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ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR CHILD SUPPORT ENFORCEMENT**

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

MEMORANDUM

TO: The Office of the Secretary of State
Administrative Law Division

FROM: Heidi L. Talmage, Esquire
General Counsel

DATE:

SUBJECT: Brief Summary of Proposed Legislative Rule 97-8
=====

Pursuant to West Virginia Code § 48-8-105 (19), the Bureau for Child Support Enforcement is authorized to file rules to address issues related to the establishment of paternity, the establishment, modification, and enforcement of support obligations, and other issues required to maintain compliance with Federal IV-D requirements. This proposed Legislative Rule clarifies the bureau's role in the establishment of paternity, the establishment of support, the modification of support, and the establishment and enforcement of medical support.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: ESTABLISHMENT OF PATERNITY AND SUPPORT AND MODIFICATION OF SUPPORT OBLIGATIONS

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: THE BUREAU FOR CHILD SUPPORT ENFORCEMENT

Address: 350 CAPITOL STREET, ROOM 147
CHARLESTON, WV 25301-3703

Phone Number: 304-356-4730 Email: KIM.S.RIDER@WV.GOV

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This legislative rule outlines the steps Bureau staff must follow to redirect child support to the person who has physical custody of a child for whom there is a court order for support.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: _____

ESTABLISHMENT OF PATERNITY AND SUPPORT AND MODIFICATION OF SUPPORT
OBLIGATIONS

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

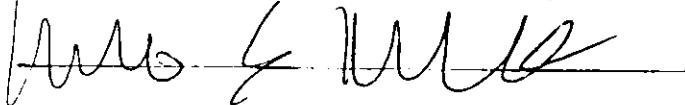
None anticipated, as this is merely placing the current Policy Manual into legislative Rule format in order to bring the Bureau into compliance.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 6/4/13

Signature of Agency Head or Authorized Representative



QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 25, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) THE BUREAU FOR CHILD SUPPORT ENFORCEMENT
350 CAPITOL STREET, ROOM 147
CHARLESTON, WV 25301-3703

LEGISLATIVE RULE TITLE: ESTABLISHMENT OF PATERNITY AND SUPPORT AND
MODIFICATION OF SUPPORT OBLIGATIONS

1. Authorizing statute(s) citation § 48-18-105 (19)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

KIM RIDER, ASSISTANT TO GENERAL COUNSEL
BUREAU FOR CHILD SUPPORT ENFORCEMENT
350 CAPITOL STREET, ROOM 147

CHARLESTON, WV 25301-3703

304-356-4730 - PHONE 304-558-4092 - FAX KIM.S.RIDER@WV.GOV

- g. IF DIFFERENT FROM ITEM 'F', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

HEIDI L. TALMAGE, ESQUIRE
GENERAL COUNSEL
BUREAU FOR CHILD SUPPORT ENFORCEMENT

350 CAPITOL STREET, ROOM 147

CHARLESTON, WV 25301-3703
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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

Title 97

Legislative Rules

The Bureau for Child Support Enforcement

Series 8

Establishment of Paternity and Support and Modification of Support Obligations

§ 97-8-1. General.

1.1. Scope. - This legislative rule clarifies the bureau's role in the establishment of paternity, and the establishment, the modification, and enforcement of support, including medical support.

1.2. Authority. - W. Va. Code § 48-18-105 (19).

1.3. Filing Date. - *June 25, 2013*

1.4. Effective Date. -

§ 97-8-2. Definitions.

2.1. Bureau. - The Bureau for Child Support Enforcement. The Bureau for Child Support Enforcement is established by W.Va. Code § 48-18-101 and is designated as the single state agency to fulfill the obligations of the State of West Virginia under Title IV-D of the Social Security Act. Pursuant to W. Va. Code § 48-18-122, the bureau operates the central state case registry.

2.2. Department. - The Department of Health and Human Resources. The Department of Health and Human Resources is established pursuant to W. Va. Code § 5F-1-2 and contains within it the Bureau for Child Support Enforcement.

2.3. Income withholding. - Pursuant to W. Va. Code § 48-14-105 and § 48-14-401, a method by which the bureau withholds monies from an obligor's income to be remitted to the bureau for the payment of the obligor's support obligations. An income withholding may be used to collect both current support and arrearages, if any are owed.

2.4. Insurance Exchange. A health insurance marketplace operated by an agency of state government, the federal government, or a partnership between state and federal government, designed to allow individuals and small business to compare health plans, determine eligibility for government health programs, determine eligibility for tax credits or subsidies, and enroll in an insurance plan.

2.5. Medical support. A specific type of support that obligates the parent or parents of a minor child to provide financial support for the provision of medical care for their minor child, or obligates a spouse or former spouse to provide financial support for the provision of medical care for a spouse or former spouse. The financial support may be in the form of a sum certain to be paid to the custodian of the child, spouse, or former spouse, an order to be financially responsible for specific medical expenses, an order to enroll a child, spouse or former spouse in an insurance plan, an order for premium payments, deductibles, or other methods of assigning responsibility that are within the discretion of the court.

2.6. National Medical Support Notice. Pursuant to 45 C.F.R. § 303.32, a federally-required form used to notify an obligor's employer and insurance plan administrator that the employee has been ordered to provide health insurance for a minor child.

2.7. Obligee. An individual or the estate of a decedent to whom a duty of support is owed or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered; or a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or an individual seeking a judgment determining parentage of the individual's child.

2.8. Obligor. - An individual or the estate of a decedent who owes or is alleged to owe a duty of support, or who is alleged, but has not been adjudicated to be a parent of a child, or who is liable under an order of support.

2.9. Order of Support. - A judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, or the support and maintenance of a spouse or former spouse, which provides for monetary support, health care, arrearage or reimbursements.

2.10. Support. - The payment of money, including interest, for a child or spouse, ordered by a court of competent jurisdiction or an administrative agency authorized to establish support obligations, whether the payment is ordered in an emergency, temporary, permanent or modified order, the amount of unpaid support shall bear simple interest from the date it accrued, at a rate of five percent per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time; or a payment, including interest, to third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile or payments for day care; or the payment of money, including interest, to a mother for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

§ 97-8-3. Paternity establishment methods.

3.1. Paternity may be established in one of three ways:

3.1.a. By the signing of a written voluntary acknowledgment form before a Notary Public by the parents of the child;

3.1.b. By an order of a court establishing a person as the father of a child; or

3.1.c. By the application of the legal presumption that a man who is the husband of a woman is the father of the child if he was married to the mother at the time that the mother conceives, at any time during the pregnancy, or at the time of birth, pursuant to W. Va. Code 16-5-10 (f).

§ 97-8-4. Civil actions by the bureau to establish paternity.

4.1. If the paternity of a child is not established presumptively by marriage or by the signing of a written voluntary affidavit, the bureau may file a civil action to obtain a determination of paternity. Such an action may be brought by the bureau if requested by any of the individuals listed in W. Va. Code § 48-24-101.

4.2. In a paternity action filed by the bureau, the bureau and its attorney represent the interests of the State and do not represent the interests of the child or any other party to the proceeding.

4.3. The bureau shall not file a paternity action in any case where the custodian of the child has previously established good cause for non-cooperation with the bureau pursuant to W. Va. 97CSR2.

4.4. The bureau shall not file an action to establish paternity of a child for whom there is already a legally-established father, except as set forth in W. Va. Code § 48-24-101(e) (2), et seq.

4.4.a. In circumstances where a married mother asserts that she has lived separate and apart from her husband continuously without cohabitation with her husband during the ten months immediately preceding the birth of the child, the bureau may bring a paternity action against a man who the mother believes is the father of the child. The husband, as the presumptive father of the child, shall also be served with notice of the filing of the proceeding.

4.4.b. The bureau shall seek to have a guardian ad litem appointed for the child in order to determine whether genetic testing is appropriate.

4.5. When a divorce decree is silent as to a child born during a lawful marriage, the silence does not constitute a disestablishment of paternity and does not negate or rebut

the legal presumption that the husband is the father of the child.

4.6. In any civil action filed to establish paternity for a child under the age of eighteen years, the bureau shall seek the establishment of child support, including medical support, an appropriate amendment to the child's birth certificate, and any other relief that the bureau and its attorney deem appropriate for the situation pursuant to W. Va. Code § 48-24-104.

4.7. In any civil action filed to establish paternity for a child over the age of eighteen years, the bureau shall not seek to establish an on-going child support obligation unless the child meets the criteria set forth in W. Va. Code § 48-11-103 or has been determined to have become permanently disabled prior to emancipation and is unable to provide his or her own support. The court, in its discretion, may award reimbursement child support for a period of time prior to the emancipation of the child pursuant to W. Va. Code § 48-24-104 (c).

§ 97-8-5. Death of a party prior to paternity establishment.

5.1. If the bureau is notified that either party to a paternity action or the minor child has died prior to paternity establishment or the taking of a genetic sample for paternity establishment testing, the bureau shall immediately contact the medical examiner, funeral home, hospital, or any other institution that may be in possession of the deceased individuals body, tissue, or blood and determine whether any tissue or blood exists from which a sample could be obtained;

5.2. If it is possible to obtain such a sample, the bureau shall obtain an order from the court or permission from the decedent's next of kin to use the sample for paternity establishment testing;

5.3. If the bureau is unable to obtain a sample appropriate for testing, the bureau may seek, either voluntarily or by court order, a sample from a close family member of the deceased.

