

**Juvenile Law Resource Center**  
**FACT SHEET: Child Support**

***How are child support obligations established and how does my client contest a child support order?***

The Child Support Program in Oregon is administered by the Division of Child Support (DCS), a division of the Oregon Department of Justice.

An important aspect of this child support program is that DCS can administratively establish support obligations even when there is no court order for support.<sup>1</sup> When a child support case is opened, a DCS case manager asks both parents for income and expense information, reviews relevant that information along with other records, and then prepares and serves parties to the matter with a Notice and Finding of Financial Responsibility. This Notice and Finding document informs the parties of the proposed support order, and of their right to contest the amount within a certain time frame.<sup>2</sup> If paternity has not been legally established for the child, there will also be an allegation against the alleged father and an opportunity to have genetic testing.

A DCS administrative support order need *not* be filed with the court in order to be effective.<sup>3</sup> However, upon filing with the circuit court, the DCS order has the force and effect of a court judgment, which includes the creation of a judgment lien and the ability to enforce the order via contempt proceedings.<sup>4</sup> The only exception to this is that a DCS order that attempts to modify a court order does not become effective until it is reviewed and approved by the court that issued the original order.<sup>5</sup>

Parties may contest the proposed support order by requesting an administrative hearing before an administrative law judge (ALJ) employed by the Office of Administrative Hearings, an agency separate from DCS.<sup>6</sup> In the absence of a timely response, DCS prepares a default order, which is immediately enforceable; there is no requirement that the court ratify the order.<sup>7</sup> If there is a timely challenge to the proposed support order, an administrative hearing is scheduled.<sup>8</sup> Parties may also contact their DCS case manager to supply additional or different information regarding their income or expenses. An amended Notice and Finding with a different proposed order may be issued based on the new information. Parties may also work with their DCS case manager to arrive at a stipulated support order.

At the administrative hearing, parties may be represented by an attorney and may present evidence to be entered into the record. The ALJ usually issues a decision within 14 days of the hearing, which is sent to the parties by regular mail. The ALJ order is final, and remains in effect and enforceable during any appeal, unless stayed by a court.<sup>9</sup> A party may appeal an ALJ order by filing a petition for review by the circuit court within a certain time frame after the order has been entered.<sup>10</sup> An appeal hearing to circuit court is *denovo*, which means that additional information may be presented to the judge even if it was not provided to the ALJ.

***What is my client's child support obligation while his/her child is in DHS custody?***

Parents who do not have custody of their children are obligated to pay child support to the person or agency caring for their child. In a dependency proceeding, a parent pays the Department of Human Services (DHS) for the care of the child, regardless of whether the child is placed in foster care, residential care, or some other type of substitute living arrangement. The amount and frequency of the obligation may be determined by the Juvenile Court during the preliminary hearing.<sup>11</sup> More often, the order will be established through an administrative process initiated by the Division of Child Support, pursuant to ORS 416.415. (as described above)

When a child is in the physical or legal custody of DHS, the substitute caregiver receives a stipend to house, feed, clothe, and otherwise provide for the basic needs of the child.<sup>12</sup> The exact amount of this stipend depends on the age and particular needs of the child.<sup>13</sup> The size of the stipend received by the

substitute caregiver is *not* the same as the amount of the parent's child support obligation. Furthermore, required child supports payments are paid to DHS (via the Department of Justice, Division of Child Support) as the child's assignee, and not directly to the child or substitute caregiver.<sup>14</sup> If a support order has already been established by a divorce decree, the amount ordered will be assigned to the state. A separate order will be established against the former custodial parent in favor of DHS.

***How much will my client have to pay? What if this amount is unreasonable?***

The formula for calculating each parent's child support obligation is set out in Oregon Administrative Rule 137-050-0710. This formula takes into account each parent's income or potential income, expenses, Social Security or Veteran's benefits, and the portion of the parents' combined income that is supplied by each parent.<sup>15</sup> In determining the support obligation, each parent is entitled to a Self-Support Reserve, which is a fund intended to be sufficient to meet the parent's own basic needs.<sup>16</sup> The Self-Support Reserve is \$1053 per month, which is based on the federal poverty guideline and adjusted for estimated taxes.<sup>17</sup>

The court and DCS presumes that each parent can contribute at least \$100 per month in child support. This presumption, however, does not apply if the parent subsists entirely on disability benefits, is incarcerated without the ability to pay, or receives public benefits under the Supplemental Security Income (SSI) Program, Oregon Supplemental Income Program, Title IV-A of the Social Security Act, the general assistance program as provided in ORS chapter 411, or a general assistance program of another state or tribe.<sup>18</sup>

If a parent disagrees with the child support obligation as determined by the formula in OAR 137-050-0710, he or she may rebut the presumed amount. To deviate from the support guidelines, the court or DCS must find that the presumed amount is either unjust or inappropriate.<sup>19</sup> Factors that may contribute to such a finding include the parent's number of dependants, evidence of special hardship affecting the parent's ability to pay, and the extraordinary or reduced needs of the child.<sup>20</sup> Such factors must be established on the record.<sup>21</sup> After a support order is established, either through DCS or a divorce proceeding, a parent may file for a modification of the child support order when there has been a substantial change in circumstances that adversely affects her ability to meet the support obligation.<sup>22</sup>

***The child in DHS custody has special needs. Will my client have to pay more in child support?***

The formula in ORS 137-050-0710 is intended to account for the "educational, physical, and emotional needs of the child for whom the support is sought."<sup>23</sup> The expense of child care for children with disabilities is incorporated into the formula, and thus parents of these children will pay more in support.<sup>24</sup> Furthermore, if the support amount as determined by the formula is inadequate, the amount may be rebutted on the basis of the "extraordinary or diminished needs of the child" and be recalculated in light of this factor.<sup>25</sup> Thus, to the extent a parent is financially capable, her support obligation may be increased to provide for the special needs of her child.

