**RULES**

**OF**

**DEPARTMENT OF HUMAN SERVICES**

**OFFICE OF CHILD SUPPORT RECOVERY**

**CHAPTER 290-7-1**

**RECOVERY AND ADMINISTRATION OF CHILD SUPPORT**

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## 290-7-1-.03 Definitions

(a) "Administrative Hearing" means the evidentiary hearing conducted by an administrative law judge ("ALJ") appointed by the Office of State Administrative Hearings ("OSAH") in accordance with these Rules, any rules promulgated by OSAH, and the statutory provisions of the Georgia Administrative Procedure Act.

(b) "Administrative Procedure Act" means that law codified at Official Code of Georgia sections 50-13-1 through ~~50-13-22~~ 50-13-23.

(c) "Arrearage" means an amount of money calculated by the Department or a court representing the total amount of support owed less the actual amount of support paid by an obligor. An obligor who is "in arrears" is subject to any administrative or civil enforcement action allowed by law.

(d) "Child support" means any periodic or lump-sum payment of cash as well as the duty to provide health insurance on behalf of a child or to pay for uninsured medical expenses of a child or any other obligation imposed or imposable under Georgia's child support guidelines (see O.C.G.A. § 19-6-15).

(e) "Child support obligation" means any obligation of support imposed or imposable by law, court or administrative order, decree or judgment or ~~final~~ administrative decision.

(f) "Consent agreement" means an agreement entered into between the Department and one or more obligors setting forth the obligor's child support obligation.

(g) "Consent order" means the order issued by the administrative law judge based on a signed consent agreement.

(h) "CSRA" refers to Georgia's "Child Support Recovery Act," codified at sections 19-11-1 through 19-11-39 of the Official Code of Georgia Annotated. The CSRA is the enabling legislation of the Department.

(i) "Department" means the division within the Georgia Department of Human Services which provides and administers child support services under the IV-D program.

(j) "Enforcement" refers to the entire array of administrative or civil actions available to the Department to collect child support or an arrearage from one or more obligors.

(k) "Enforcement deferral" is a non-contractual writing between the Department and the obligor providing that the Department shall voluntarily refrain from taking specified enforcement actions so long as the obligor is making payments in accordance with the schedule specified in the document.

(l) "Establishment" means the process, whether administrative or civil, of the determination of paternity and the duty of a parent or parents to pay child support.

~~(m) "Final administrative decision" means a decision of the Department for which all administrative appeal procedures have been exhausted or waived.~~

~~(n)~~(m) "FIW" means either an income deduction order issued by a court pursuant to O.C.G.A. § 19-6-30*et seq.* or an administrative order for income withholding issued by the Department pursuant to section 19-6-32. FIW is also an acronym for the federally-issued "Federal Income Withholding" form (OMB Form # 0970-0154) which must be utilized by all IV-D agencies.

~~(o)~~(n) "Foreign order" means an order issued by a court or an administrative entity located in a jurisdiction other than Georgia, including other countries if the United States government or Georgia has a reciprocity agreement with said country.

~~(p)~~(o) "IV-D order" means any order or judgment of a court of this state, any order or judgment of a court of another state or any administrative decision of this state issued under O.C.G.A. § 50-13-1*et seq.* or any final administrative decision or order of another state setting forth an obligation to pay child support if a proper person has either applied for services from the Department or has received public assistance.

~~(q)~~(p) "Modification" refers to either the administrative or civil process of reviewing a child support order and then seeking a court order adjusting the original child support order. Modification is triggered when a support order:

(1) provides for a support amount which is no longer consistent with the provisions of O.C.G.A. § 19-6-15; or,

(2) contains a legal defect of any sort which the Department deems necessary to correct to make an order fully enforceable under the laws of this state; or,

(3) requires the inclusion of medical support when available at reasonable cost. Review and modification may also be triggered by the mere passage of time if the obligee or child is receiving public assistance.

~~(r)~~(q) "Nonparent custodian" means, in accordance with O.C.G.A. § 19-6-15, an individual who has been granted legal custody of a child, or an individual who has a legal right to seek, modify, or enforce a child support order (such as a guardian or guardian ad

litem). Nonparent custodians are usually, but not always, a relative of the child such as a grandparent.

~~(s)~~(r) "O.C.G.A." refers to the Official Code of Georgia Annotated. The specific references to sections of O.C.G.A. in these rules are to those laws in effect at the time these rules were promulgated. If, at some later date, the O.C.G.A. is revised, then these rules are to be construed in accordance with current law. If O.C.G.A. section numbers are changed, the O.C.G.A. references herein shall refer to the then-applicable law.

~~(t)~~(s) "Obligee" means the person to whom a child support obligation is owed under any court order or administrative order for child support.

~~(u)~~(t) "Obligor" means the person who is responsible for paying a child support obligation under any court order or administrative order for child support.

~~(v)~~(u) "Putative obligor" means any person who is alleged to owe a duty to support a child or children.

~~(w)~~(v) "UIFSA" refers to the "Uniform Interstate Family Support Act," codified at sections 19-11-100 through 19-11-191 of the Official Code of Georgia Annotated.