§ 97-8-6. Genetic testing to aid in the determination of paternity.

6.1. In any case where the court orders genetic testing to aid in the determination of paternity or in a circumstance where an attorney of the bureau administratively orders the parties to submit to such testing, the bureau may arrange for the genetic sample to be collected by a contractor or by an employee of the bureau.

6.1.a. Whether performed by a contractor or by an employee of the bureau, the collection of the genetic sample shall conform to industry standards and shall preserve the accuracy of the chain of custody.

6.1.b. Any bureau attorney who signs an administrative order for the collection of a

genetic sample may not participate in the collection of the sample.

6.1.c. Any collection of a genetic sample made by an employee of the bureau shall be performed by the use of a buccal swab.

§ 97-8-7. Disestablishment of paternity.

7.1. Except as set forth in W. Va. Code § 48-24-101(e)(2), the bureau shall not seek to disestablish legally-established paternity. However, when ordered to participate in a proceeding seeking to disestablish paternity, the bureau shall comply with any orders of the court to provide genetic testing services, calculate support obligations, or provide any other services to the court and parties that fall within the powers and duties of the bureau.

§ 97-8-8. Civil actions to establish a support obligation.

8.1. In West Virginia, a support obligation may be established by a court of competent jurisdiction as a part of the following civil actions:

8.1.a. A proceeding to establish paternity filed pursuant to W. Va. Code § 48-24-101, et seq.;

8.1.b. A proceeding to establish a child support obligation filed pursuant to W. Va. Code § 48-11-101, et seq.;

8.1.c. A domestic violence proceeding filed pursuant to W. Va. Code § 48-27-101, et seq.;

8.1.d. A divorce proceeding filed pursuant to W. Va. Code § 48-5-101, et seq.;

8.1.e. An annulment proceeding filed pursuant to W. Va. Code § 48-3-101, et seq.;

8.1.f. A proceeding for separate maintenance filed pursuant to W. Va. Code § 48-4-101, et seq.;

8.1.g. A Uniform Interstate Family Support Act proceeding filed pursuant to W. Va. Code § 48-16-101, et seq.;

8.1.h. A juvenile proceeding filed pursuant to W. Va. Code § 49-5-1, et seq.; or

8.1.i. An abuse and neglect proceeding filed pursuant to W. Va. Code § 49-6-1, et seq.

8.2. In any proceeding where the paternity of a child, establishment or modification of child support, establishment or modification of medical support, establishment of reimbursement support or support arrearage is at issue, the bureau may request

permission from the court to intervene in the action to represent the interests of the state.

8.3. In any proceeding where the paternity of a child, establishment or modification of child support, establishment or modification of medical support, establishment of reimbursement support or support arrearage is at issue but the bureau has not intervened, if the court believes that the bureau has in its possession information needed by the court to arrive at a just decision, the court may request the assistance of the bureau for the limited purpose of providing information to the court.

8.4. In any proceeding where the establishment or modification of child support is an issue, the court shall calculate the child support amount pursuant to W. Va. Code § 48-13-101 et seq.

§ 97-8-9. Interpretation of orders of support.

9.1. When an order of support contains an internal date specifying the date that the support obligation shall begin or shall be modified, the bureau shall be bound by that date.

9.2. When an original order of support does not contain an internal date specifying the date that the support obligation shall begin, the bureau shall consider the first day of the support period in which the order was entered by the clerk of the court to be the beginning of the new support period. If the bureau cannot ascertain the date of the clerk's entry of the order, the bureau shall consider the first day of the support period in which the order was signed by the judge to be the beginning of the new support period.

9.3. When a modified order of support does not contain an internal date specifying the date that the support obligation shall be modified, the bureau shall consider the first day of the support period following the support period in which the order was entered by the clerk of the court to be the beginning of the new support period. If the bureau cannot ascertain the date of the clerk's entry of the order, the bureau shall consider the first day of the support period following the support period in which the order was signed by the judge to be the beginning of the new support period.

9.4. The law of the state that issued an order of support controls the determination of the age of majority, emancipation, or any other terms related to the termination of a support obligation.

9.5. If the parents of the child marry, and the child is residing in the household with the parents, any on-going child support obligation shall terminate upon the marriage of the parents. Any arrearage that may have accrued prior to the marriage of the parents shall continue to be valid and collectible.

9.6. If a case with a support order is dismissed by the court and the dismissal order does not specify how the support obligation shall be handled, the support obligation shall terminate on the last day of the support period in which the dismissal order is entered.

§ 97-8-10. Modification of child support.

10.1. An on-going child support obligation may be modified prospectively by order of a court of competent jurisdiction if a substantial change in circumstances occurs. The change may be related to any of the following circumstances:

10.1.a. A change in the income or financial circumstances of one of the parties;

10.1.b. A change in the needs of a child for whom support is paid;

10.1.c. A change in the residence of a child for whom support is paid.

10.2. There are several procedures that may be used to request a modification of a support amount.

10.2.a. The party requesting the modification may ask the bureau to initiate a review of the support amount;

10.2.b. The party may file a petition to modify with a court of competent jurisdiction, with or without the assistance of counsel;

10.2.c. The bureau may, on its own initiative, file a petition to modify a support obligation if the minor child resides in a household receiving cash public assistance benefits or if the bureau is notified that the obligor is receiving disability based income or is incarcerated; or

10.2.d. The party requesting modification may file an expedited modification petition with the court.

10.3. Once an installment of support becomes due and owing, it cannot be modified, except as set forth in Rule 23 of the Rules of Practice and Procedure for Family Court.

§ 97-8-11. Modification Review Conducted by the Bureau.

11.1. If a party to an order of support requests that the bureau review the current child support amount to determine if the current support obligation is appropriate, the party requesting the review shall supply to the bureau a true and accurate financial statement with documentation of income;

11.2. If the party is alleging that the modification is necessary because the minor child has changed residences, records documenting the change in the child's residence shall be provided;

11.3. If the party is alleging that the modification is necessary because of a change in the financial needs of the minor child, records documenting the need shall be provided.

11.4. Upon receipt of the documentation from the party requesting the review, the bureau shall contact the other party to the court order and shall provide the party with the opportunity to provide income information or any other type of information needed to evaluate the appropriateness of the current support obligation.

11.5. Pursuant to the terms contained in W. Va. Code § 48-18-204, the bureau shall also make available to the parties to the order an opportunity to meet informally with the bureau employee assigned to the case to explain the information supplied.

11.6. After providing both parties with the opportunity to supply appropriate information and after performing actions to independently verify the information supplied or obtaining additional information, the bureau employee assigned to the case shall calculate the support amount, using the formula contained in W. Va. Code § 48-13-101 et seq. If the non requesting party fails to respond, the bureau shall use the information available to it to determine the income of the party.

11.6.a. The new amount shall be compared to the current support obligation. The bureau shall file a petition with the court to request modification if the comparison shows that there is a substantial change in the support amount based upon the parties change in circumstances. W. Va. Code § 48-11-105 (b) defines a substantial change in circumstances as a fifteen percent (15%) difference between the amounts.

11.6.b. If the amount of the calculation varies by at least ten percent (10%) from the current support obligation, and the previous entry of an order of support occurred more than thirty-six months prior to the date of the review, the bureau shall file a petition with the court to request modification of the support obligation.

11.7. If the circumstances of the parties meet the statutory provisions for a change of circumstances, the bureau shall file the petition without regard to whether the support obligation increases or decreases.

11.8. If the threshold for the filing of the modification by the bureau is not met, the bureau shall notify the parties in writing of its decision not to file a petition to modify the obligation.

11.9. In any petition filed with the court to request modification of a support obligation, the bureau attorney assigned to the case shall represent the interests of the state and shall not represent the child or any individual party to the action.

11.10. In any hearing held to address the modification of the support amount, the bureau attorney assigned to the case shall also address the provision of medical support for the minor child.

§ 97-8-12. Petition to modify filed by a party.

12.1. Any party who believes that there has been a substantial change in income of one

of the parties or of the financial needs or living arrangements of the child for whom support is paid may file with the court a petition to request modification of the support obligation.

12.2. If any party to the case is receiving services from the bureau, the party filing the petition for modification shall serve a copy of the petition to modify on the bureau, in addition to the requirement to serve the other party.

12.3. If any party to the case is receiving services from the bureau, the party filing the petition for modification shall provide to the bureau a copy of any order resulting from the hearing on the petition to modify.

§ 97-8-13. Expedited modification of support.

13.1. W. Va. Code § 48-11-106 permits a party to a support order to ask that the court consider the petition for modification in an expedited manner if the substantial change in circumstances is one of the following situations:

13.1.a. A decrease in income due to loss of employment or other involuntary cause;

13.1.b. An increase in income due to promotion, change in employment, change in employment status, or re-employment; or

13.1.c. A party to the order is called to active military duty.

13.2. Because an expedited modification proceeding may result in the issuance of an order without a hearing being held, bureau attorneys shall not initiate an expedited modification proceeding, even if a case reviewed by the attorney may, in all other respects, qualify for the use of the expedited procedure.

13.3. If served with notice of the expedited proceeding, the bureau attorney assigned to the case may file a response if the bureau has information necessary to the just adjudication of the matter, but the bureau attorney shall request that the court schedule a hearing on the merits of the case.

§ 97-8-14. Overpayment of support as a result of a modification.

