
- Receipt of SSI/RSDI
- Receipt of public assistance
- Disability
- Mental health issues

Considerations

- Parties residing together
- Custody of minor children
- Minimal earnings
- Sporadic work history
- Multiple cases

Considerations

- High PA/NPA arrears balance
- High amount of PA interest paid
- How long it will take to pay it off
- Collectibility

Example #1

- Over \$40,000 PA interest paid
- Multiple cases
- Child in obligor's household
- Inappropriate order
- Obligor on public assistance
- Drug and alcohol abuse

Example #2

- High PA arrears balance
- minimal earnings
- Sporadic payments
- History of receipt of cash assistance
- Children resided off and on with obligor

Example #3

- Settlement offer
- Length of time to pay in full
- Multiple cases

Checks and balances

- In Ramsey County
 - Streamlined processes for:
 - Public assistance
 - Incarceration
 - RSDI/SSI
 - Cost to collect exceeds debt

Checks and balances

- Other cases required a full analysis of the circumstances of the case... and multiple signatures.

Questions?

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