~~(x)~~(w) "Underemployed" means either a complete failure to seek employment or the acceptance of employment at a level of compensation which does not reasonably reflect a person's earning potential or a refusal without good cause to accept employment which is otherwise reasonably available.

**Authority: O.C.G.A. Secs. 19-6-30, 19-6-31, 19-6-32, 19-6-33, 19-11-4, 19-11-24, 49-5-1, 50-3-1-et seq.**

**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, genetic testing will be required in any case in which paternity is at issue and paternity 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. The sworn statement is required by law, O.C.G.A. § 19-7-43. A defendant in a paternity case who fails to comply with the departmental genetic testing order 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. Genetic testing will 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.). 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. Neither the Department nor any contractor, vendor, or laboratory authorized to do testing for the Department may share the genetic material with any other person or agency, or use the genetic material for any purpose other than the determination of paternity. The contractor, vendor, or laboratory must agree to comply with terms and conditions set forth within a contract for services with the department including but not limited to liquidated damages due to the improper release, use, or failure to destroy information or materials associated with paternity testing services.

(c) 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) 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 pursuant to O.C.G.A. § 19-6-15(h)2(B)(iii) or available at reasonable cost pursuant to O.C.G.A. § 19-11-26. 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) 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).

(f) 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.

(g) 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.**

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

(a) Application Fees: all persons applying for services from the Department are required to pay a $25 application fee, or other amount as federally required, unless the applicant is currently receiving TANF or some other form of public assistance.

(b) FSR Fees: The Department controls the "family support registry," a central registry which operates on behalf of the department to receive, process, disburse, and maintain a record of all child support payments paid to the Department or paid pursuant to an income deduction order.

(1) The Department shall collect a fee of up to $30.00 for processing of insufficient funds checks.

(2) The Department shall collect an administrative fee of up to $2.00 per payment or 5 percent of each payment, whichever is the lesser.

(c) DRA Fees: The Department is required by the federal Deficit Reduction Act and state law to collect an annual fee from obligors. Such fee shall only apply to the obligor when no individual in the case has received assistance under a State TANF program, former State AFDC program and Tribal TANF program of the federal Social Security Act. The annual fee is ~~$25.00~~$35.00 for each case. The Department shall retain and collect this fee through income withholding or any other enforcement remedy available to the Department.

(d) Other Fees

(1) For any person not currently receiving TANF or Family Medicaid assistance, or whose gross monthly income is not less than an amount determined by the Department and set by policy based upon the current minimum wage, 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~~ $25.00 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 be utilized as required by law 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)).

(e) An applicant for services from the Department is not permitted to close his/her case if any fees required by this Rule remain unpaid.

(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.

(g) In any enforcement proceeding brought by the Department, should it prevail, the court may award the Department its reasonable attorney's fees and actual court costs.

(h) In the collection of overdue fees, the Department may utilize any collection mechanism existing within Title 19 of the Georgia Code, from either the obligee or the obligor. The Department is authorized to add an amount to any order for income withholding as needed to offset the total amount of fees owed under this Rule.

(i) In compliance with O.C.G.A. § 50-16-18, the Department has limited authority to "write off" any fees otherwise due under this Rule and zero out a fee account if, upon review by accounting personnel or by counsel, and subsequent certification by the Commissioner, the Department concludes that the account receivable is no more than $100 and that the account is uncollectible or that the cost of collecting on the fee account would likely equal or exceed the fee amount owed.

(j) Any person aggrieved by an effort of the Department to collect a fee under this Rule shall be entitled to an administrative hearing. 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.

**Authority: O.C.G.A. Secs. 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**

(a) This Rule applies to periodic redeterminations of support requested under sections 19-11-16 and 19-11-17 of the Georgia Code as well as review and modification under section 19-11-12 of the Georgia Code.

(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 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, 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.

(d) Where a child is born to an obligee and obligor who are already subject to a child support order being enforced by the Department, the procedures of this Rule may be utilized to add the child to the order by consent. If the obligor and obligee do not consent to adding the child to the order, the Department shall initiate a new civil action in superior court seeking to establish support for the new child and modifying the original order to add that child as a dependent covered by the order.

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

(4) The Department may seek a modification if, upon sentencing, the obligor will be incarcerated for more than 180 calendar days.

(f) After a review is conducted, the agency recommendation will be sent by first-class mail to the obligor and obligee at their last known addresses of a proposed adjustment or a determination that there should be no change in the child support award amount.

(g) In the case of an administrative support order, the Department shall file the agency recommendation with OSAH. If neither the obligor nor obligee objects to the agency recommendation in writing sent to the Department within 33 days of mailing of the agency recommendation, the ALJ shall, after being notified by the Department of the lack of objection, enter an order adopting the agency recommendation. If a written objection is received within the 33 day period following mailing of the agency recommendation, the ALJ shall schedule a hearing. The parties may, at any time following the filing, enter into a consent agreement to modify the support order.