14.1. An order modifying a support obligation may be made effective retroactively pursuant to the terms of Rule 23 of the Rules of Practice and Procedure for Family Court. If this occurs and the support for the period of time while the petition for modification was pending has already been collected and disbursed to the obligee, the obligee may have received more money than he or she was entitled to receive pursuant to the new order of support.

14.2. If the court addresses the overpayment situation in its order, the bureau shall follow the direction of the court. If the court does not address the overpayment in its order, the

bureau shall determine if there exists any arrearage owed by the payor against which the overpayment can be offset. If such an arrearage exists, the bureau shall offset the overpayment against the arrearage to the extent possible.

14.3. The bureau is not responsible for refunding an overpayment to the payor unless the funds remain in the possession of the department. If the funds have been released to the support obligee prior to the bureau receiving a copy of the court's order, the bureau shall repay the funds to the payor only after the funds are received by the bureau from the obligee.

14.4. If ordered by the court to initiate, the bureau may direct a notice of income withholding to a source of income for the support obligee to collect an overpayment.

14.4.a. Such a withholding may only occur upon an order of a court when the court finds that the following circumstances exist:

14.4.a.1. The overpayment occurred due to a downward modification of a support obligation; and

14.4.a.2. The obligee has sufficient income from sources other than the child support to be able to support the minor child.

§ 97-8-15. Requirement to establish medical support.

15.1. W. Va. Code § 48-12-102 requires that the medical support of a minor child be addressed in every action to establish or modify an order of support. Methods to address medical support include:

15.1.a. An order directed to one or both of the parties to enroll the child or maintain enrollment of the child in a medical insurance plan, including plans for which the parents may be entitled to join or a new plan purchased for the benefit of the child;

15.1.b. An order for a party or parties to pay a recurring sum specifically designated as a medical support obligation; or

15.1.c. An order directing the parties to pay deductibles, co-payments and other medical expenses not covered by insurance.

§ 97-8-16. Enrollment in a medical insurance plan provided through a parents employment.

16.1. Upon receipt of an order requiring a party to enroll a child in medical insurance coverage provided through a parent's employment, the bureau shall issue a National Medical Support Notice (NMSN) to the employer and a Notice of Intent to the parent. The Notice of Intent shall advise the parent that the NMSN has been initiated and shall include

the method available to contest the enrollment.

16.1.a. An obligor may contest in writing the withholding of the premiums for the insurance if there is a mistake of fact.

16.1.b. If such a contest is received by the bureau, the bureau shall immediately schedule an Informal Conference with the obligor.

16.1.c. If the matter is not settled in the Informal Conference, the bureau attorney assigned to the case shall immediately file an appropriate petition with the court of competent jurisdiction and bring the matter on for hearing.

16.2. Any additional premium amount required to be withheld from the employees pay is subject to the limitations contained in 16 U.S.C. 1673 (b), and the employer shall be responsible for ensuring that this limitation is observed.

16.3. If the employer is unable to enroll the child in the insurance due to the limitation on the ability to withhold the premium amount, the employer shall notify the bureau immediately.

16.4. If there is more than one plan of insurance available through the parent's employment, the plan administrator shall provide information about the available plans to the bureau within forty (40) days of receipt of the NMSN.

16.5. The bureau shall attempt to engage the child's caretaker in the discussion of the options available and shall select the caretaker's preferred option, unless the bureau employee assigned to the case finds that the preferred option is unaffordable, given the income of the obligor and the limitations contained in W. Va. Code § 48-12-102, or will not provide reasonable access to medical care for the child, as that term is defined in W. Va. Code § 48-12-101.

16.5.a. If the child's caretaker does not participate in the discussion or declines to make a selection, the bureau employee assigned to the case shall consider affordability, accessibility, scope of coverage, and any special needs of the minor child, and shall make the selection of the plan.

§ 97-8-17. Enrollment in a medical insurance plan not provided through a parents employment.

17.1. If the court orders a parent to provide medical insurance purchased through the Insurance Exchange, the bureau employee assigned to the case shall provide contact information to the parent for the Exchange.

17.2. The bureau employee assigned to the case shall verify the enrollment of the child in the insurance plan, once the parent or caretaker has made the selection.

§ 97-8-18. Cash medical support.

18.1. Medical support which is expressed as a specific dollar amount to be paid on a periodic basis is a form of child support that is subject to collection by income withholding or any other remedy available for the collection of support. Cash medical support is subject to the limitations contained in W. Va. Code § 48-12-102.

18.2. Interest shall accrue on unpaid cash medical support in the same manner as it accrues on unpaid child support.

§ 97-8-19. Priority of support.

19.1. The collection of child support due in the month in which it is collected is the highest priority. All collections received by the bureau shall be allocated and distributed pursuant to 45 C.F.R § 302.51 and the attached chart.

19.2. If the employer notifies the bureau that the employer is unable to withhold a sufficient sum to pay both the current child support obligation and the premium due for court-ordered insurance coverage provided through the employer, the bureau shall petition the court for a review and modification of the medical support provisions of the previous order.

§ 97-8-20. Enforcement of the payment of medical expenses not covered by insurance.

20.1. When the obligor has been ordered to pay a percentage of medical bills, co-payments, deductibles or other items not covered by medical insurance, the bureau may seek enforcement through any legal method under the following circumstances:

20.1.a. If there is insurance coverage for the item, after the insurance has settled their portion of the claim;

20.1.b. The amount of the unpaid or unreimbursed items is equal to or greater than one hundred dollars (\$100.00); and

20.1.c. The items have been unpaid or unreimbursed for a period of time equal to or greater than six (6) months.

20.1.c.1. The bureau attorney assigned to the case has the authority to waive the period of time expressed in 20.1.c. if it is determined by the attorney that legal action by the medical services provider against the caretaker is imminent or if the caretaker's financial situation is imperiled by the obligor's non-compliance with the provisions of the order.

20.2. When reduced to a judgment, a judgment for unpaid medical expenses shall accrue interest at the same rate as any other unpaid child support.

TABLE OF CONTENTS

97 CSR 8

Attachment A	-	45 C.F.R. § 302.51 - Distribution of support collections.
Attachment B	-	45 C.F.R. § 303.32 - National Medical Support Notice



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*** This section is current through the May 9, 2013 ***

*** issue of the Federal Register ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER III -- OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT
PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND
HUMAN SERVICES
PART 302 -- STATE PLAN REQUIREMENTS

[Go to the CFR Archive Directory](#)

45 CFR 302.51

§ 302.51 Distribution of support collections

The State plan shall provide as follows:

(a)(1) For purposes of distribution in a IV-D case, amounts collected, except as provided under paragraphs (a)(3) and (5) of this section, shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months.

(2) In title IV-A and title IV-E foster care cases in which conversion to a monthly amount is necessary because support is ordered to be paid other than monthly, the IV-D agency may round off the converted amount to whole dollar amount for the purpose of distribution under this section and § 302.52 of this part.

(3)(i) Except as provided in paragraph (a)(3)(ii), amounts collected through Federal tax refund offset must be distributed as arrearages in accordance with § 303.72 of this chapter, and section 457 of the Act.

(ii) Effective October 1, 2009, or up to a year earlier at State option, amounts collected through Federal tax refund offset shall be distributed in accordance with § 303.72 of this chapter and the option selected under section 454(34) of the Act.

(4)(i) Effective October 1, 1998 (or October 1, 1999 if applicable) except with respect to those collections addressed under paragraph (a)(3) of this section and except as specified under paragraph (a)(4)(ii) of this section, with

respect to amounts collected and distributed under title IV-D of the Act, the date of collection for distribution purposes in all IV-D cases is the date of receipt in the State disbursement unit established under section 454B of the Act.

(ii) If current support is withheld by an employer in the month when due, and received by the State in a month other than the month when due, the date of withholding may be deemed to be the date of collection.

(iii) When the date of collection pursuant to this subparagraph is deemed to be the date the wage or other income was withheld, and the employer fails to report the date of withholding, the IV-D agency must reconstruct that date by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order.

(5)(i) Except as provided in paragraph (a)(5)(ii), a State must pay to a family that has never received assistance under a program funded or approved under title IV-A or foster care under title IV-E of the Act and to an individual who is not required to cooperate with the IV-D program as a condition of Food Stamp eligibility as defined at § 273.11(o) and (p) of title 7 the portion of the amount collected that remains after withholding any annual \$ 25 fee that the State imposes under § 302.33(c) of this part.

(ii) If a State charges the noncustodial parent the annual \$ 25 fee under § 302.33(c) of this part, the State may retain the \$ 25 fee from the support collected after current support and any payment on arrearages for the month under a court or administrative order have been disbursed to the family provided the noncustodial parent is not required to cooperate with the IV-D program as a condition of Food Stamp eligibility as defined at § 273.11(o) and (p) of title 7.

(b) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to such future months. However, no such amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under section 403(a)(8) of the Act for the current month and all past months.

(c)(1) The amounts collected by the IV-D agency which represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the State under *42 CFR 433.146* shall be forwarded to the Medicaid agency for distribution under *42 CFR 433.154*.

(2) When a family ceases receiving assistance under the State's title XIX plan, the assignment of medical support rights under section 1912 of the Act terminates, except for the amount of any unpaid medical support obligation that has accrued under such assignment. The IV-D agency shall attempt to collect any unpaid specific dollar amounts designated in the support order for medical purposes. Under this requirement, any medical support collection made by the IV-D agency under this paragraph shall be forwarded to the Medicaid agency for distribution under *42 CFR 433.154*.

