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RULES OF THE GEORGIA DEPARTMENT OF HUMAN SERVICES

CHAPTER 290-7-1

RULES AND REGULATIONS FOR RECOVERY AND ADMINISTRATION OF CHILD SUPPORT

PROPOSED RULE AMENDMENT

290-7-1-.03 Definitions

(l) “Establishment” means the process, whether administrative or civil, of ~~adjudicating the establishment~~ determination of legal paternity and the duty of a parent or parents to pay child support.

290-7-1-.04 Establishment of Child Support Obligation.

(a) Initial investigation. In cases in which no child support order already exists, the Department may conduct an investigation in accordance with O.C.G.A. § 19-11-10 to determine the ability of a putative obligor to support his/her child(ren). The Department will calculate the amount of the support award based on the standards set forth at O.C.G.A. § 19-6-15. An obligor shall not be relieved of his/her duty of support when he/she has brought about his/her own unstable financial condition or when it is determined that he/she is underemployed. If paternity is contested, the Department shall pursue a determination of paternity as permitted by law.

(b) Genetic Testing

(1) In accordance with Georgia law as amended in 2015, The Department will generally pursue genetic testing will be required in any case in which paternity is at issue and a child support obligation has not previously been established. In such instances, the Department will issue an order for genetic testing, which will be provided to both putative parents of the child at issue. The order shall specify the time and place for genetic samples to be obtained. An applicant for services who fails to comply with the order for genetic testing is failing to cooperate with the

Department, and his/her case is subject to administrative closure. An application will not be deemed complete unless accompanied by an applicant's sworn statement alleging or denying paternity. A defendant in a paternity case who fails to comply with the genetic testing order on more than two (2) occasions shall be held to have waived any right to genetic testing in the case or in any proceedings involving the Department. The Department may initiate litigation prior to the completion of genetic testing, in which case the testing shall take place as ordered by the court. ~~because, in the majority of cases, it is in the best interest of the child(ren) to know the identity of both biological parents; however, g~~Genetic testing will ~~normally~~ not be pursued in cases involving adoption or the use of reproductive assistance techniques which would negate biological relations (such as embryo donation, egg donation, sperm donation, etc.). ~~Genetic testing will also generally not be pursued in the case of married persons. The decision regarding whether or not to seek genetic testing shall be at the sole discretion of the Department based upon the facts known to it at the time.~~ The cost of genetic testing shall be cast upon the defendant if the results show that the defendant is the biological parent of the child.

(2) Any genetic material collected for a paternity test shall be destroyed by the Department and any contractor, vendor, or laboratory authorized to do testing for the Department no earlier than one year but no later than two years from the date that the result of such test is transmitted to the Department. The Department may extend this period of time if needed due to a continuing court action or legal dispute by notice to the contractor, vendor, or laboratory.

(~~c~~b.) Consent agreement. When the investigation is complete, the Department will request that the putative obligor enter into a consent agreement to provide child support (including medical support) and to provide medical insurance when available to the putative obligor in accordance with O.C.G.A. § 19-11-26. Subsequently, the Department will submit a signed consent agreement to OSAH for the issuance of a support order and will issue an FIW after entry of the consent order if the obligor is employed.

(~~d~~e.) Establishment at Hearing. If the Department is unable to secure a consent agreement from the putative obligor, the Department will file a request for hearing before an administrative law judge appointed by OSAH to determine the duty of and ability of the putative obligor to provide child support. The amount of the support shall be determined in accordance with O.C.G.A. § 19-6-15 and shall include medical insurance for his/her children when available at reasonable cost pursuant to O.C.G.A. § 19-11-26. A putative obligor shall not be relieved of his/her duty of support when the administrative law judge determines that the obligor is underemployed or has brought about his/her own unstable financial condition. An administrative hearing and any appeal therefrom under this Rule shall be in accordance with the procedures set forth at Rule 290-7-1-.19.

(~~e~~d.) If a nonparent custodian is the party seeking establishment, the Department may proceed against all natural or adoptive parents of the child in the same proceeding unless jurisdictional defects require separate proceedings. Although a nonparent custodian

applying for services may seek establishment against only one parent, the Department in its sole discretion may choose to proceed against both parents of the child(ren).

(fe.) As required by federal law, when TANF, Medicaid, or other public assistance is paid by the State of Georgia on behalf of a child, a referral is automatically made to the Department for establishment services. In such public assistance cases, the Department may proceed without an application for services in order to collect a public debt owed to the State of Georgia. In such public assistance cases only, the Department may seek to establish a support obligation even though the custodian of the child does not have legal custody.

(gf.) The Department may, in its sole discretion, elect to proceed in superior court to establish any child support obligation rather than proceed through OSAH.

AUTHORITY: O.C.G.A. §§ 19-6-15, 19-6-17, 19-7-43, 19-11-8, 19-11-10, 19-11-15.

290-7-1-.05 Fees and Collection Procedures.