***The child was removed because my client was the victim of domestic violence. Is my client still required to pay child support?***

Parents who are the victims of domestic violence may still be obligated to pay child support to DHS when domestic violence is the reason for removal. Oregon Administrative Rule 413-100-0830, which lists exemptions from child support obligations, does not specifically enumerate status as a victim of domestic violence. However, the Assistant Director of DHS has discretion to waive the support obligation when it is in the best interest of the child,<sup>26</sup> and the Juvenile Court has discretion with regard to whether or not to order child support payments.

***My client is unwilling or unable to pay DHS. How will this affect my client's ability to have her children returned?***

Willfully failing to pay the court-ordered child support amount will adversely impact your client's attempts to regain custody of her children. The Juvenile Court may terminate parental rights when substantial actions support a finding of neglect, including the "failure to . . . pay a reasonable portion of substitute physical care and maintenance if custody is lodged with others."<sup>27</sup>

The court, however, is unlikely to use a parent's inability to pay support as evidence of neglect. To forward such an argument, the State must demonstrate that the parent could reasonably meet the support obligation, given her financial means.<sup>28</sup> A client who is financial incapable of paying should instead file for a modification of the child support order to demonstrate her willingness to comply with the support order, but her inability to do so.

***My client's parental rights have been terminated / relinquished. Does he/she still have to pay? What about his/her past-due obligation?***

A biological parent has no child support obligation to DHS when his or her parental rights have been terminated, parental rights have been relinquished, or the child has been adopted.<sup>29</sup> If the client owes \$500 or less in back-payments (at the time parental rights are terminated or relinquished) and there is no reasonable expectation that he or she will be able to pay, the case may be closed by the Division of Child Support.<sup>30</sup> However, if the client owes more than \$500 or it is reasonably anticipated that he or she will be able to pay, the case will not be closed and the Division of Child Support can take a number of enforcement measures to ensure payment,<sup>31</sup> including garnishing wages, suspending business and driver's licenses, and denying the issuance of a passport.<sup>32</sup>

***What if payment of child support is a barrier to reunification?***

If payment of child support is a barrier to reunification, a parent can enter into an agreement with DCS to pay less than the full amount in the original administrative or court order.<sup>33</sup> Also, reduced withholding may be available when there is good cause, for example when a child is returned to a parent but full collection of the arrears would jeopardize that return.<sup>34</sup>

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<sup>1</sup> SEE OR. REV. STAT. § 416.415.

<sup>2</sup> *Id.*.

<sup>3</sup> *Id.*.

<sup>4</sup> OR. REV. STAT. § 416.440(3).

<sup>5</sup> OR. REV. STAT. § 416.425(10).

<sup>6</sup> OR. REV. STAT. § 416.427(2).

<sup>7</sup> OR. REV. STAT. § 416.415(8).

<sup>8</sup> OR. REV. STAT. § 416.415(6). See also OR. REV. STAT. § 416.427.

<sup>9</sup> OR. REV. STAT. § 416.427(5).

<sup>10</sup> OR. REV. STAT. § 416.427(6).

<sup>11</sup> OR. REV. STAT. § 419B.400 (2010); OR. REV. STAT. § 419B.117 (2010).

<sup>12</sup> OR. ADMIN. R. 413-090-0010 (2010).

<sup>13</sup> *Id.*.

<sup>14</sup> OR. REV. STAT. § 419B.406 (2010).

<sup>15</sup> OR. ADMIN. R. 137-050-0710 (2010).

<sup>16</sup> OR. ADMIN. R. 137-050-0745 (2010).

<sup>17</sup> *Id.*.

<sup>18</sup> OR. ADMIN. R. 137-050-0755 (2010); OR. REV. STAT. § 25.245 (2010).

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- <sup>19</sup> OR. ADMIN. R. 137-050-0760 (2010).
- <sup>20</sup> *Id.*, *See* Dep't of Human Resources v. Lucia, 880 P.2d 505 (Or. Ct. App. 1994) (the child's age is not sufficient as the "needs of the child" to overcome the presumptive child support amount).
- <sup>21</sup> Christopherson & Christopherson, 827 P.2d 950 (Or. Ct. App. 1992).
- <sup>22</sup> OR. ADMIN. R. 137-055-3430 (2010).
- <sup>23</sup> OR. REV. STAT. § 25.275(1)(e) (2010).
- <sup>24</sup> OR. ADMIN. R. 137-050-0735(1) (2010).
- <sup>25</sup> OR. ADMIN. R. 137-050-0760(o) (2010). *See* Stringer v. Brandt, 877 P.2d 100, 102 (Or. Ct. App. 1994) (holding that the guidelines cap, which does not consider income in excess of \$10,000 per month in the calculation of child support obligations, can be rebutted through the demonstration of the child's needs).
- <sup>26</sup> OR. ADMIN. R. 413-100-0830(3)(c)(C) (2010).
- <sup>27</sup> OR. REV. STAT. § 419B.506(1) (2010).
- <sup>28</sup> State ex rel. Juvenile Dep't v. Boren, 806 P.2d 149, 155 (Or. Ct. App. 1991).
- <sup>29</sup> OR. ADMIN. R. 137-055-1120(1)(a)(D) (2010).
- <sup>30</sup> OR. ADMIN. R. 137-055-1120 (2010).
- <sup>31</sup> OR. REV. STAT. § 25.080 (2010).
- <sup>32</sup> OR. ADMIN. R. 137-055-4060 to 137-055-4540 (2010).
- <sup>33</sup> OR. REV. STAT. § 25.396(3)(b).
- <sup>34</sup> OR. REV. STAT. § 25.396(1).