HISTORY: [40 FR 27159, June 26, 1975, as amended at 47 FR 37889, Aug. 27, 1982; 47 FR 57281, Dec. 23, 1982; 49 FR 35605, Sept. 10, 1984; 50 FR 19648, May 9, 1985; 50 FR 31719, Aug. 6, 1985; 51 FR 37731, Oct. 24, 1986; 53 FR 21644, June 9, 1988; 54 FR 32309, Aug. 4, 1989; 54 FR 32309, Aug. 4, 1989; 56 FR 8004, Feb. 26, 1991; 56 FR 22353, May 15, 1991; 64 FR 6237, 6248, Feb. 9, 1999, as confirmed and amended at 68 FR 25293, 25303, May 12, 2003; 73 FR 74898, 74920, Dec. 9, 2008]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

NOTES: [EFFECTIVE DATE NOTE: 73 FR 74898, 74920, Dec. 9, 2008, amended this section, effective Feb. 9, 2009.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: Nomenclature changes to Chapter III appear at 66 FR 39450, 39452, July 31, 2001.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: Nomenclature changes to part 302 appear at 64 FR 6237, 6247, Feb. 9, 1999.]

NOTES TO DECISIONS: COURT AND ADMINISTRATIVE DECISIONS SIGNIFICANTLY DISCUSSING SECTION —

Lanzyer v Valdez (1990, DC NM) 763 F Supp 1562

Desrochers v Desrochers (2002) 173 Vt 312, 795 A2d 1171

LexisNexis (R) Notes:

CASE NOTES

CASE NOTES Applicable to entire Part:Part Note

King v. Wright, 1995 U.S. Dist. LEXIS 12138 (ND Ill Aug. 18, 1995).

Overview: *Class of clients of Child Enforcement Act (Act) had enforceable rights and standing to have pursued action to enforce state officials who oversaw and administered child support enforcement program to comply with statutory requirements of the Act.*

- Support payments collected by Department of Child Support Enforcement (DCSE) are distributed to clients in the following manner. Title IV-D clients who are not receiving Aid to Families with Dependent Children (AFDC) benefits receive the full payment. 42 U.S.C.S. § 657(c); 45 C.F.R. § 302.51(e). Title IV-D clients receiving AFDC benefits are entitled to a "pass-through" of the first \$ 50 of each timely monthly payment. 42 U.S.C.S. §§ 657(b)(1), 692(a)(8)(A)(vi); 45 C.F.R. § 302.51(b)(1). The Illinois Department of Public Aid retains the remainder of the monthly payment to reimburse AFDC for benefits distributed to the client presently or in the past. 42 U.S.C.S. § 657(b)(2); 45 C.F.R. § 302.51(b)(2). If the monthly payment minus the \$ 50 pass-through exceeds the amount of the total monthly AFDC benefit, the client also receives the excess amount. 42 U.S.C.S. § 657(b)(3); 45 C.F.R. § 302.51(b)(3). However,

DCSE may retain the excess amount to reimburse AFDC funds paid to the client in the past. 42 U.S.C.S. § 657(b)(4); 45 C.F.R. § 302.51(b)(4), (b)(5). Go To Headnote

Hornbeck v. Caplinger, 712 S.E.2d 779, 2011 W. Va. LEXIS 44 (W Va June 14, 2011).

Overview: The Bureau of Child Support Enforcement's rule allocating excess child support payments first to overdue principal before allocating them to interest on the overdue principal was upheld because the rule was within the agency's authority under W. Va. Code § 48-18-105 (2003), as it closely adhered to a legislative purpose for child support payments.

- When allocating child support payments, 45 C.F.R. § 302.51 requires that current support be paid first. There is no federal requirement regarding interest on support payments, and the matter of interest accrual and distribution of payments to interest is completely subject to the law of each state. Go To Headnote

Barnes v. Healy, 980 F.2d 572, 1992 U.S. App. LEXIS 30913 (9th Cir Nov. 25, 1992).

Overview: Scope of preliminary injunction was improperly defined because it did not require that the notice of annual child support disbursements given to custodial parents had to specify a federally defined collection date.

- Except for tax refund intercepts, any money collected during a month is treated as payment of the support obligation for that month, up to the court-ordered amount of current support. 45 C.F.R. § 302.51(a)(1) (1991). The state may retain the remainder as reimbursement for past Aid to Families with Dependent Children payments. 45 C.F.R. § 302.51(b)(2) (1991). Go To Headnote

State by & Through Dep't of Social Servs. v. Succi, 924 P.2d 882, 1996 Utah LEXIS 84 (Utah Sept. 24, 1996).

Overview: Custodial parents' assignments of past due child support to a private collection agency were valid.

- Utah Code Ann. § 62A-9-121(1)(a) provides that the department of human services shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The requirement of an assignment is further subject to the limitations of 45 C.F.R. § 302.51(f), which provides that an approved state plan for the implementation of the Aid to Families with Dependent Children (AFDC) program shall contain the requirement that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. Go To Headnote

King v. Wright, 1995 U.S. Dist. LEXIS 12138 (ND Ill Aug. 18, 1995).

Overview: Class of clients of Child Enforcement Act (Act) had enforceable rights and standing to have pursued action to enforce state officials who oversaw and administered child support enforcement program to comply with statutory requirements of the Act.

- Support payments collected by Department of Child Support Enforcement (DCSE) are distributed to clients in the following manner. Title IV-D clients who are not receiving Aid to Families with Dependent Children (AFDC) benefits receive the full payment. 42 U.S.C.S. § 657(c); 45 C.F.R. § 302.51(e). Title IV-D clients receiving AFDC benefits are entitled to a "pass-through" of the first \$ 50 of each timely monthly payment. 42 U.S.C.S. §§ 657(b)(1), 692(a)(8)(A)(vi); 45 C.F.R. § 302.51(b)(1). The Illinois Department of Public Aid retains the remainder of the monthly payment to reimburse AFDC for benefits

45 CFR 302.51

distributed to the client presently or in the past. 42 U.S.C.S. § 657(b)(2); 45 C.F.R. § 302.51(b)(2). If the monthly payment minus the \$ 50 pass-through exceeds the amount of the total monthly AFDC benefit, the client also receives the excess amount. 42 U.S.C.S. § 657(b)(3); 45 C.F.R. § 302.51(b)(3). However, DCSE may retain the excess amount to reimburse AFDC funds paid to the client in the past. 42 U.S.C.S. § 657(b)(4); 45 C.F.R. § 302.51(b)(4), (b)(5). Go To Headnote

Barnes v. Healy, 980 F.2d 572, 1992 U.S. App. LEXIS 30913 (9th Cir Nov. 25, 1992).

Overview: Scope of preliminary injunction was improperly defined because it did not require that the notice of annual child support disbursements given to custodial parents had to specify a federally defined collection date.

- Except for tax refund intercepts, any money collected during a month is treated as payment of the support obligation for that month, up to the court-ordered amount of current support. 45 C.F.R. § 302.51(a)(1) (1991). The state may retain the remainder as reimbursement for past Aid to Families with Dependent Children payments. 45 C.F.R. § 302.51(b)(2) (1991). Go To Headnote

Hill v. Iharra, 954 F.2d 1516, 1992 U.S. App. LEXIS 920 (10th Cir Jan. 28, 1992).

Overview: Grant of summary judgment was proper because recipient did not have a priority interest in monies collected by department of social services pursuant to a judgment department obtained because she failed to authorize department to take such action.

- The cited provisions that require priority to be given to collection of current monthly child support payments, 42 U.S.C.S. § 654(11) and 45 C.F.R. 302.51(a), apply to situations where the state is collecting such support on behalf of a welfare recipient, not where it is simply collecting on its own judgment for arrearages. And, 42 U.S.C.S. § 657(c)(2) applies to situations where a former Aid to Families with Dependent Children recipient has authorized a state Title IV-D agency to continue to collect current child support. Go To Headnote

Kenyon v. Sullivan, 761 F. Supp. 951, 1991 U.S. Dist. LEXIS 5121 (D RI Apr. 10, 1991).

Overview: A class of public aid recipients successfully challenged the state's method of distributing pass-through payments from the child support received by the state on behalf of the public aid recipients.

- The Secretary of the United States Department of Health and Human Services modified 45 C.F.R. § 302.51(a), effective June 9, 1988, to state that the date of collection shall be the date on which that payment is received by the Child Support Enforcement Program, of the Social Security Act Title IV-D agency or the legal entity of any state or political subdivision actually making the collection, whichever is earliest. This amendment means that in cases of interstate collection, the support payment shall be deemed made when received by the state responsible for collecting payment, not, as was the case previously, when received by the state in which the recipient resided. Go To Headnote

Beasley v. Ginsberg, 1989 U.S. Dist. LEXIS 16682 (D Conn Oct. 3, 1989).

Overview: State and federal regulations improperly implemented the child support "pass-through" provisions of the Social Security Act by placing the burden on AFDC recipients to prove when child support was paid.

