
**Rules of
Department of Social Services
Division 30—Child Support Enforcement
Chapter 7—Administrative Hearings**

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Title 13—DEPARTMENT OF SOCIAL SERVICES

Division 30—Child Support Enforcement Chapter 7—Administrative Hearings

13 CSR 30-7.010 Administrative Hearings

PURPOSE: This rule sets forth procedures by which the Division of Child Support Enforcement conducts hearings before its designated hearing officers to resolve disputes between the division and persons from whom the division is seeking to establish an obligation for child support or collect an established obligation.

(1) Definitions. As used in this rule—

(A) Absent parent means the noncustodial parent;

(B) Administrative process hearing means a hearing to dispute a Notice and Finding of Financial Responsibility issued by the division or a hearing concerning a motion to modify an administrative order under section 454.500, RSMo;

(C) Agency means the Department of Social Services and its employees;

(D) Case means the proceeding in which a dispute between an absent parent and the division has been or is in the process of being resolved, including all division records, facts and statements in evidence and all findings and conclusions made;

(E) Client means the custodial parent who is receiving Division of Child Support Enforcement services;

(F) Consumer reporting agency means a credit bureau;

(G) Division means the Division of Child Support Enforcement and its employees;

(H) Division representative means an employee, attorney or designated representative who appears in an administrative proceeding on behalf of the division;

(I) General hearing request means an administrative hearing to resolve a dispute with the division arising from the absent parent's receipt of—1) notification of a lottery interception under section 454.505, RSMo and Missouri's right to set off under common law, 2) an administrative order on an existing order under section 454.476, RSMo, 3) a notification of referral to a consumer credit bureau under section 454.512, RSMo, 4) a claim of abatement in the support obligation under section 452.340, RSMo or 5) a claim involving the age of majority under section 452.340, RSMo;

(J) Hearing request means a request made by an absent parent, personally or through a representative, according to the procedures set forth under this rule and applicable Missouri

statutes;

(K) Internal Revenue Service (IRS) administrative review means an administrative hearing to challenge a preintercept notice sent by the federal Office of Child Support Enforcement to the absent parent or to challenge an intercept notice sent by the United States IRS to the absent parent. This hearing request may also be made on any other preintercept notice sent by the division as long as it involves the interception of a federal tax refund;

(L) Issue means a question of fact disputed by the absent parent, the division or the custodial parent, the determination of which is material to a decision in the case;

(M) Submitting state means the state that submitted the absent parent's name to the Internal Revenue Service for intercept of all or part of any tax refund for a specific year;

(N) Tax refund intercept hearing means a hearing to contest the interception by the division of an absent parent's Missouri tax refund under section 143.784, RSMo; and

(O) Unreimbursed assistance means the total amount of Aid to Families with Dependent Children (AFDC) received by the client less any support paid to and retained by the state.

(2) Administrative Process Hearing Requests.

(A) To make a valid request for a hearing, the absent parent or his/her representative must send to the division a written request for an administrative process hearing within twenty (20) calendar days after the date upon which the Notice and Finding of Financial Responsibility was hand-delivered to the absent parent by a division representative, or served on the absent parent in a manner prescribed for service of process in a civil action, or by a duly authorized process server appointed by the director or by certified mail, return receipt requested.

(B) The absent parent's request for an administrative process hearing will not be effective unless it is sent or delivered to the division according to the instructions on the Notice and Finding of Financial Responsibility the absent parent has received.

(C) Within two (2) division working days after it receives an absent parent's request for an administrative process hearing, the division shall send to the absent parent a written acknowledgment of the hearing request.

(D) If the division determines that the absent parent is not entitled to an administrative process hearing, it shall send the absent parent a written notice that his/her request for an administrative process hearing has been denied. The division may deny a request for an administrative process hearing for any one (1) of the following reasons:

1. The absent parent's hearing request is

based solely on issues that have previously been litigated and decided by a court of law;

2. The hearing request was sent to the division more than twenty (20) calendar days after the Notice and Finding of Financial Responsibility was hand-delivered to the absent parent by a division representative, or was served on the absent parent in a manner prescribed for service of process in a civil action, or by a duly authorized process server appointed by the director or by certified mail, return receipt requested; or

3. The absent parent's request for administrative process hearing is based solely on issues which cannot be decided in an administrative process hearing including, but not limited to, visitation, legal custody and nonpaternity.

