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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

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CHAPTER 137
DEPARTMENT OF JUSTICE

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FILING CAPTION: Hearing rights following denial of modification; allocation of collections to multiple cases

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NEED FOR THE RULE(S):

Failure to act may result in serious prejudice to the public interest or the interest of the parties. A temporary revision of OAR 137-055-6024 is necessary to correctly process child support payments in the Origin automated child support system when an obligor has multiple cases. Revisions to OAR 137-055-3420 and 137-055-3430 are necessary to provide the appropriate hearing rights when a request for modification is denied.

JUSTIFICATION OF TEMPORARY FILING:

The amendment to OAR 137-055-6024 is needed immediately because the existing rule does not accurately address the allocation of current support for multiple cases when a payment is not sufficient to cover all current support on all cases in Origin. Amendments to OAR 137-055-3420 and 137-055-3430 are needed immediately to ensure that parties are provided with the correct hearing rights.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

n/a

RULES:

137-055-3420, 137-055-3430, 137-055-6024

AMEND: 137-055-3420

RULE SUMMARY: Oregon law requires that parties be given hearing rights after a denial of a modification of a periodic review modification. However, the current version of OAR 137-055-3430 does not provide hearing rights. OAR 137-055-3420 is amended to adopt a new section that provides hearing rights pursuant to ORS 25.287.

CHANGES TO RULE:

137-055-3420

Periodic Review and Modification of Child Support Order Amounts ¶

- (1) "Periodic Review" means a proceeding initiated under ORS 25.287(1) to modify an existing order to comply with the child support guidelines. ¶
- (2) The administrator will initiate a periodic review if 35 months have passed since the date the most recent support order took effect, and ¶
 - (a) The family is currently receiving TANF; or¶
 - (b) The requesting party submits a written request to review or modify the order (signature is not required if it can be determined who submitted the request).¶
- (3) For purposes of a periodic review, a child support order is not in substantial compliance with the guidelines if it has been more than 35 months since the order took effect. ¶
- (4) The administrator must complete the modification of the existing order within 180 days of receiving a written request for a periodic review, initiating the mandatory review, or locating the non-requesting party(ies), whichever occurs later.¶
- (5) The administrator is responsible for conducting a periodic review in this state or for requesting that another jurisdiction conduct a review pursuant to OAR 137-055-7190. ¶
- (6) On receipt of a written request for a periodic review or when a mandatory periodic review is required, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information that may affect the support calculation. ¶
- (7) If there is an adult child on the case: ¶
 - (a) A tier as defined in OAR 137-055-1020 may be included for the adult child; or¶
 - (b) The order may be modified to remove support provisions for the adult child but can be modified later to include support provisions for a child attending school if the adult child qualifies for support under ORS 107.108.¶
- (8) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program will annually notify the parties:¶
 - (a) Of their right to request a periodic review of the amount of support ordered; and¶
 - (b) That the Child Support Program will perform a mandatory periodic review and adjustment if the family is currently receiving TANF. ¶
- (9) Pursuant to ORS 25.287, if a request under this rule is denied, the administrator will notify the parties in writing of their right to object to the determination. The objection must be submitted within 30 days after the date of the determination. If a request for an administrative hearing is received regarding the denial, the administrator will forward the request to the Office of Administrative Hearings to conduct a hearing to determine whether the modification will be granted or denied. The Office of Administrative Hearings will:¶
 - (a) Issue a final order that determines whether the request for periodic review modification as provided by ORS 25.287(1) and this rule should be granted or denied; and ¶
 - (b) Issue an order remanding the case to the Program to initiate the modification, if the final order determines that the Program denied the request in error.

Statutory/Other Authority: ORS 180.345, 416.455

Statutes/Other Implemented: ORS 25.080, 25.287, 25.321 to 25.343, 107.135, 416.425

AMEND: 137-055-3430

RULE SUMMARY: Oregon law does not require that parties be given hearing rights after a denial of a modification if the request was based on a substantial change in circumstances. However, the current version of OAR 137-055-3430 provides administrative hearing rights. Due to the expense of hearings, as well as reevaluation of statutory authority, OAR 137-055-3430 is amended to remove administrative hearing rights and, instead, adding appeal rights pursuant to ORS 183.484.