(d.) Other Fees

(1) For any person not currently receiving TANF or Family Medicaid assistance, or whose gross monthly income is not less than \$1,300.00 ~~\$1,000.00~~, a non-refundable fee of up to \$100.00 is required for review and modification pursuant to code section 19-11-12, payable upon completion of the review process, except in cases proceeding under UIFSA.

(2) A fee of \$15.00 shall be retained and deducted from any intercept of federal tax refunds, as required by federal law.

(3) A fee of \$12.00 shall be retained and deducted from any intercept of state tax refunds.

(4) Genetic testing ~~will often~~ may be utilized ~~as required by law in appropriate circumstances~~ to establish a putative parent's biological relationship to a child. The genetic testing fee will be based on the contracted rate at the time the test is administered. If the putative obligor is confirmed as a parent and paternity is established, the obligor is responsible for paying the genetic testing fee at the time the court or administrative tribunal enters an order. If the putative father is excluded as a possible parent then the person who named the putative father shall be liable to the department for reimbursement of the paternity testing fee.

(5) The Department shall charge a fee of up to \$10.00 for each certification

regarding entries on the putative father registry (see O.C.G.A. § 19-11-9(f)).

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(f.) An applicant for services who closes his/her case after a civil action has been initiated by the Department shall be responsible for reimbursing the Department for any court costs or service fees arising from said civil action for which the Department was required by law to pay.

AUTHORITY: O.C.G.A. §§ 19-6-33.1, 19-7-43, 19-11-6, 19-11-9.3, 19-11-12, 50-16-18.

290-7-1-.06 Periodic Review and Modification of Child Support Obligations

(b.) The Department may conduct periodic redeterminations and reinvestigations of the ability of the parent to furnish support upon the receipt of an application for services from written request of an obligor or obligee. An application for modification shall not be deemed to be received until the applicant submits all information required by the Department in the application packet. If either party requests redetermination under section 19-11-17, the party shall be informed that Georgia law has changed since section 19-11-17 was enacted and that, now, all redeterminations must proceed under section 19-11-12 and this Rule.

(c.) The Department shall notify the obligor and obligee of the opportunity for a review of their IV-D order at least once every three years in accordance with the provisions of O.C.G.A. § 19-11-12 and these regulations. The Department, either parent, a nonparent custodian may request a review of the IV-D order for potential modification at that time by submitting an application for review and modification. If no review is applied for requested in writing by any proper person, no action need be taken by the Department prior to the expiration of the next applicable review period unless the case involves the receipt of TANF benefits - such orders shall, as mandated by federal law, be subject to mandatory review every three years without request.

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(e.) When a review application is received is requested, the Department shall notify the obligee and the obligor(s) at least 30 days before the commencement of the review of

the time and place of the review unless notice is waived by the obligee and obligor(s). However, both the obligee and obligor(s) may be asked to submit necessary information during the aforementioned 30 day period. At the review, the child support guidelines codified at O.C.G.A. § 19-6-15 shall be used to determine the appropriate amount of the child support obligation under the facts existing at the time of review. In determining whether a change in circumstances exists necessitating modification of a IV-D order, the Department shall consider the following:

(1) The Department may seek an upward modification if the calculated support award is a 15% or greater increase than the current support award with a minimum \$ 25 per month increase. The Department may consider evidence that the obligor is underemployed or otherwise artificially suppressing income.

(2) The Department may seek a downward modification if the obligor is not underemployed and if the calculated support award would result in a 15% or greater decrease of the current support award with a minimum \$25 per month decrease. The Department may consider evidence that the (1) obligor is medically certified disabled to work and such condition is expected to continue one year or longer; or (2) the obligor has experienced an involuntary loss of income in accordance with O.C.G.A. § 19-6-15(j); or (3) the obligor has subsequently incurred an additional child support obligation.

(3) The Department may seek a modification requiring any obligor to procure health insurance for his/her child(ren) if health insurance is reasonably available to the obligor at reasonable cost. See O.C.G.A. §§ 19-6-15, 19-11-26. If the IV-D order does not provide for the payment of uninsured medical expenses, modification will be sought to provide for medical support payments as appropriate under the circumstances of the case.

290-7-1-.10 Issuance of Orders for Income Withholding.

(g) Employers

(1) An employer receiving an FIW may collect up to \$25 against the obligor's income to reimburse the employer for administrative costs for the first income deduction and up to \$3.00 for each deduction thereafter. The employer may not impose or deduct any other fee for complying with the FIW.

(2) Any payor subject to an FIW or Order to Withhold and Deliver may not discharge or terminate an obligor by reason of the fact that income has been subjected to income withholding. The Department is authorized to impose civil

penalties against any payor who violates this provision.

(3) Employers are hereby informed that an FIW has priority over all other legal processes under state law pertaining to the same income. Payment as required by the FIW is a complete defense by the payor against any claims of the obligor or his creditors as to the sum paid. *See* O.C.G.A. § 19-6-33(e)(9).

(4) The Department may issue the FIW electronically to those employers which have implemented electronic income withholding through the U.S. Department of Health & Human Services Office of Child Support Enforcement. Receipt of the electronic income withholding order constitutes receipt of all notices to payors required by code section 19-6-33.