(E) If the division discovers an error in the case that materially affects the Notice and Finding of Financial Responsibility after the notice has been sent to the absent parent, the division shall communicate the nature of this error and corrected information to the absent parent. In cases in which a second Notice and Finding of Financial Responsibility has been sent to the absent parent before the absent parent has requested a hearing, the absent parent will have an additional ten (10) calendar days to file a timely request for hearing with the division. The additional ten (10) calendar days will be counted from the twentieth day after service of the first Notice and Finding of Financial Responsibility on the absent parent.

(F) After the division has sent the absent parent an acknowledgment of the hearing request, either the division or the absent parent may request a conference to reach agreement. The request, whether initiated by the absent parent or the division, will be conducted according to the following procedures:

1. If the absent parent is represented by legal counsel, the request or consent in writing to a conference being held must be made by the legal counsel;

2. The conference may proceed whether or not division legal counsel is present unless the counsel's absence is objected to by the absent parent's legal counsel; and

3. An administrative process hearing need not be held if all disputed matters are resolved at a conference to reach agreement before the hearing. This agreement must have the absent parent's written consent (on advice of legal counsel, if represented) and the consent of the division's client to the extent that the client's interests may be affected. The division's client or his/her legal counsel may be included in the conference to reach agreement.

(G) An administrative process hearing may be held to resolve a motion for modification of an existing administrative process order of

support and will be held according to the same procedures as set forth in this rule for administrative process hearings, except time limitations for requests. A hearing may be requested on a motion for modification by the division, the client or the absent parent. When an administrative process hearing has been requested by any of these parties, the division shall not deny a request for hearing. A conference to reach agreement may be conducted as in other administrative process hearings.

(3) Missouri Tax Refund Intercept Hearings.

(A) The absent parent must request a Missouri tax refund intercept hearing within thirty (30) calendar days after the Missouri Department of Revenue mails a Notice of Tax Refund Intercept to the absent parent.

(B) To be valid, the absent parent's request for a Missouri tax refund intercept hearing must be made in writing and delivered to the division according to the instructions contained in the Notice of Tax Refund Intercept. Separate instructions are sent to the nondebtor taxpayer (spouse) to receive his/her apportionment either by requesting it in writing or by having it automatically apportioned and sent by the Department of Revenue.

(C) The division, upon receipt of a nondebtor spouse's written request for apportionment, shall send an apportionment calculation request to the Missouri Department of Revenue. The division shall send an acknowledgement to the nondebtor spouse that his/her apportionment request has been forwarded to the Department of Revenue. The division shall also send notice of the apportioned amount to the nondebtor spouse with instructions that s/he may request a hearing if s/he disagrees with the amount of the apportionment.

(D) If the nondebtor spouse's apportionment will be sent automatically to him/her, the division shall send to the nondebtor spouse notification of the apportioned amount and notice that s/he may request a hearing if s/he disagrees with the amount of apportionment.

(E) The division must receive a nondebtor spouse's request for an apportionment hearing no more than thirty (30) calendar days after the day upon which the division mailed or delivered to the nondebtor spouse notification of the apportioned amount.

(F) If the request for a Missouri tax refund intercept hearing appears to have been made jointly by the absent parent and the absent parent's spouse who is requesting apportionment, the agency hearing officer may hold the tax refund intercept hearing and the apportionment hearing as a joint proceeding. At the discretion of the agency hearing officer and upon the request of the division, the absent parent or his/her spouse, the agency hearing

officer may grant a severance of the joint proceeding and have separate proceedings on the two (2) issues. A request from any party may be denied by the agency hearing officer unless failure to separate the proceedings could clearly prejudice the debtor-taxpayer or his/her spouse.

(G) Within two (2) division working days after the division receives a request for hearing from an absent parent or a nondebtor spouse, the division shall send acknowledgement of the hearing request to the requesting party.

(H) The division may deny the request for hearing, but only if the denial is sent to the absent parent within ten (10) calendar days after the request for hearing is received. The division may deny a request for a Missouri tax refund intercept hearing for any one (1) of the following reasons: 1) The hearing request is not timely, 2) the hearing request solely raises issues which have been previously decided by a court of law or 3) the hearing request solely raises issues that cannot be determined in an administrative proceeding. These issues include, but are not limited to, visitation, legal custody and nonpaternity.

(I) Any party to the Missouri tax refund intercept proceeding, after the division's acknowledgement of the hearing request is sent, may request a conference to reach agreement. If the absent parent or the nondebtor spouse is represented by legal counsel, the conference may not be held without the approval or agreement of all legal counsel. If a conference to reach agreement is held and a written agreement among all affected parties results, it will not be necessary for an administrative Missouri tax refund intercept hearing to be held in the case.