CHANGES TO RULE:

137-055-3430

Substantial Change in Circumstance Modification of Child Support Order Amounts ¶¶

- (1) For purposes of this rule: "Substantial compliance" means that the difference between the existing support order and the amount calculated using current guidelines is not greater than \$50 or 15% of the current guideline amount, whichever is less. ¶¶
- (2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstance. ¶¶
- (3) The administrator will conduct a review based on a request for a change of circumstance modification when: ¶¶
- (a) Oregon has jurisdiction to modify; and ¶¶
- (b) The administrator: ¶¶
- (A) Receives a request for modification based on a change of circumstance and at least 60 days have passed from the date the existing support order was entered. For those cases where a review is requested pursuant to paragraphs (3)(c)(I), (J), or (K), there is no need for 60 days to have passed; or ¶¶
- (B) Determines that a modification should be initiated based on the administrator's motion; and ¶¶
- (c) At least one of the following criteria is met: ¶¶
- (A) A change in the written parenting time agreement or order has taken place; ¶¶
- (B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered; ¶¶
- (C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003; ¶¶
- (D) Veterans benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003; ¶¶
- (E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order; ¶¶
- (F) The needs of the child(ren) have changed; ¶¶
- (G) Since the date of the last order or January 1, 2018, whichever is later, the obligor was incarcerated for at least 180 consecutive days or was released from incarceration as defined in OAR 137-055-3300; ¶¶
- (H) The support order has been suspended and reinstated under OAR 137-055-3300 and qualifies for a review pursuant to ORS 25.247, ~~Section 2~~; ¶¶
- (I) There is a need to add or change medical support provisions for a child; ¶¶
- (J) A change in the physical custody of a minor child has taken place; ¶¶
- (K) An order is being modified to add or remove a child of the parties; ¶¶
- (L) A child who is 18 years of age or older and under 21 years of age does not qualify as a child attending school under ORS 107.108 and OAR 137-055-5110 and, pursuant to ORS 107.108(10), tiered order provisions will be added, removed, or changed. Tiered order has the meaning given in OAR 137-055-1020. ¶¶
- (d) And the requesting party (if other than the administrator) submits the following documentation, or its equivalent: ¶¶
- (A) A written request for modification based on a substantial change of circumstance (signature is not required if it can be determined who submitted the request); ¶¶
- (B) Appropriate information for the criteria in subsection (3)(c) showing that a substantial change of circumstance

has occurred; and ¶

(C) A completed Uniform Income and Expense Statement or Uniform Support Declaration. ¶

(4) Upon receipt of a request for modification, or at the administrator's initiative, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information that may affect the support calculation. ¶

(5) A request for modification will be granted: ¶

(a) If the order is not in substantial compliance with the guidelines and the request was due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(F). ¶

(b) Whether or not the order is in substantial compliance with the guidelines, so long as: ¶

(A) The request was due to one of the criteria in paragraphs (3)(c)(G) through (3)(c)(L), or ¶

(B) The new calculation: ¶

(i) Includes consent by the parties as provided in OAR 137-050-0765; ¶

(ii) Includes compelling factors as provided in OAR 137-050-0750; ¶

(iii) Includes application of rebuttals, as provided in OAR 137-050-0760; or ¶

(iv) Is for a modification to consider receipt of Social Security or Veterans benefits as provided in paragraphs (3)(c)(C) or (D). ¶

(6) If the request for modification is granted, the administrator will advise the parties of the guideline child support obligation. Notification may be by motion for modification and will include a request for hearing form. ¶

(7) If there is an adult child on the case: ¶

(a) A tier as defined in OAR 137-055-1020 may be included for the adult child; or ¶

(b) The order may be modified to remove support provisions for the adult child but can be modified later to include support provisions for a child attending school if the adult child qualifies for support under ORS 107.108. ¶

(8) Pursuant to ORS 25.287, if a request under this rule is denied, the administrator will notify the requesting parties in writing of their right to object to the determination within 30 days after the date of the determination. If a request for hearing is received regarding the denial, the administrator will forward the request to the Office of Administrative Hearings to conduct a hearing to determine whether the modification will be granted or denied. The OAH will issue a final order regarding the request. a party may contest the administrator's finding as provided in ORS 183.484. ¶

(9) No provision of this rule prevents the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order. ¶

(10) If a request for review and modification is received because a change in the physical custody of the minor child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

Statutory/Other Authority: ORS 25.247, 180.345, 416.455

Statutes/Other Implemented: ORS 25.080, 25.247, 25.287, 25.321 to 25.343, 107.108, 107.135, 416.425

AMEND: 137-055-6024

RULE SUMMARY: OAR 137-055-6024 is amended because the current version does not accurately address the allocation of current support for multiple cases when a payment is not sufficient to cover all current support on all cases in Origin. The pro-ration method in CSEAS can result in a different allocation than the one in Origin. Essentially, CSEAS prorates using total balance of all types of current support. Origin prorates based on the balance of the court ordered amount for the first type of support for which there is not enough money to fully pay. Origin will pay all types of current support, using a pro-rata calculation, in the following order: current cash child support, current cash medical support, followed by all current spousal support.

