# BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

# STATE OF OREGON

# for the

# DIVISION OF CHILD SUPPORT

|  |  |  |
| --- | --- | --- |
| **In the Matter of Child Support:** | ) | FINAL ORDER |
|  | ) |  |
| **Obligor** | ) |  |
| and  **Obligee** | )  ) | CSP Case No.  Reference No. |

## History of the Case

## Language is unique to each order

## Issues

Whether a party has a duty to pay monthly child support and, if so, in what amount. ORS 25.511, 25.527, 25.505, and Oregon Administrative Rules, chapter 137, divisions 050 and 055.

Whether a party is liable to provide medical support for the child. ORS 25.321, 25.323, 25.527, 25.505, and Oregon Administrative Rules, chapter 137, divisions 050 and 055.

Whether a party owes past child support. ORS 25.501, 25.511, 25.515, and OAR 137-055-3220.

## Evidentiary Rulings

Exhibits 1 through 4 were admitted into the record without objection.

## Findings of Fact

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## Conclusions of Law

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## Opinion

It is the public policy of this state that dependent children shall be maintained, as much as possible, from the resources of both of the parents, thereby relieving or avoiding, at least in part, the burden often borne by single parents or by the general citizenry through public assistance programs. *See* ORS 25.502. Each parent has the duty to support his or her child. *See* ORS Chapter 109. The amount of the child support obligation is based on the child support guidelines as adopted by the Division of Child Support.

### Current Child Support

*Parenting Time*

OAR 137-050-0730(4) provides:

If there is no current written parenting time agreement or court order providing for parenting time, the parent or party having primary physical custody of the minor child will be treated as having all of the parenting time for that child unless a court or administrative law judge determines actual parenting time.

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*Income*

OAR 137-050-0715 provides, in part:

(1) “Income” means the actual or potential gross income of a parent as determined in this rule. Actual and potential income may be combined when a parent has actual income and is unemployed or employed at less than the parent’s potential.

(2) “Actual income” means a parent’s gross earnings and income from any source, including those sources listed in section (4), except as provided in section (5).

(3) “Potential income” means the parent’s ability to earn based on relevant work history, including hours typically worked by or available to the parent, occupational qualifications, education, physical and mental health, employment potential in light of prevailing job opportunities and earnings levels in the community, and any other relevant factors. A determination of potential income includes potential income from any source described in section 4 of this rule. If a parent residing in Oregon is determined to be able to earn at the minimum wage, the hourly earning amount to be imputed as potential income will be based on the lowest minimum wage provided for in any area of Oregon.

(4) Actual income includes but is not limited to:

(a) Employment-related income including salaries, wages, commissions, advances, bonuses, dividends, recurring overtime pay, severance pay, pensions, and honoraria;

\* \* \* \* \*

(d) Income replacement benefit payments including Social Security benefits, workers’ compensation benefits, unemployment insurance benefits, disability insurance benefits, and Department of Veterans Affairs disability benefits;

\* \* \* \* \*

(5) Child support, food stamps, Social Security or Veterans benefits received on behalf of a child in the household, adoption assistance, guardianship assistance, and foster care subsidies are not considered income for purposes of this calculation.

(6) If a parent's actual income is less than the parent’s potential income, the court, administrator, or administrative law judge may impute potential income to the parent.

\* \* \* \* \*

(8) Potential income may not be imputed to:

(a) A parent unable to work full-time due to a verified disability;

(b) A parent receiving workers’ compensation benefits;

(c) An incarcerated obligor as defined in OAR 137-055-3300; or

(d) A parent whose order is being temporarily modified under ORS 25.527(12).

(9) To determine monthly income when the employee is paid:

(a) Weekly, multiply the weekly earnings by 52 and divide by 12.

(b) Every two weeks, multiply the bi-weekly earnings by 26 and divide by 12.

(c) Semimonthly (twice per month), multiply the semimonthly earnings by 2.

\* \* \* \* \*

(11) As used in this rule, “full-time” means 40 hours of work in a week except in those industries, trades or professions in which most employers, due to custom, practice or agreement, utilize a normal work week of more or less than 40 hours in a week.

*Child Care Costs*

OAR 137-050-0735 provides, in part:

(1) Adjust the support obligation for child care costs paid by either parent or the child’s caretaker if the child for whom support is being calculated is disabled or under the age of 13.

(2) Child care costs must be related to the parent's or caretaker's employment, job search, or training or education necessary to obtain a job. Only actual costs paid by a parent or caretaker for child care that can be documented and determined may be used to compute an adjustment under these rules.

#### Monthly Support Amount

## Language is unique to each order

### Medical Support

ORS 25.323 provides:

(1) Every child support order must include a medical support clause.

(2) Whenever a child support order that does not include a medical support clause is modified the modification must include a medical support clause.

(3) A medical support clause may require that medical support be provided in more than one form, and may make the requirement that medical support be provided in a particular form contingent on the availability of another form of medical support.