(J) The agency hearing officer shall give notice of the date, time and place of the Missouri tax refund intercept hearing to the absent parent, the nondebtor spouse, or both, in case of a joint hearing. The notice will be in writing and will be sent to any legal counsel known by the division to be representing any of the parties in the case. Within three (3) division working days after the division receives notice from the hearing officer of a scheduled Missouri tax refund intercept hearing, the division shall calculate the amount of any arrearage which has accrued between the time of the tax refund intercept and the most recent ordered payment date. The division shall send notice, at least ten (10) days before the hearing, of the amount of the additional arrearage to the absent parent and to the absent parent's legal counsel, if the absent parent is known to be represented by legal counsel in the proceeding. The additional arrearage will be included in the tax refund intercept proceeding, and it will be within the agency hearing officer's discretion to

determine whether the late receipt of the additional arrearage notice has prejudiced the absent parent's ability to defend. In no event may the agency hearing officer separate the tax refund intercept and the additional arrearage into issues for separate hearings. If the absent parent, either individually or by and through legal counsel, does not request a continuance and elects to proceed with the scheduled hearing, the absent parent will be deemed to have waived any objection to the timeliness of the receipt of the notice of additional accrued arrearage.

(4) IRS Administrative Review.

(A) The absent parent shall have the right to an administrative review for the purpose of contesting the stated amount of arrearage certified by the division to the United States IRS for federal tax refund intercept and collection.

(B) A preintercept notice will be sent to the absent parent by either the federal Office of Child Support Enforcement or the division if the absent parent was certified for intercept on or before October 1 of the calendar year. The notice will contain the following information:

1. The absent parent's right to contest the division's determination that past-due support is owed or the amount of past-due support submitted;

2. The absent parent's right to an administrative review by the submitting state or, at the absent parent's request, the state where the order was entered upon which the referral to the United States IRS was based;

3. The procedures and time allowed for contacting the division to request an administrative review;

4. The right of the absent parent's spouse (if a joint return is filed) to protect his/her apportioned share of the tax refund and the steps the spouse must take in order to receive the share of the refund which may be payable to him/her; and

5. The amount of the certified arrearage.

(C) The preintercept notice, whether sent by the division or the federal Office of Child Support Enforcement, will have the division's local office address and telephone number as the return address and will instruct that requests for administrative reviews must be sent to the division's local office by the date listed in the notice.

(D) The intercept notice, sent by the United States IRS at the time of actual intercept, will also have the division's local office and telephone number as the return address and will instruct the absent parent to contact that office if s/he has questions. A request for an administrative review at this time must be made within thirty (30) days of the date of mailing under Chapter 536, RSMo. The

intercept notice must be presented at the administrative review as proof that the absent parent's request was made within the thirty (30)-day time limit. An administrative review request will be denied if the taxpayer requested an administrative review at the time of the preintercept notice for the same tax year.

(E) Within two (2) division working days after the division receives a request from an absent parent for an administrative review of a federal tax refund intercept certification (preintercept notice), the division shall send a written acknowledgement of the request. This will apply whether the request is received orally in person, orally on the telephone or in writing. If the request is not made within the time specified in the preintercept notice, the division shall send written notice that the request for administrative review is denied.

(F) The administrative review will be conducted by either an agency hearing officer or a division employee.

(5) General Hearing Request—Administrative Order on an Existing Order.

(A) An absent parent may contest the issuance of an administrative order on an existing order or the withholding order issued under it by requesting a hearing according to instructions given to the absent parent in the Notice of Withholding.

1. To be valid, the absent parent's request for hearing must be received by the division within fourteen (14) calendar days after the date on which the absent parent received the Notice of Withholding.

2. If the absent parent requests a hearing, the withholding will continue unless the absent parent posts a security bond in the amount as stated in the Notice of Withholding.

(B) The division, within two (2) division working days, shall send the absent parent an acknowledgement of the hearing request. If the hearing request was not timely sent by the absent parent, the division shall send a written denial of the request for hearing in lieu of the acknowledgement of the hearing request.