CHANGES TO RULE:

137-055-6024

~~Distribution and Disbursement on~~ Allocation of Collections to Multiple Cases ¶

Unless otherwise specified, this rule applies to cases managed in both the Child Support Automated Enforcement System (CSEAS) and the Origin child support automated system. ¶

The terms used in this rule have the meanings set out in OAR 137-055-1020 and 137-055-6010. ¶

(1) Except as provided ~~for~~ in this rule, when an obligor has multiple support cases, the ~~allocation and, as appropriate, distribution and disbursement sequence, as needed~~ for each case, will be as provided in OAR 137-055-6022. ¶

(2) When a withholder remits a payment ~~that is on behalf of~~ an obligor against whom more than one income withholding order has been issued, the Department will allocate, ~~distribute, and, as appropriate, disbur~~ the amount as follows: ¶

(a) The payment will be allocated to current support on all cases for which the withholding was made. Any remaining amount, after current support is paid in full on all cases, will be allocated to the arrears on all withholding cases as provided in subsection (2)(b) of this rule. ¶

(A) For cases the amount as follows: ¶

~~(a) That continue to be managed in CSEAS, if the payment is not sufficient to pay the current support due on each case, the payment will be allocated based on a pro rata share of the balance of current support due on each case: if the amount is not sufficient to pay the~~ Pro rata shares will be determined by dividing the total amount of all types of current support remaining due on the case by the total of all types of current support remaining due on all of the obligor's support cases for to which an order to withhold is in effect, each withholding case will receive a pro rata share of the total amount withheld. The pro rata shares the proceeds of the order to withhold will be applied, and then multiplying the resulting percentage by the total amount withheld. ¶

(B) For cases managed in the Origin child support automated system, if the payment is not sufficient to pay each type of current support due on each case, the payment will be allocated based on a pro rata share of each type of support in the following priority: current cash child support first, then current cash medical support, then current spousal support. Pro rata shares for a particular type of support will be determined by dividing the amount of that type of current support remaining due on the case by the total combined amount of current that type of support remaining due on all of the obligor's support cases to which the proceeds of the order to withhold will be applied, and then multiplying the resulting percentage by the total amount withheld. ¶

(b) To arrears on each case as follows: ¶

(A) For cases that continue to be managed in CSEAS, equally to each withholding case in which arrears are owed after each case has received the monthly amount requested to be withheld for arrears. However, no case may receive more than the total amount of current support and arrears owed on that case at the time the distribution and disbursement is made. Any remaining funds will be equally distributed and disbursed to the obligor's other cases. ¶

(B) For cases managed in the Origin child support automated system, pro rata to each case in which arrears are owed, determined by dividing the amount of arrears owed on the case by the total combined amount of arrears

remaining owed on all of the obligor's support cases, and then multiplying the resulting percentage by the total amount available for distribution to arrears. However, no case may receive more than the total amount of current support and arrears owed on that case at the time this distribution and disbursement is made. Any remaining funds will be distributed and disbursed pro rata to the obligor's other cases.¶

(3) When the obligor is paid either weekly or biweekly, for those months in which there is an extra pay period due to the manner in which pay periods fall during the year, the payment may be allocated, distributed, and, as appropriate, disbursed to each case for which an income withholding order is in effect when the payment is received, even if this results in a case receiving more than the amount requested to be withheld for that case for a single month. ¶

(4) Except as provided by section (5) of this rule, when the Department receives a single collection that is the result of an enforcement action that includes more than one case for the obligor, the Department will allocate, distribute and, as appropriate, disburse the amount received as follows:¶

(a) To current support on each case included in the enforcement action: if the amount is not sufficient to pay the current support due on all of the obligor's support cases included in the enforcement action, each case will receive a pro rata share of the total amount. The pro rata shares will be determined by dividing the amount of current support remaining due on the case by the total combined amount of current support remaining due on all of the obligor's support cases to which the proceeds will be applied, and then multiplying the resulting percentage by the total amount received.¶

(b) To arrears on each case included in the enforcement action as follows: ¶

(A) For cases that continue to be managed in CSEAS, equally to each case in which arrears are owed. However, no case may receive more than the total amount of current support and arrears owed on that case at the time this distribution and disbursement is made. Any remaining funds will be equally distributed and disbursed to the obligor's other cases.¶

