

137-055-5510

Request for Credit Against Child Support Arrears for Physical Custody of Child

The terms used in this rule have the meanings set out in OAR 137-055-6010.

(1) In accordance with ORS 25.527, the administrator may allow a credit against child support arrears for periods of time during which the obligor has physical custody of all children under a child support order when a written request is received, and:

(a) Physical custody was pursuant to a court-ordered parenting time schedule, and the court order specifically states that the obligor is allowed a credit for parenting time that is not already factored into the monthly child support amount;

(b) Physical custody was with the knowledge and consent of the obligee; or

(c) The obligor has custody of the children pursuant to a court order.

(2) A request for credit against child support arrears under this rule may be made:

(a) As part of a request for modification for a time period immediately prior to the effective date of the modification; or

(b) Independently of a request for modification for any time period within two years prior to the date of the written request.

(3) When the obligor is seeking credit for physical custody as part of a modification action, credit may only be allowed beginning with the first accrual that occurs on or after the date of the physical custody change through the effective date of the modification.

(4) When the obligor is seeking credit for physical custody independent of a modification, credit may only be allowed if the children are with the obligor for 30 consecutive days or the entire month for which credit is sought.

(5) When the obligor is seeking a credit for fewer than all of the children under a child support order, a credit may only be allowed if the order is not a class order as defined in OAR 137-055-1020.

(6) Credit for physical custody may not be allowed for any child who is a child attending school or an adult child as defined in ORS 107.108 and OAR 137-055-5110, and credit may not be allowed against any arrears that have accrued to a child attending school account.

(7) Notwithstanding sections (3) through (6), the maximum credit allowed will be limited to the amount of the child support arrears.

(8) The administrator will provide the parties a notice indicating the amount to be credited. The notice will be sent by regular mail when provided independently of a modification and by the appropriate service method when provided as part of the modification action.

(9) Within 30 days of being served with the notice, a party may request an administrative hearing. The request must be made in writing, and the only basis upon which a party may object is that:

(a) The obligor did not have physical custody of all the children under the support order for the time periods requested;

(b) The obligor had physical custody of the children, but the custody was not with the knowledge and consent of the obligee, and the obligor does not have legal custody of the children; or

(c) The obligor had physical custody of the children pursuant to a court order for parenting time, and credit for custody has already been factored into the support order.

(10) Any appeal of the decision made by an administrative law judge must be to the circuit court for a hearing de novo pursuant to ORS 25.513.

(11) If a credit is allowed pursuant to this rule, the credit will be applied as follows:

(a) If none of the arrears are assigned to the state, the credit will be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state, the credit will be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) Family's unassigned during assistance arrears;

(D) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance.

Stat. Auth.: ORS 25.505 & 180.345

Stats. Implemented: ORS 25.527

Effective: September 1, 2023