(h) In the case of a judicial order, the Department shall file a petition with the court to adopt the agency recommendation contemporaneously with the mailing of the agency recommendation under paragraph (f). The petition shall be served upon the obligor and obligee in accordance with O.C.G.A. § 9-11-4. If no party files an objection with the clerk of court within 30 days from the date of service of the petition, the court shall issue an order adopting the agency recommendation. If any party files an objection within 30 days of having been served, the court shall schedule a de novo hearing. The parties may, at any time following filing of the petition, enter into a consent agreement to modify the support order.

(i) Any order, whether administrative or judicial, modified under this Rule shall also provide that medical insurance must be provided in accordance with O.C.G.A. § 19-6-15(h)2(B)(iii) and O.C.G.A. § 19-11-26.

(j) If arrears are owed by the obligor at the time of the review, the Department shall seek to have the amount of arrears established by the tribunal, along with a repay amount to be added as needed to pay off the arrearage. The repay amount is limited to a maximum of 20% of the support amount as modified.

(k) If the Department is hindered in its review of a IV-D order because it is unable to secure sufficient financial or other information necessary to complete the review from the applicant seeking modification, the Department may terminate the review due to lack of cooperation and no further action need be taken by the Department prior to the expiration of the next applicable review period. If any necessary party who is not the applicant for services fails or refuses to timely supply requested information, an administrative subpoena may be issued in accordance with O.C.G.A. §§ 19-11-11 and 31-5-4. In its discretion, the Department may temporarily halt the review and seek judicial enforcement of the administrative subpoena by the appropriate superior court.

(l) An administrative hearing and any appeal therefrom under this Rule shall be held in accordance with the procedures set forth at Rule 290-7-1-.19.

**Authority: O.C.G.A. Secs. 19-6-15, 19-11-12, 19-11-26, 50-13-13.**

**290-7-1-.19 Administrative Hearing Procedures**

(a) Under these Rules, administrative hearings before OSAH are available with regard to certain enforcement actions taken by or decisions made by the Department. The availability of an administrative hearing and the deadlines for seeking an administrative hearing are controlled by the specific Rule addressing the action in question.

(b) If an administrative hearing is available and is timely requested in accordance with the applicable Rule, the Department shall initiate an administrative hearing before OSAH by filing an "OSAH 1" form.

(c) An administrative law judge ("ALJ") shall be assigned by OSAH in accordance with OSAH rules or operating procedures.

(d) Any issue, procedure, process, or other matter related to administrative hearings that is not explicitly addressed in these Rules shall be controlled by the rules of OSAH.

(e) After the ALJ hears the evidence at hearing, the ALJ shall issue an administrative decision. The decision shall be deemed entered when it is filed with the Clerk of OSAH, and shall be mailed to all parties immediately upon entry.

~~(f) Within 30 days of the entry of an initial decision by the ALJ, any obligee or obligor may request that the initial decision be reviewed by the Commissioner of Human Services ("Commissioner") or his designee. The Commissioner or his designee shall have 30 days after receipt of this request to issue a final agency decision affirming, reversing, amending, or remanding an initial decision for the taking of additional evidence. The Commissioner or his designee may extend this period at his/her discretion and must notify the parties in writing of the extension.~~

~~(g) The Department may itself initiate review with the Commissioner or his designee without the request of any party if the Department believes the initial decision entered by the ALJ may be erroneous.~~

~~(h)~~(f) If no party or the Department seeks review of the decision, it becomes final 30 days after entry of the decision.

~~(i) Exhaustion of this administrative appeal process is required in order to seek judicial review in superior court under O.C.G.A. § 50-13-19.~~

~~(j)~~(g) If a party or the Department is aggrieved by the administrative ~~agency~~ decision and has exhausted his or her administrative remedies, the aggrieved party or the Department may file a petition for judicial review under O.C.G.A. § 50-13-19 in either the superior court of his/her county of residence or in the Superior Court of Fulton County, within 30 days of the entry of a decision by the ALJ. NOTE: the procedure is slightly different for appealing an administrative decision affirming a tax refund intercept based upon an existing civil support order - an appeal of that type of action must be filed in the court that issued or registered the underlying child support order. *See* O.C.G.A. § 19-11-18(e).

(h) The petition for judicial review must be served personally on the Commissioner in accordance with O.C.G.A. § 49-2-15, or service shall be deemed defective and the petition for judicial review may be subject to dismissal by the court.

~~(k)~~(i) As required by O.C.G.A. § 50-13-19, judicial review shall be conducted by the court without a jury and shall be confined to the record made before the agency in accordance with the Georgia Administrative Procedure Act. The Commissioner or his designee shall file the administrative record with the court within 30 days of the Commissioner being served with the petition for judicial review personally by second original as required by law. The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

~~(l)~~(j) Any appeal of the ~~Department's~~ administrative decision shall be limited solely to the issue of child support and shall exclude issues of visitation, custody, property settlement or other similar matters otherwise joinable by the parties.

~~(m)~~(k) Neither an ALJ nor a superior court may retroactively modify a child support order nor eliminate arrearages accrued under a valid child support order.

**Authority: O.C.G.A. Secs. 19-11-9.3(o), 19-11-24, 19-11-18.**