(C) The division shall notify the client of the hearing when—

1. The client has an interest in the arrearage (that is, the arrearage is more than the amount of the unreimbursed public assistance);

2. The client's testimony is needed for the division to defend the withholding;

3. The case is nonpublic assistance, or a combination of paragraphs (5)(C)1.—3.

(D) After the division has sent the absent parent an acknowledgement of the hearing request, either the division or the absent parent may request a conference to reach an agreement. The request for a conference, whether initiated by the absent parent or the division,

will be conducted as follows:

1. If the absent parent is represented by legal counsel in the case, the legal counsel must either make the request or consent in writing to a conference being held;

2. The conference to reach agreement may proceed whether or not division legal counsel is present unless the counsel's absence is objected to by the absent parent's legal counsel; or

3. An administrative process hearing need not be held if all matters in dispute are resolved at a conference to reach agreement prior to the hearing. Any resolution must have the written consent of the absent parent (on advice of legal counsel, if represented) and the client to the extent that the client's interests may be affected. The client, his/her legal counsel, or both, may be included in the conference to reach agreement, or a combination of paragraphs (5)(D)1.—3.

(6) General Hearing Request—Lottery Intercept.

(A) An absent parent may contest interception of lottery winnings by requesting a hearing according to instructions given in the absent parent's notice of intercept. The absent parent's request for a hearing must be received by the division within twenty (20) calendar days of the date the absent parent received the notice, if hand-delivered, or of the date of mailing.

(B) Upon receipt by the division of a timely request for hearing from the absent parent, the division, within two (2) division working days, shall send an acknowledgement of the hearing request to the absent parent. If the hearing request has not been timely sent by the absent parent, the division shall send a written denial of the request for hearing in lieu of the acknowledgement of the hearing request.

(C) The division may intercept lottery winnings on an AFDC case which does not have an order establishing the child support obligation. When an intercept is made, the division shall send the absent parent a Notification of Lottery Setoff/No Order and a Notice and Finding of Financial Responsibility—Special.

(D) An absent parent may request a hearing to address both the issues of the lottery intercept and the administrative order.

(E) An absent parent may also request a hearing when the division has intercepted lottery winnings on a non-AFDC case where the order establishing the obligation has been rendered by a court in a foreign state or where a foreign state has obtained an administrative order.

(F) Within two (2) division working days after the receipt by the division of the absent parent's timely hearing request to contest a

lottery intercept in a non-AFDC case, the division shall send the absent parent a notice of acknowledgement of the hearing request. In cases where the absent parent's hearing request was not timely received by the division, the division shall send notice that the hearing request has been denied in lieu of the acknowledgement of the hearing request.

(G) The division shall notify the client of the pending hearing when—

1. The client has an interest in the arrearage (that is, the arrearage is more than the unreimbursed amount of public assistance);

2. A current support obligation is being determined in the hearing;

3. The client's testimony, in the judgment of the division, is needed in order to fully conduct the hearing; or

4. The case is nonpublic assistance, or a combination of (6)(G)1.—4.

(7) General Hearing Request—Consumer Reporting Agency (CRA).

(A) An absent parent may request a hearing to contest the accuracy of the arrearage information provided on the division's notice informing the absent parent that his/her support debt will be referred to a CRA.

(B) The absent parent shall be deemed to have received proper notice of the agency's planned referral to a CRA when the absent parent has received written notification of the planned referral and a statement of his/her support debt.

(C) To be valid, the absent parent's hearing request must be received by the division in writing no more than twenty (20) calendar days after the date the notice of the planned CRA referral was mailed to the absent parent.

(D) Within two (2) division working days after the division's receipt of the absent parent's written hearing request, the division shall send written acknowledgement of the request. If the absent parent's hearing request was not timely received by the division, the division shall send written notice that the hearing request has been denied in lieu of the acknowledgement of the hearing request.

(E) After the division acknowledges receipt of the hearing request, the division may contact the absent parent in an effort to reach an agreement on the arrearage amount. If the absent parent is not contacted, or if an agreement is not reached within ten (10) division working days, the absent parent's request will be forwarded for scheduling of an administrative hearing.

(F) The division may notify the client of the pending CRA referral hearing when—

1. The client has an interest in the arrearage (that is, the arrearage is more than the amount of the unreimbursed public

assistance);

2. The client's testimony will be needed in order for the division to defend the referral; or

3. The case is nonpublic assistance, or a combination of (7)(D)1.—3.

(8) General Hearing Request—Abatement Claim.

(A) An absent parent may request a hearing to contest the division's notice to the absent parent that the client does not agree with the absent parent's claim of an extended period of physical custody of the child(ren) which would cause a reduction or abatement in the child support obligation under an administrative process order.