- To the extent 45 C.F.R. § 302.51 limits the Title IV-D agency's obligation to pay only one "pass-through" payment in a month in which two or more support payments are collected by the home state, it is in violation of 42 U.S.C.S. § 657(b)(1). A support payment made within a given month, but not forwarded to the State Department of Administrative Services (Connecticut) in the same month because

45 CFR 302.51

of bureaucratic or postal delays is certainly no basis to penalize the Aid to Families with Dependent Children family. No rational purpose is served by denying child support to a needy family because the state itself has not promptly entered the money into its books. Go To Headnote

Mosley v. Bowen, 703 F. Supp. 1288, 1989 U.S. Dist. LEXIS 311 (SD Ohio Jan. 6, 1989).

Overview: Regulations promulgated by Secretary of United States Department of Health and Human Services limiting AFDC recipient to one pass-through payment per month and only when support payment was received in month when due, violated Social Security Act.

- 45 C.F.R. § 302.51(a) provides that the date of collection of child support payments is the date the support payment is received by an authorized Title IV-D agency or legal entity of the state or other political subdivision actually making the collection, whichever is earlier. 53 Fed. Reg. 21,642 (June 9, 1988). Go To Headnote

Hornbeck v. Caplinger, 712 S.E.2d 779, 2011 W. Va. LEXIS 44 (W Va June 14, 2011).

Overview: The Bureau of Child Support Enforcement's rule allocating excess child support payments first to overdue principal before allocating them to interest on the overdue principal was upheld because the rule was within the agency's authority under W. Va. Code § 48-18-105 (2003), as it closely adhered to a legislative purpose for child support payments.

- When allocating child support payments, 45 C.F.R. § 302.51 requires that current support be paid first. There is no federal requirement regarding interest on support payments, and the matter of interest accrual and distribution of payments to interest is completely subject to the law of each state. Go To Headnote

State by & Through Dep't of Social Servs. v. Succi, 924 P.2d 882, 1996 Utah LEXIS 84 (Utah Sept. 24, 1996).

Overview: Custodial parents' assignments of past due child support to a private collection agency were valid.

- As a condition of eligibility for assistance, each applicant for or recipient of Aid to Families with Dependent Children (AFDC) shall assign to the state any rights to support which have accrued at the time such assignment is executed. Utah has complied with and codified this requirement in Utah Code Ann. § 62A-9-121(1)(a) which provides that the department shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The federal regulations governing AFDC further provide that a state plan for the administration of AFDC shall provide that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. 45 C.F.R. § 302.51(f). Go To Headnote
- 45 C.F.R. § 232.11 states that to receive AFDC payments, the applicant must assign to the state any past-due support that has accrued up to the time the assignment is made. Even if the language of § 232.11 were subject to more than one interpretation, 45 C.F.R. § 302.51(f) clearly states that the assignment under 45 C.F.R. § 232.11, whatever its scope may be, terminates when a family ceases receiving public assistance, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. Go To Headnote

Barnes v. Healy, 980 F.2d 572, 1992 U.S. App. LEXIS 30913 (9th Cir Nov. 25, 1992).

Overview: Scope of preliminary injunction was improperly defined because it did not require that the notice of annual child support disbursements given to custodial parents had to specify a federally defined collection date.

- Custodial parents who receive Aid to Families with Dependent Children are entitled to receive the first \$ 50 of any support payment collected in the month when due, even if the Title IV-D of the Social Security Act agency's receipt of the funds is delayed. 45 C.F.R. § 302.51(b)(1) (1991). Go To Headnote
- The California Department of Social Services is required by law to determine the federally defined date of collection for its own use in distributing payments. 45 C.F.R. § 302.51(a)(4) (1991). Go To Headnote

Comm'r of Soc. Servs. Ex Rel. Wandel v. Segarra, 78 N.Y.2d 220, 78 N.Y.2d 220, 1991 N.Y. LEXIS 1011 (NY July 2, 1991).

Overview: *In the Commissioner's action for child support, it was held that a father's financial resources were a relevant factor in determining the amount owed, and the amount of support was not limited to the amount of public assistance the child received.*

- The 1975 amendments to the Federal Aid to Families with Dependent Children Act, 42 U.S.C.S. § 602(a)(26)(A), includes a scheme for the distribution of court-ordered support collected on behalf of Aid to Families with Dependent Children (AFDC) recipients. The scheme provides for reimbursement to the states for past, as well as present, AFDC payments. This distribution scheme is adopted in the New York State regulations, 18 N.Y. C.R.R. 347.13, and contemplates that all assigned support payments be paid directly to the Commissioner of Social Services. 45 C.F.R. 302.32; 18 N.Y. C.R.R. 347.12(a). The Commissioner must then determine if the current support payment makes the family ineligible for AFDC, 45 C.F.R. 232.20, 302.32(b); 18 N.Y. C.R.R. 347.12(b) and if so, the Commissioner's assignment terminates, except to the extent of unpaid support obligations that have accrued under such assignment, 45 C.F.R. 302.51(f); 18 N.Y. C.R.R. 347.13(f). Go To Headnote
- Both federal and state regulations provide for the distribution of support collected on behalf of an Aid to Families with Dependent Children (AFDC) recipient in excess of an AFDC grant. The regulations establish a tiered distribution scheme, 42 U.S.C.S. §§ 657(b)(1)-(4); 45 C.F.R. 302.51(b)(1)-(5); 18 N.Y. C.R.R. 347.13(b)(2)-(4), pursuant to which the first \$ 50 of monthly support collected pursuant to a court order is distributed to the family and is disregarded as income. If the amount collected exceeds \$ 50, the state is entitled to retain, as reimbursement, an amount equal to that month's assistance payment. Any amount collected in excess of that month's assistance payment is paid to the family to the limit of the amount required by the court order, and if any amount is collected in excess of the amount required to be paid by court order, it is applied to reimburse the state for past assistance payments made to that recipient. Once the state is reimbursed for AFDC assistance payments, any excess remaining is paid to the subject family. Go To Headnote

Hull v. State Dep't of Public Welfare, 515 So. 2d 1205, 1987 Miss. LEXIS 2930 (Miss Nov. 25, 1987).

Overview: *The Department of Public Welfare, by virtue of having provided public assistance benefits for minor children, was empowered to bring suit against the non-supporting parent who had failed to comply with a previous order of support.*

- 45 C.F.R. 302.51(f) (1986 Add.) states that when a family ceases receiving assistance under the state's Title IV-A Plan, the assignment of support rights under 45 C.F.R. § 232.11 of this title terminates, except with respect to the amount of any unpaid support obligation that accrued under such assignment. From this accrued amount, the IV-D Agency shall attempt to collect such unpaid obligations. Under this regulation: such collection shall be used to reimburse any amounts of past assistance which have not been reimbursed. Only amounts collected pursuant to this paragraph which exceed the amount of unreimbursed past assistance shall be paid to the family. Go To Headnote

Beasley v. Harris, 671 F. Supp. 911, 1987 U.S. Dist. LEXIS 9258 (D Conn Oct. 14, 1987).

Overview: In action by aid recipients protesting state agencies' handling of "pass through" payments of child support, court declined to dismiss all but one of recipient's claims, found that agencies did not have immunity, and provisionally certified a class.

- 45 C.F.R. § 302.51, to the extent it limits a Title IV-D agency's obligation to pay only one pass-through payment in a month where two or more support payments are collected by the home state, is invalid. Go To Headnote

Greene v. Iowa Dist. Court, 312 N.W.2d 915, 1981 Iowa Sup. LEXIS 1080 (Iowa Nov. 25, 1981).

Overview: When the parties to a dissolution action remarry, the remarriage did not nullify the enforceability of an order that was valid when entered, and the district court had jurisdiction to enforce back child support award.

- When a family ceases receiving assistance the assignment of support rights terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. From this accrued amount, the state agency shall attempt to collect such unpaid obligation (1) Such collections shall be used to reimburse any amounts of past assistance which have not been reimbursed. 45 C.F.R. § 302.51(f)(1) (1980). Go To Headnote

Levesque v. Sheehan, 821 F. Supp. 779, 1993 U.S. Dist. LEXIS 6693 (D Me May 12, 1993).

Overview: Because pass-through child support payments were welfare benefits and did not constitute property, there was no taking of a welfare recipient's property in violation of the Takings Clause of the Fifth Amendment.

- Federal regulations interpreting 42 U.S.C.S. § 657(b)(1) provide that except for specifically enumerated situations: (i) Effective June 9, 1988, the date of collection for distribution purposes in all IV-D cases shall be the date on which the payment is received by the IV-D agency or the legal entity of any state or political subdivision actually making the collection, whichever is earliest; and (ii) Effective January 1, 1989, a state may use on a statewide basis either the definition of the date of collection in 45 C.F.R. § 302.51(a)(5)(i) or the date the payment is mailed, as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier, as the date of collection in all IV-D cases. 45 C.F.R. § 302.51(a)(5)(i) and (ii). Another subsection of this regulation requires that the date of collection of child support payments made by withholding from wages or other income must be the date the wages or other income are withheld to meet the support obligation. 45 C.F.R. § 302.51(a)(4). Go To Headnote

Hill v. Ibarra, 954 F.2d 1516, 1992 U.S. App. LEXIS 920 (10th Cir Jan. 28, 1992).

Overview: Grant of summary judgment was proper because recipient did not have a priority interest in monies collected by department of social services pursuant to a judgment department obtained because she failed to authorize department to take such action.