(B) For cases managed in the Origin child support automated system, pro rata to each case in which arrears are owed, determined by dividing the amount of arrears owed on the case by the total combined amount of arrears remaining owed on all of the obligor's support cases, and then multiplying the resulting percentage by the total amount available for distribution to arrears. However, no case may receive more than the total amount of current support and arrears owed on that case at the time this distribution and disbursement is made. Any remaining funds will be distributed and disbursed pro rata to the obligor's other cases.¶

(5) When support payments are received from federal tax refund intercepts, the payment will first be processed under OAR 137-055-6021(12). If the payment is not sufficient to pay the full arrears amount on each case certified for federal offset, the Department will allocate, distribute, and, as appropriate, disburse the amount received as follows:¶

(a) For cases that continue to be managed in CSEAS:¶

(A) If the total amount received is not sufficient to pay the state's permanently assigned arrears on all of the obligor's certified cases, each certified case with permanently assigned arrears will receive an equal share. However, no case may receive more than the state's permanently assigned arrears on that case.¶

(B) If the total amount is sufficient to pay the state's permanently assigned arrears on all certified cases, but is not enough to pay in full all the state's conditionally assigned arrears or the family's conditionally assigned arrears on all of the obligor's certified cases, the amount received in excess of that required to pay the state's permanently assigned arrears on all certified cases will be allocated, distributed, and, as appropriate, disbursed as follows:¶

(i) State's conditionally assigned arrears to each certified case in equal shares not to exceed the amount of state's conditionally assigned arrears on that case.¶

(ii) An equal share of the remaining funds for each certified case with family's conditionally assigned arrears. However, no case may receive more than the family's conditionally assigned arrears on that case.¶

(C) If the total amount is sufficient to pay the state's permanently assigned arrears, the state's conditionally assigned, and the family's conditionally assigned arrears on all certified cases, but is not enough to pay in full the family's unassigned arrears on all of the obligor's certified cases, the amount received in excess of that required to pay the state's permanently and conditionally assigned arrears and the family's conditionally assigned arrears on

all certified cases will be allocated, distributed, and, as appropriate, disbursed as follows:¶

(i) An equal share of the remaining funds for each certified case with family's unassigned arrears. However, no case may receive more than the total amount of arrears owed on that case at the time this allocation, distribution, or disbursement is made.¶

(ii) Arrears owed to other jurisdictions, in equal shares to each certified case, and, within a case, if multiple other jurisdictions are owed arrears, the arrears in the order in which they were certified to Oregon. ¶

(b) For cases managed in the Origin child support automated system:¶

(A) If the total amount is not sufficient to pay the state's permanently assigned arrears on all certified cases, the amount received will be allocated, distributed, and, as appropriate, disbursed pro rata to each case, determined by dividing the amount of assigned arrears owed on the case to the total combined amount of assigned arrears remaining owed on all of the certified cases, and then multiplying the resulting percentage by the total amount available for distribution to arrears.¶

(B) If the total amount is sufficient to pay the state's permanently assigned arrears on all certified cases, but is not enough to pay in full all the conditionally assigned and unassigned arrears on all of the obligor's certified cases, the amount received in excess of that required to pay the state's permanently assigned arrears on all certified cases will be allocated, distributed, and, as appropriate, disbursed as follows:¶

(i) Pro rata to each certified case determined by dividing the amount of conditionally assigned and unassigned arrears owed on the case by the total combined amount of conditionally assigned and unassigned arrears remaining owed on all of the obligor's support certified cases, and then multiplying the resulting percentage by the total amount available for distribution to arrears. ¶

(ii) To arrears owed to other jurisdictions, pro rata to each certified case, determined by dividing the amount of arrears owed on the case to other jurisdictions by the total combined amount of arrears remaining owed on all of the obligor's support cases to other jurisdictions, and then multiplying the resulting percentage by the total amount available for distribution to arrears. Within a single case, if multiple other jurisdictions are owed arrears, pro rata to the arrears owed to other jurisdictions determined by dividing the amount of arrears owed to each other jurisdiction by the total combined amount of arrears remaining owed to all other jurisdictions. ¶

(6) When the Department has received a personal payment from an obligor that was not directed to fewer than all cases for the obligor for which support is due as provided in OAR 137-055-6023, the Department will allocate, distribute, and, as appropriate, disburse the payment pursuant to section (4) of this rule as if it were a payment received as the result of an enforcement action that included all cases of the obligor.

Statutory/Other Authority: ORS 25.020, 180.345

Statutes/Other Implemented: ORS 18.645, 25.020, 25.387, 25.414, 25.610