

**MFSRC 2010 SHLIF Presentation**  
**Monday September 20**  
**3:30 pm – 4:30 pm**

**Strategies for Helping Low Income Families**

1. The goal of the SHLIF program is to improve voluntary current support collections and to help low income obligors to overcome obstacles to paying support

- a. Arrears Management
- b. Arrears Prevention

2. Guiding principles

Am I.....

- Treating similar cases similarly?
- Improving the financial well-being of children?
- Treating each case based on its own set of facts?
- Considering all of obligor's cases?

3. Arrears management from all angles

- Get the order right and keep it right
- Provide new obligors with detailed information on their child support obligation
- Apply early intervention strategies as soon as payments are missed
- Review old arrears for possible equitable adjustment
- Make connections with stakeholders

4. Use those codes and add notes to capture the strategy

- Think – would I have considered this option 5 years ago?
- If not, it's probably a SHLIF action

5. What's on the horizon?

- Mind the Gap – Case obligation summary sheet, improved DOC interface, and cleanup of institution table
- Move towards consistent policies statewide

## **Legal Perspective**

Minn. Stat. § 518A.62

This statute explicitly authorizes child support debt and arrearage management.

In order to reduce and otherwise manage support debts and arrearages, the parties, including the public authority where arrearages have been assigned to the public authority, may compromise unpaid support debts or arrearages owed by one party to another, whether or not docketed as a judgment. A party may agree or disagree to compromise only those debts or arrearages owed to that party.

### **The Social Security Act requires:**

1. States have laws that make a child support order a judgment on and after the date it is due with the full force, effect, and attributes of a judgment of the state.

Our Law: Minn. Stat. § 518.048, Subd. 1a makes past due child support a judgment by operation of law.

2. Child support orders not be subject to retroactive modification, except for any period during which there is a pending motion for modification and then only from the date upon which notice of the modification motion has been given.

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 Requirements**

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

1. Some states allowed courts to reduce or wipe out arrears by reducing the amounts owed for past period (i.e. retroactive modifications).
2. Seventeen states at the time did not require reducing child support debts to final judgments as the payments became due. Thus, the child support debts were not entitled to full faith and credit in other states as is the case with other money judgments.
3. 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).

The Office of Child Support Enforcement stated parties can agree to forgive arrears. Several commentators suggested the rule be revised to permit retroactive modification if there was some type of agreement by the parties. In responding to the comments, the Office of Child Support Enforcement stated:

Federal Law and regulations provide that child support is a judgment on and after the date due with the full force, effect and attributes of a judgment of the State. Such support judgment may, however, be compromised or satisfied by specific agreement of the parties on the same grounds as exist for any other judgment in the State.

54 C.F. at 15763.

### **Arrears – Defined**

Minn. Stat. § 518A.26, subd. 3.

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.60(a).

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

### **Assignment**

Arrears are assigned to the State for families on public assistance.

Under the Social Security Act, when a family that receives Temporary Assistance for Needy Families (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 or compromised**

Minn. Stat. § 16D.09, Subd. 1 permits debt that is uncollectible to be written off. It states the debt is considered uncollectible when:

- 1) all reasonable collection efforts have been exhausted,
- 2) the cost of further collection action will exceed the amount recoverable,
- 3) the debt is legally without merit or cannot be substantiated by evidence,
- 4) the debtor cannot be located,
- 5) the available assets or income, current or anticipated, that may be available for payment of the debt are insufficient,
- 6) the debt has been discharged in bankruptcy,
- 7) the applicable statute of limitations for collection of the debt has expired, or
- 8) 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.

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.

### **Relevant Laws**

42 U.S.C.A. 666(a)(9) - Requirement of Prescribed Procedures for Child Support Arrearages

45 C.F.R. 303.10 - Procedure to Prohibit Retroactive Modification of Child Support Arrearages

All statutes in Chapter 16D - Debt Collection Act

518A.26, Subd. - Definition of Arrears

518A.60(a) - Collection; Arrears Only

518A.62 - Child Support Debt and Arrearage Management

548.091, Subd. 1a - Child Support Judgment by Operation of Law

## **Practical Applications for Arrears Management**

Cases may be identified through data warehouse reports, contact with the parties, when a party files a motion, or in the course of a case review.

What to watch for:

- Inappropriate order
- Incarceration periods
- Receipt of SSI or RSDI
- Receipt of public assistance
- Disability
- Mental health issues
- Parties residing together
- Obligor has custody of minor children
- Minimal earnings
- Sporadic work history
- Obligor has multiple cases
- High PA/NPA arrears balance
- High amount of PA interest paid
- How long it will take to pay if off
- Collectibility

### **Example #1**

Obligor owes \$13,000 in PA arrears, \$12,000 in principle and \$1,000 is interest. He has paid over \$43,000.00 in PA interest. The kids are all adults in their mid 20s. NPA arrears are paid in full. Monthly payback on arrears is \$500. Support was set based on imputed income. The original order included a PA judgment for prior expenses in excess of \$6,000.

Obligor has another child support obligation on PRISM. He is paying current support of \$300 per month. He owes NPA arrears of \$10,000 on that case. He also has a minor child living in his home. Obligor and his current family receive MinnesotaCare. He has been paying consistently since 2001.