- The cited provisions that require priority to be given to collection of current monthly child support payments, 42 U.S.C.S. § 654(11) and 45 C.F.R. 302.51(a), apply to situations where the state is collecting such support on behalf of a welfare recipient, not where it is simply collecting on its own judgment for arrearages. And, 42 U.S.C.S. § 657(c)(2) applies to situations where a former Aid to Families with Dependent Children recipient has authorized a state Title IV-D agency to continue to collect current child support. Go To Headnote

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Overview: *In the Commissioner's action for child support, it was held that a father's financial resources were a relevant factor in determining the amount owed, and the amount of support was not limited to the amount of public assistance the child received.*

- The 1975 amendments to the Federal Aid to Families with Dependent Children Act, 42 U.S.C.S. § 602(a)(26)(A), includes a scheme for the distribution of court-ordered support collected on behalf of Aid to Families with Dependent Children (AFDC) recipients. The scheme provides for reimbursement to the states for past, as well as present, AFDC payments. This distribution scheme is adopted in the New York State regulations, 18 N.Y. C.R.R. 347.13, and contemplates that all assigned support payments be paid directly to the Commissioner of Social Services, 45 C.F.R. 302.32; 18 N.Y. C.R.R. 347.12(a). The Commissioner must then determine if the current support payment makes the family ineligible for AFDC, 45 C.F.R. 232.20, 302.32(b); 18 N.Y. C.R.R. 347.12(b) and if so, the Commissioner's assignment terminates, except to the extent of unpaid support obligations that have accrued under such assignment, 45 C.F.R. 302.51(f); 18 N.Y. C.R.R. 347.13(f). Go To Headnote

Schwendeman v. Ives, 1990 U.S. App. LEXIS 20425 (1st Cir Nov. 7, 1990).

Overview: *Judgment for Commissioner of the Maine Department of Human Services and the Secretary of Health and Human Services was proper in action by families for declaration to invalidate 45 C.F.R. § 302.51(b)(1) because 42 U.S.C.S. § 657(b)(1) was facially unclear as to whether more than one \$ 50 pass-through payment was called for under the circumstances.*

- Under 45 C.F.R. § 302.51(b)(1), the state pays only one \$ 50 monthly child support pass-through payment to each Aid to Families with Dependent Children household notwithstanding the state's receipt of child support payments from more than one parent for the same household. Go To Headnote

Luyando v. Grinker, 8 F.3d 948, 1993 U.S. App. LEXIS 28859 (2d Cir Nov. 3, 1993).

Overview: *Decision invalidating regulation governing pass-through benefits under Aid to Families with Dependent Children program was reversed because Secretary of Health and Human Services' interpretation of statute was not impermissible.*

- Under 45 C.F.R. pt. 302.51(b)(1), the family receives the \$ 50 pass-through only if the state receives the payment in the month it is due. N.Y. Comp. R. & Regs. tit. 18, § 352.15(a) (1986) mirror the federal pass-through regulation. Go To Headnote

Levesque v. Sheehan, 821 F. Supp. 779, 1993 U.S. Dist. LEXIS 6693 (D Me May 12, 1993).

Overview: *Because pass-through child support payments were welfare benefits and did not constitute property, there was no taking of a welfare recipient's property in violation of the Takings Clause of the Fifth Amendment.*

- If an employer fails to report the date of withholding, the IV-D agency must reconstruct that date by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order. 45 C.F.R. § 302.51(a)(4). Requiring the recording of the postmark date of payments received is not too much of a burden to impose on the state agency, even when the volume of those payments is high. Go To Headnote

Kenyon v. Sullivan, 761 F. Supp. 951, 1991 U.S. Dist. LEXIS 5121 (D RI Apr. 10, 1991).

Overview: *A class of public aid recipients successfully challenged the state's method of distributing pass-through*

payments from the child support received by the state on behalf of the public aid recipients.

- The Secretary of the United States Department of Health and Human Services modified 45 C.F.R. § 302.51(a), effective June 9, 1988, to state that the date of collection shall be the date on which that payment is received by the Child Support Enforcement Program, of the Social Security Act Title IV-D agency or the legal entity of any state or political subdivision actually making the collection, whichever is earliest. This amendment means that in cases of interstate collection, the support payment shall be deemed made when received by the state responsible for collecting payment, not, as was the case previously, when received by the state in which the recipient resided. Go To Headnote

Luyando v. Bowen, 1989 U.S. Dist. LEXIS 177 (SD NY Jan. 13, 1989).

Overview: In a parent's proposed class action against state and federal officials challenging regulations that limited the "pass-through" of child support payments to participants in the Aid to Families With Dependent Children program, classes were certified.

- 45 C.F.R. § 302.51(b)(1) provides: Of any amount that is collected in a month which represents payment on the required support obligation for that month, the first \$ 50 of such amount shall be paid to the family. If the amount collected includes payment on the required support obligation for a previous month or months, the family shall only receive the first \$ 50 of the amount which represents the required support obligation for the month in which the support was collected. Go To Headnote

Beasley v. Harris, 671 F. Supp. 911, 1987 U.S. Dist. LEXIS 9258 (D Conn Oct. 14, 1987).

Overview: In action by aid recipients protesting state agencies' handling of "pass through" payments of child support, court declined to dismiss all but one of recipient's claims, found that agencies did not have immunity, and provisionally certified a class.

- 45 C.F.R. § 302.51, to the extent it limits a Title IV-D agency's obligation to pay only one pass-through payment in a month where two or more support payments are collected by the home state, is invalid. Go To Headnote

King v. Wright, 1995 U.S. Dist. LEXIS 12138 (ND Ill Aug. 18, 1995).

Overview: Class of clients of Child Enforcement Act (Act) had enforceable rights and standing to have pursued action to enforce state officials who oversaw and administered child support enforcement program to comply with statutory requirements of the Act.

- Support payments collected by Department of Child Support Enforcement (DCSE) are distributed to clients in the following manner. Title IV-D clients who are not receiving Aid to Families with Dependent Children (AFDC) benefits receive the full payment. 42 U.S.C.S. § 657(c); 45 C.F.R. § 302.51(c). Title IV-D clients receiving AFDC benefits are entitled to a "pass-through" of the first \$ 50 of each timely monthly payment. 42 U.S.C.S. §§ 657(b)(1), 692(a)(8)(A)(vi); 45 C.F.R. § 302.51(b)(1). The Illinois Department of Public Aid retains the remainder of the monthly payment to reimburse AFDC for benefits distributed to the client presently or in the past. 42 U.S.C.S. § 657(b)(2); 45 C.F.R. § 302.51(b)(2). If the monthly payment minus the \$ 50 pass-through exceeds the amount of the total monthly AFDC benefit, the client also receives the excess amount. 42 U.S.C.S. § 657(b)(3); 45 C.F.R. § 302.51(b)(3). However, DCSE may retain the excess amount to reimburse AFDC funds paid to the client in the past. 42 U.S.C.S. § 657(b)(4); 45 C.F.R. § 302.51(b)(4), (b)(5). Go To Headnote

Levesque v. Sheehan, 821 F. Supp. 779, 1993 U.S. Dist. LEXIS 6693 (D Me May 12, 1993).

Overview: *Because pass-through child support payments were welfare benefits and did not constitute property, there was no taking of a welfare recipient's property in violation of the Takings Clause of the Fifth Amendment.*

- Federal regulations interpreting 42 U.S.C.S. § 657(b)(1) provide that except for specifically enumerated situations: (i) Effective June 9, 1988, the date of collection for distribution purposes in all IV-D cases shall be the date on which the payment is received by the IV-D agency or the legal entity of any state or political subdivision actually making the collection, whichever is earliest; and (ii) Effective January 1, 1989, a state may use on a statewide basis either the definition of the date of collection in 45 C.F.R. § 302.51(a)(5)(i) or the date the payment is mailed, as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier, as the date of collection in all IV-D cases. 45 C.F.R. § 302.51(a)(5)(i) and (ii). Another subsection of this regulation requires that the date of collection of child support payments made by withholding from wages or other income must be the date the wages or other income are withheld to meet the support obligation. 45 C.F.R. § 302.51(a)(4). Go To Headnote

Luyando v. Sullivan, 808 F. Supp. 283, 808 F. Supp. 283, 1992 U.S. Dist. LEXIS 16877 (SD NY Nov. 4, 1992).

Overview: *Recipients of Aid to Families with Dependent Children were entitled to summary judgment in their action challenging federal and state regulations interpreting an amendment to the program because the regulations contradicted the statutory scheme.*

- 45 C.F.R. § 302.51(b)(1) interprets 42 U.S.C.S. § 657(b)(1) to require the state to distribute the first \$ 50 of child support collected only when the state or local entity receives that payment in the month in which it is due. Go To Headnote
- The United States District Court for the Southern District of New York finds that 45 C.F.R. § 302.51(b) violates the statutory mandate of 42 U.S.C.S. § 657(b)(1). Go To Headnote

Hill v. Ibarra, 954 F.2d 1516, 1992 U.S. App. LEXIS 920 (10th Cir Jan. 28, 1992).