(B) To be valid, the division must receive the absent parent's hearing request within thirty (30) calendar days from the date of mailing of the notice of abatement disagreement sent to the absent parent.

(C) Within two (2) division working days after the division's receipt of the absent parent's hearing request, the division shall send written acknowledgement of the request. If the absent parent's request for a hearing was not timely received, the division shall send written notice to the absent parent that the hearing request has been denied in lieu of the acknowledgement of the hearing request.

(D) The division shall notify the client of the pending hearing in all cases.

(E) A hearing request will not be accepted for an abatement hearing on a judicial child support order.

(9) General Hearing—Termination of Support.

(A) An absent parent may request a hearing to contest the division's notice to the absent parent that the client or caretaker has provided information that the child is over age eighteen (18) and meets the requirements for continuing current support stated in section 452.340, RSMo.

(B) Within two (2) division working days after the division's receipt of the absent parent's hearing request, the division shall send written acknowledgement of the request.

(C) The division shall notify the client of the pending hearing in all cases.

(D) The sole issue addressed at the hearing will be the claimed school attendance or non-attendance by the child(ren) over age eighteen (18).

(E) A hearing request under this section will be granted only on an administrative child support order entered pursuant to Chapter 454, RSMo; provided:

1. The order specifies a per child amount; or

2. In the case of a multiple child order, only one (1) child is receiving or is arguably

entitled to receive support at the time of the hearing request.

(F) This section does not preclude the division from considering termination of support issues in conjunction with the review and modification of an existing child support order as specified in 13 CSR 30-4.020.

(10) Continuances.

(A) In any administrative hearing under this rule, continuances may be granted only by the agency hearing officer assigned to the case or the hearing officer's supervisor. The agency hearing officer (or supervisor), at the hearing officer's discretion, may grant a continuance freely upon the first request for a continuance from any party.

(B) If a party requesting a continuance previously has been granted a continuance, the agency hearing officer shall grant a continuance only upon a clear and present showing that substantive rights of a party in interest will be severely prejudiced by the denial of the request for continuance or for good cause. For the purposes of this rule, good cause will be when—

1. The legal counsel of any necessary party has, in fact, a scheduling conflict with any judicial body;

2. Illness or other significant emergency prohibits the attendance at the hearing of any necessary party or his/her legal counsel; or

3. The division's client does not appear for the hearing and the division has determined that the client's presence is necessary for the proceeding. A continuance shall be granted in these circumstances only when the division, more than ten (10) calendar days prior to the hearing, has requested that a subpoena for the client's attendance be issued.

(11) Mailing.

(A) In any proceeding under this rule, the agency hearing officer may enter a decision in default against any party who has failed to appear or failed to perform a necessary act in the course of the proceeding. It shall be the absent parent's responsibility to update the proper mailing address for notices issued by the agency hearing officer including, but not limited to, hearing notices, continuance notices and hearing decisions.

(B) The valid entry of a decision in default by the agency hearing officer may be made in all cases, subject to the defaulting party's right to move that the decision in default be set aside for good cause, but only if the defaulting party gives notice of the good cause to the agency hearing officer in writing within ten (10) calendar days after the default decision is mailed to the absent parent.

(C) Any notice sent registered mail, with a return receipt requested, whose delivery is

refused or any other mailing whose delivery is refused, will constitute delivery and notice under the meaning of this rule. Any notice mailed to the last-known address of any party in interest will be deemed valid delivery of that notice.

(D) Unless otherwise specified in this rule, all time limits shall be counted beginning with the day following the day upon which the written notice in question was mailed.

(E) A written hearing request mailed to the division, which is postmarked within the time frames given in this rule, will constitute receipt by the division within the applicable time frame.

(12) Service of a Motion to Modify.

(A) In any administrative hearing proceeding under this rule, when a party is seeking to modify an administrative process order under section 454.500, RSMo, it will be the moving party's responsibility to serve the motion on or otherwise give valid notice to all other parties necessary to the proceeding.

(B) When an absent parent, with due diligence, has attempted to make delivery or service of a motion to modify upon the client, the absent parent may apply to the division to have service made upon the client by the division. The service may be made by the division or it may be referred to the agency hearing officer to perfect the service.

(C) When an absent parent seeks to have service made upon the client by the division or the hearing officer and the absent parent's attempt at service has been by means of personal delivery, the attempts at personal delivery must be verified by affidavit giving the time, dates and places where personal service was attempted.

*Auth: section 454.400, RSMo (1994).**
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