Obligor works 2 jobs to cover his obligations and support himself and his current family. He has a history of drug and alcohol abuse.

The case came to the agent's attention when Obligor filed a motion to decrease his monthly payback.

### **Example #2**

Obligor owes \$130,000.00, \$18,000 is owed to the custodial parent and \$112,000 is owed to the State. The parties have 5 children, 3 are still minors. Support was originally set based on the amount of an AFDC grant for 5 children. A judgment was awarded for over \$8,000 for prior support.

Wage match shows obligor's ability to earn has been consistently been little more than minimum wage. He is currently working at a fast food restaurant and he is paying. The children have all lived with the obligor at various times and he has received public assistance for them in his household.

Child support was recalculated retroactively based on the obligor's social security earnings statement, with no charging when he was on public assistance. The result is that approximately \$99,000 was forgiven and \$13,000 remains due.

### **Example #3**

The obligor owes \$15,000 on a PA relative caretaker case. \$10,000 is principle and \$5,000 is interest. The obligor has additional cases for this child and for other children. His monthly payback is \$75.00. The obligor has sold his house and has \$10,000 available. He called to make a settlement offer of \$10,000. The offer was accepted. It would have taken over 16 years to pay in full at \$75 per month (with no interest charging).

### **Checklists**

In Ramsey County, shortened processes have been developed for cases based on certain facts and for narrowly defined use;

- Public assistance- forgiving only the time periods an obligor received cash public assistance
- Incarceration- forgiving only the time periods and obligor was incarcerated
- RSDI/SSI- forgiving all PA arrears when the obligor is unable to pay due to the receipt of SSI and/or RSDI
- Cost to collect exceeds debt- for use when administrative remedies have not resulted in payment and judicial remedies are not cost effective, arrears less than \$2,000

**The standard long form is used for cases that require a full analysis of the circumstance.**

**Presenters:**

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**TOPIC: ARREARS PREVENTION AND MANAGEMENT**

**SECTION: ASSISTS**

**ACTIVITIES**

Activity	Who Adds	When To Add It	Action
E9801 - CASE REVIEW FOR CURRENT SUPPORT/ARREARS MGMT STRATEGY	CSO	When the CSO decides the case should be reviewed for possible arrears management strategies.	<p>Use the Arrears Management Default Flow (AMDF) worksheet to review the case. Determine if any of the following actions are appropriate:</p> <ul style="list-style-type: none"> <li>• review the order for modification</li> <li>• reduce permanently assigned public assistance arrears</li> <li>• remove accrued interest on permanently assigned public assistance arrears</li> <li>• provide obligor with information on pro se motions for stopping interest</li> </ul> <p>Update the activity with comments describing the reasons this case might be appropriate for arrears management.</p>



E9802 - CASE REVIEW/ARREARS MGMT STRATEGY APPROVAL REQUESTED	CSO	If after completing AMDF and worksheet; the CSO determines that the case is suitable to apply one or more of the arrears management strategies.	Update CAAD activity E9802 with detailed notes describing why the case is suitable for arrears management strategies.
E9803 - CASE REVIEW/NO ARREARS MGMT APPLIED	CSO or Supervisor	If after completing AMDF and the worksheet the CSO determines that the case is not appropriate for arrears management.  or The supervisor has reviewed the case and determines that no arrears management strategies will be taken on this case.	The CSO or the Supervisor (the one who added the activity) updates CAAD activity E9803 with detailed notes describing why the case is not appropriate for arrears management strategies. This prevents the case from being selected for the identification report for 12 months.
E9804 - ARREARS MANAGEMENT STRATEGY APPROVED	Supervisor	The supervisor reviewed the case and approved the case for arrears management.	The CSO can now make an offer to the obligor.
E9805 - ARREARS MGMT - OBLIGOR ACCEPTS SETTLEMENT	CSO	The CSO made an offer to the obligor and they reached an agreement.	Send a follow-up memo or letter to the obligor stating the details of the agreement. Update CAAD activity E9805 with details of the agreement.
E9806 - ARREARS MGMT - OBLIGOR REJECTS SETTLEMENT	CSO	The CSO made an offer to the obligor and there is no agreement.	Update CAAD activity E9806 with details of the offer and the reason the obligor rejected the offer.

E9815 - CORRECTIONS LIAISON REVIEWED CASE	Corrections Facility Child Support Liaison	The Corrections Facility Child Support Liaison met with the parent and will add activity E9815 to the case.	No action required.
E9816 - CORRECTIONS LIAISON REFERS CASE FOR ARREARS MGMT	Corrections Facility Child Support Liaison	The Corrections Facility Child Support Liaison met with the parent and will add activity E9816 to the case for the CSO to review.	CSO to review case. Activity E9816 triggers Worklist E9816.
E9830 - CORR LIAISON ADDED INFORMATION FOR CASE WORKER REVIEW	Corrections Facility Child Support Liaison	The Corrections Facility Child Support Liaison met with the parent and there is important information that is not specific to a request for arrears management.	CSO to review case. Activity E9830 triggers Worklist E9830.