Overview: *Grant of summary judgment was proper because recipient did not have a priority interest in monies collected by department of social services pursuant to a judgment department obtained because she failed to authorize department to take such action.*

- The cited provisions that require priority to be given to collection of current monthly child support payments, 42 U.S.C.S. § 654(11) and 45 C.F.R. 302.51(a), apply to situations where the state is collecting such support on behalf of a welfare recipient, not where it is simply collecting on its own judgment for arrearages. And, 42 U.S.C.S. § 657(c)(2) applies to situations where a former Aid to Families with Dependent Children recipient has authorized a state Title IV-D agency to continue to collect current child support. Go To Headnote

Comm'r of Soc. Servs. Ex Rel. Wandel v. Segarra, 78 N.Y.2d 220, 78 N.Y.2d 220, 1991 N.Y. LEXIS 1011 (NY July 2, 1991).

Overview: *In the Commissioner's action for child support, it was held that a father's financial resources were a relevant factor in determining the amount owed, and the amount of support was not limited to the amount of public assistance the child received.*

- Both federal and state regulations provide for the distribution of support collected on behalf of an Aid to Families with Dependent Children (AFDC) recipient in excess of an AFDC grant. The regulations establish a tiered distribution scheme, 42 U.S.C.S. §§ 657(b)(1)-(4); 45 C.F.R. 302.51(b)(1)-(5); 18 N.Y.

C.R.R. 347.13(b)(2)-(4), pursuant to which the first \$ 50 of monthly support collected pursuant to a court order is distributed to the family and is disregarded as income. If the amount collected exceeds \$ 50, the state is entitled to retain, as reimbursement, an amount equal to that month's assistance payment. Any amount collected in excess of that month's assistance payment is paid to the family to the limit of the amount required by the court order, and if any amount is collected in excess of the amount required to be paid by court order, it is applied to reimburse the state for past assistance payments made to that recipient. Once the state is reimbursed for AFDC assistance payments, any excess remaining is paid to the subject family. Go To Headnote

Kenyon v. Sullivan, 761 F. Supp. 951, 1991 U.S. Dist. LEXIS 5121 (D RI Apr. 10, 1991).

Overview: *A class of public aid recipients successfully challenged the state's method of distributing pass-through payments from the child support received by the state on behalf of the public aid recipients.*

- Title 42 U.S.C.S. § 602(a)(8)(A)(vi) required the agency to disregard the first \$ 50 when determining the families' eligibility for Aid to Families with Dependent Children benefits. 42 U.S.C.S. § 602(a)(8)(A)(vi), amended by 42 U.S.C.S. § 602(a)(8)(A)(vi). Pursuant to the statute, the Secretary of the United States Department of Health and Human Services promulgated 45 C.F.R. § 302.51(b)(1), interpreting 42 U.S.C.S. § 657(b)(1) as allowing only one \$ 50 payment per month, and then only if the support payment was received by the recipient's state in the month when due. Go To Headnote

Vanscoter v. Sullivan, 920 F.2d 1441, 1990 U.S. App. LEXIS 20899 (9th Cir Dec. 5, 1990).

Overview: *Recipients of Aid to Families with Dependent Children were not entitled to delinquent pass-through child support payments where the controlling statute was ambiguous and the administrative interpretation thereof was not inconsistent therewith.*

- Until amended by the Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (codified as amended at 42 U.S.C.S. § 657(b)(1)), 42 U.S.C.S. § 657(b)(1) provided as follows: the first \$ 50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month. To implement this pass-through program, the Secretary of the United States Department of Health and Human Services promulgated 45 C.F.R. § 302.51(b), which interpreted former § 657(b)(1) to permit the state to pass through only \$ 50 per month, and only from a support payment collected by the recipient's state in the month it was due. Go To Headnote

Beasley v. Ginsberg, 1989 U.S. Dist. LEXIS 16682 (D Conn Oct. 3, 1989).

Overview: *State and federal regulations improperly implemented the child support "pass-through" provisions of the Social Security Act by placing the burden on AFDC recipients to prove when child support was paid.*

- To the extent 45 C.F.R. § 302.51 limits the Title IV-D agency's obligation to pay only one "pass-through" payment in a month in which two or more support payments are collected by the home state, it is in violation of 42 U.S.C.S. § 657(b)(1). A support payment made within a given month, but not forwarded to the State Department of Administrative Services (Connecticut) in the same month because of bureaucratic or postal delays is certainly no basis to penalize the Aid to Families with Dependent Children family. No rational purpose is served by denying child support to a needy family because the state itself has not promptly entered the money into its books. Go To Headnote

Mosley v. Bowen, 703 F. Supp. 1288, 1989 U.S. Dist. LEXIS 311 (SD Ohio Jan. 6, 1989).

45 CFR 302.51

Overview: Regulations promulgated by Secretary of United States Department of Health and Human Services limiting AFDC recipient to one pass-through payment per month and only when support payment was received in month when due, violated Social Security Act.

- The Secretary of the Department of Health and Human Services' regulations define the date of collection under 42 U.S.C.S. § 657(b)(1) as the date the payment is received by the Title IV-D Agency or state entity making the collection on behalf of the IV-D agency. 45 C.F.R. § 302.51. If the amount collected includes the required support payment for a prior month, the family is entitled to receive only one \$ 50 pass-through payment that represents the support obligation for the month in which the support has been collected. Go To Headnote

State by & Through Dep't of Social Servs. v. Sucee, 924 P.2d 882, 1996 Utah LEXIS 84 (Utah Sept. 24, 1996).

Overview: Custodial parents' assignments of past due child support to a private collection agency were valid.

- 45 C.F.R. § 232.11 states that to receive AFDC payments, the applicant must assign to the state any past-due support that has accrued up to the time the assignment is made. Even if the language of § 232.11 were subject to more than one interpretation, 45 C.F.R. § 302.51(f) clearly states that the assignment under 45 C.F.R. § 232.11, whatever its scope may be, terminates when a family ceases receiving public assistance, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. Go To Headnote

Levesque v. Sheehan, 821 F. Supp. 779, 1993 U.S. Dist. LEXIS 6693 (D Me May 12, 1993).

Overview: Because pass-through child support payments were welfare benefits and did not constitute property, there was no taking of a welfare recipient's property in violation of the Takings Clause of the Fifth Amendment.

- Federal regulations interpreting 42 U.S.C.S. § 657(b)(1) provide that except for specifically enumerated situations: (i) Effective June 9, 1988, the date of collection for distribution purposes in all IV-D cases shall be the date on which the payment is received by the IV-D agency or the legal entity of any state or political subdivision actually making the collection, whichever is earliest; and (ii) Effective January 1, 1989, a state may use on a statewide basis either the definition of the date of collection in 45 C.F.R. § 302.51(a)(5)(i) or the date the payment is mailed, as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier, as the date of collection in all IV-D cases. 45 C.F.R. § 302.51(a)(5)(i) and (ii). Another subsection of this regulation requires that the date of collection of child support payments made by withholding from wages or other income must be the date the wages or other income are withheld to meet the support obligation. 45 C.F.R. § 302.51(a)(4). Go To Headnote

Barnes v. Healy, 980 F.2d 572, 1992 U.S. App. LEXIS 30913 (9th Cir Nov, 25, 1992).

Overview: Scope of preliminary injunction was improperly defined because it did not require that the notice of annual child support disbursements given to custodial parents had to specify a federally defined collection date.

- Custodial parents who receive Aid to Families with Dependant Children are entitled to receive the first \$ 50 of any support payment collected in the month when due, even if the Title IV-D of the Social Security Act agency's receipt of the funds is delayed. 45 C.F.R. § 302.51(b)(1) (1991). Go To Headnote
- Except for tax refund intercepts, any money collected during a month is treated as payment of the support obligation for that month, up to the court-ordered amount of current support. 45 C.F.R. § 302.51(a)(1) (1991). The state may retain the remainder as reimbursement for past Aid to Families with Dependant Children payments. 45 C.F.R. § 302.51(b)(2) (1991). Go To Headnote

Comm'r of Soc. Servs. Ex Rel. Wandel v. Segarra, 78 N.Y.2d 220, 78 N.Y.2d 220, 1991 N.Y. LEXIS 1011 (NY July 2, 1991).

Overview: *In the Commissioner's action for child support, it was held that a father's financial resources were a relevant factor in determining the amount owed, and the amount of support was not limited to the amount of public assistance the child received.*

- The 1975 amendments to the Federal Aid to Families with Dependent Children Act, 42 U.S.C.S. § 602(a)(26)(A), includes a scheme for the distribution of court-ordered support collected on behalf of Aid to Families with Dependent Children (AFDC) recipients. The scheme provides for reimbursement to the states for past, as well as present, AFDC payments. This distribution scheme is adopted in the New York State regulations, 18 N.Y. C.R.R. 347.13, and contemplates that all assigned support payments be paid directly to the Commissioner of Social Services, 45 C.F.R. 302.32; 18 N.Y. C.R.R. 347.12(a). The Commissioner must then determine if the current support payment makes the family ineligible for AFDC, 45 C.F.R. 232.20, 302.32(b); 18 N.Y. C.R.R. 347.12(b) and if so, the Commissioner's assignment terminates, except to the extent of unpaid support obligations that have accrued under such assignment, 45 C.F.R. 302.51(f); 18 N.Y. C.R.R. 347.13(f). Go To Headnote
- Both federal and state regulations provide for the distribution of support collected on behalf of an Aid to Families with Dependent Children (AFDC) recipient in excess of an AFDC grant. The regulations establish a tiered distribution scheme, 42 U.S.C.S. §§ 657(b)(1)-(4); 45 C.F.R. 302.51(b)(1)-(5); 18 N.Y. C.R.R. 347.13(b)(2)-(4), pursuant to which the first \$ 50 of monthly support collected pursuant to a court order is distributed to the family and is disregarded as income. If the amount collected exceeds \$ 50, the state is entitled to retain, as reimbursement, an amount equal to that month's assistance payment. Any amount collected in excess of that month's assistance payment is paid to the family to the limit of the amount required by the court order, and if any amount is collected in excess of the amount required to be paid by court order, it is applied to reimburse the state for past assistance payments made to that recipient. Once the state is reimbursed for AFDC assistance payments, any excess remaining is paid to the subject family. Go To Headnote

Kenyon v. Sullivan, 761 F. Supp. 951, 1991 U.S. Dist. LEXIS 5121 (D RI Apr. 10, 1991).

Overview: *A class of public aid recipients successfully challenged the state's method of distributing pass-through payments from the child support received by the state on behalf of the public aid recipients.*

- Although there are no federal regulations on wage withholding cases, the federal Secretary of the Department of Health and Human Services did amend 45 C.F.R. § 302.51(a) to provide that in cases involving interstate collection of support, payment is made when it is received by the collecting state rather than the Aid to Families to Dependent Children recipient's state. Go To Headnote

Beasley v. Ginsberg, 1989 U.S. Dist. LEXIS 16682 (D Conn Oct. 3, 1989).

Overview: *State and federal regulations improperly implemented the child support "pass-through" provisions of the Social Security Act by placing the burden on AFDC recipients to prove when child support was paid.*

- To the extent 45 C.F.R. § 302.51 limits the Title IV-D agency's obligation to pay only one "pass-through" payment in a month in which two or more support payments are collected by the home state, it is in violation of 42 U.S.C.S. § 657(b)(1). A support payment made within a given month, but not forwarded to the State Department of Administrative Services (Connecticut) in the same month because of bureaucratic or postal delays is certainly no basis to penalize the Aid to Families with Dependent Children family. No rational purpose is served by denying child support to a needy family because the

45 CFR 302.51

state itself has not promptly entered the money into its books. Go To Headnote

Mosley v. Bowen, 703 F. Supp. 1288, 1989 U.S. Dist. LEXIS 311 (SD Ohio Jan. 6, 1989).

Overview: Regulations promulgated by Secretary of United States Department of Health and Human Services limiting AFDC recipient to one pass-through payment per month and only when support payment was received in month when due, violated Social Security Act.

- 45 C.F.R. § 302.51(a) provides that the date of collection of child support payments is the date the support payment is received by an authorized Title IV-D agency or legal entity of the state or other political subdivision actually making the collection, whichever is earlier. 53 Fed. Reg. 21,642 (June 9, 1988). Go To Headnote

Hull v. State Dep't of Public Welfare, 515 So. 2d 1205, 1987 Miss. LEXIS 2930 (Miss Nov. 25, 1987).

Overview: The Department of Public Welfare, by virtue of having provided public assistance benefits for minor children, was empowered to bring suit against the non-supporting parent who had failed to comply with a previous order of support.

- 45 C.F.R. 302.51(f) (1986 Add.) states that when a family ceases receiving assistance under the state's Title IV-A Plan, the assignment of support rights under 45 C.F.R. § 232.11 of this title terminates, except with respect to the amount of any unpaid support obligation that accrued under such assignment. From this accrued amount, the IV-D Agency shall attempt to collect such unpaid obligations. Under this regulation: such collection shall be used to reimburse any amounts of past assistance which have not been reimbursed. Only amounts collected pursuant to this paragraph which exceed the amount of unreimbursed past assistance shall be paid to the family. Go To Headnote

State by & Through Dep't of Social Servs. v. Sucee, 924 P.2d 882, 1996 Utah LEXIS 84 (Utah Sept. 24, 1996).

Overview: Custodial parents' assignments of past due child support to a private collection agency were valid.

- Utah Code Ann. § 62A-9-121(1)(a) provides that the department of human services shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The requirement of an assignment is further subject to the limitations of 45 C.F.R. § 302.51(f), which provides that an approved state plan for the implementation of the Aid to Families with Dependent Children (AFDC) program shall contain the requirement that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. Go To Headnote
- As a condition of eligibility for assistance, each applicant for or recipient of Aid to Families with Dependent Children (AFDC) shall assign to the state any rights to support which have accrued at the time such assignment is executed. Utah has complied with and codified this requirement in Utah Code Ann. § 62A-9-121(1)(a) which provides that the department shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The federal regulations governing AFDC further provide that a state plan for the administration of AFDC shall provide that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. 45 C.F.R. § 302.51(f). Go To Headnote

Kenyon v. Sullivan, 761 F. Supp. 951, 1991 U.S. Dist. LEXIS 5121 (D RI Apr. 10, 1991).

Overview: A class of public aid recipients successfully challenged the state's method of distributing pass-through payments from the child support received by the state on behalf of the public aid recipients.

- Title 42 U.S.C.S. § 602(a)(8)(A)(vi) required the agency to disregard the first \$ 50 when determining the families' eligibility for Aid to Families with Dependent Children benefits. 42 U.S.C.S. § 602(a)(8)(A)(vi), amended by 42 U.S.C.S. § 602(a)(8)(A)(vi). Pursuant to the statute, the Secretary of the United States Department of Health and Human Services promulgated 45 C.F.R. § 302.51(b)(1), interpreting 42 U.S.C.S. § 657(b)(1) as allowing only one \$ 50 payment per month, and then only if the support payment was received by the recipient's state in the month when due. Go To Headnote

State by & Through Dep't of Social Servs. v. Sucec, 924 P.2d 882, 1996 Utah LEXIS 84 (Utah Sept. 24, 1996).

Overview: Custodial parents' assignments of past due child support to a private collection agency were valid.

- Utah Code Ann. § 62A-9-121(1)(a) provides that the department of human services shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The requirement of an assignment is further subject to the limitations of 45 C.F.R. § 302.51(f), which provides that an approved state plan for the implementation of the Aid to Families with Dependent Children (AFDC) program shall contain the requirement that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. Go To Headnote
- As a condition of eligibility for assistance, each applicant for or recipient of Aid to Families with Dependent Children (AFDC) shall assign to the state any rights to support which have accrued at the time such assignment is executed. Utah has complied with and codified this requirement in Utah Code Ann. § 62A-9-121(1)(a) which provides that the department shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The federal regulations governing AFDC further provide that a state plan for the administration of AFDC shall provide that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. 45 C.F.R. § 302.51(f). Go To Headnote



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*** This section is current through the May 9, 2013 ***
*** issue of the Federal Register ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER III -- OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT
PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND
HUMAN SERVICES
PART 303 -- STANDARDS FOR PROGRAM OPERATIONS

Go to the CFR Archive Directory

45 CFR 303.32

§ 303.32 National Medical Support Notice.

(a) Mandatory. State laws. States must have laws, in accordance with section 466(a)(19) of the Act, requiring procedures specified under paragraph (c) of this section for the use, where appropriate, of the National Medical Support Notice (NMSN), to enforce the provision of health care coverage for children of noncustodial parents and, at State option, custodial parents who are required to provide health care coverage through an employment-related group health plan pursuant to a child support order and for whom the employer is known to the State agency.

(b) Exception. States are not required to use the NMSN in cases with court or administrative orders that stipulate alternative health care coverage to employer-based coverage.

(c) Mandatory procedures. The State must have in effect and use procedures under which:

(1) The State agency must use the NMSN to transfer notice of the provision for health care coverage of the children) to employers.

(2) The State agency must transfer the NMSN to the employer within two business days after the date of entry of an employee who is an obligor in a IV-D case in the State Directory of New Hires.

(3) Employers must transfer the NMSN to the appropriate group health plan providing any such health care coverage for which the children) is eligible (excluding the severable Notice to Withhold for Health Care Coverage directing the employer to withhold any mandatory employee contributions to the plan) within twenty business days after

the date of the NMSN.

(4) Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the child(ren) and send any amount withheld directly to the plan.

(5) Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must initiate withholding until such time as the employer receives notice that the contest is resolved.

(6) Employers must notify the State agency promptly whenever the noncustodial parent's and, at State option, custodial parent's employment is terminated in the same manner as required for income withholding cases in accordance with § 303.100(e)(1)(x) of this part.

(7) The State agency must promptly notify the employer when there is no longer a current order for medical support in effect for which the IV-D agency is responsible.

(8) The State agency, in consultation with the custodial parent, must promptly select from available plan options when the plan administrator reports that there is more than one option available under the plan.

(d) Effective date. This section is effective October 1, 2001, or, if later, the effective date of State laws described in paragraph (a) of this section. Such State laws must be effective no later than the close of the first day of the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after October 1, 2001. For States with 2-year legislative sessions, each year of such session would be regarded as a separate regular session.

HISTORY: /65 FR 82154, 82165, Dec. 26, 2000; 66 FR 8074, Jan. 26, 2001; 73 FR 42416, 42442, July 21, 2008]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

NOTES: [EFFECTIVE DATE NOTE: 73 FR 42416, 42442, July 21, 2008, amended paragraphs (a) and (c)(6), effective July 21, 2008.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: Nomenclature changes to Chapter III appear at 66 FR 39450, 39452, July 31, 2001.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: Nomenclature changes to part 303 appear at 64 FR 6237, 6249, Feb. 9, 1999.]

CASE NOTES Applicable to entire Part:Part Note