(4) A medical support clause must require that one or both parents provide health care coverage for a child that is appropriate and available at the time the order is entered. If health care coverage for a child is not appropriate and available at the time the order is entered, the order must:

(a) Require that one or both parents provide health care coverage for the child at any time thereafter when such coverage becomes available; and

(b) Either require the payment of cash medical support, or include findings on why cash medical support has not been required.

(5) For the purposes of subsection (4) of this section, health care coverage is appropriate and available for a child if the coverage:

(a) Is accessible, as described in subsection (6) of this section;

(b) Is reasonable in cost and does not require the payment of unreasonable deductibles or copayments; and

(c) Provides coverage, at a minimum, for medical expenses, hospital expenses, preventive care, emergency care, acute care and chronic care.

(6) Health care coverage is accessible for the purposes of subsection (5)(a) of this section if:

(a) The coverage will be available for at least one year, based on the work history of the parent providing the coverage; and

(b) The coverage either does not have service area limitations or the child lives within 30 miles or 30 minutes of a primary care provider who is eligible for payment under the coverage.

(7) A medical support clause may not order a providing party to pay cash medical support or to pay to provide health care coverage if the providing party’s income is equal to or less than the Oregon minimum wage for full-time employment.

(8) Cash medical support and the cost of other medical support ordered under a medical support clause constitute a child support obligation and must be included in the child support calculation made under ORS 25.275.

OAR 137-050-0750 provides, in part:

(1) The basic support obligation (OAR 137-050-0725) includes ordinary unreimbursed medical costs of $250 per child per year. These costs represent everyday expenses such as bandages, non-prescription medication, and co-pays for doctor’s well visits. The basic support obligation does not account for health care coverage costs or for extraordinary medical expenses.

(2) “Cash medical support”, as used in OAR 137-050-0700 through 137-050-0765, has the meaning given in ORS 25.321(1).

(3) For purposes of this rule, “to provide” health care coverage means to apply to enroll the child and pay any costs associated with the enrollment, even if the cost to the parent is zero.

(4) For purposes of ORS 25.323, private health care coverage may be “available” to a parent from any source, including but not limited to an employer, spouse, or domestic partner.

(5) Private health care coverage is reasonable in cost if it costs no more than the total of four percent of each parent's adjusted income as determined in OAR 137-050-0720.

(a) The amount calculated for each parent in this section may not exceed that parent’s available income after deducting the parent's shares of basic support obligation and child care costs.

(b) The reasonable cost contribution of a parent whose income is at or below the highest Oregon minimum wage for full-time employment is zero.

(6) A parent with income at or below the highest Oregon minimum wage for full-time employment may be ordered to provide health care coverage only if it is available at no cost.

(7) Compelling factors may support a finding that health care coverage is reasonable in cost at an amount greater than the amount determined in section 5 of this rule so long as the providing parent has income greater than full-time employment at the highest Oregon minimum wage.

(8) In determining the cost of private health care coverage, consider only the cost to the parents of covering the children for whom support is sought. To calculate the amount to be considered:

(a) If there is a known cost for self-only coverage for the providing parent, deduct that cost from the cost of family coverage. Divide the remainder by the total number of people covered, excluding the providing parent. Multiply the result by the number of children for whom coverage is sought in the present calculation.

(b) If there is no self-only coverage option or the cost cannot be determined, divide the total cost of coverage by total number of people covered, including the providing parent. Multiply the result by the number of children for whom coverage is sought in the present calculation.

\* \* \* \* \*

(12) If neither parent has access to appropriate, available private health care coverage:

(a) One or both parents must be ordered to provide appropriate private health care coverage at any time whenever it becomes available;

(b) The parent with custody of the child may be ordered to provide public health care coverage for the child; and

(c) Either or both parents who are found to have a cash child support obligation as provided in OAR 137-050-0710(1)(i) must be ordered to pay cash medical support, or the order must include a finding explaining why cash medical support is not ordered. The amount of the cash medical support obligation is the lesser of:

(A) four percent of the parent’s adjusted income as determined in OAR 137-050-0720,

(B) the parent’s available income after deducting the parent's shares of basic support obligation and child care costs, or

(C) zero, if the parent’s income is at or below the highest Oregon minimum wage for full-time employment.

(13) A medical support clause may order an obligor to provide appropriate private health care coverage whenever it is available to the obligor, and to pay cash medical support whenever the obligor does not provide appropriate private health care coverage.

(14) Determine each parent’s share of the cost of health care coverage to be ordered under this rule by multiplying the total cost by each parent’s percentage share of the parents’ combined reasonable in cost limitation, as determined in section 5 of this rule.

(a) If only one parent has income above the highest Oregon minimum wage, that parent is responsible for all health care coverage costs. No share of the cost is apportioned to a parent with income at or below the highest Oregon minimum wage as provided in section 12(c)(C) of this rule.

(15) When enforcing the health insurance provision of a child support judgment entered under this rule, health insurance is reasonable in cost if the premium cost for the child is equal to or less than the amount that was determined reasonable in cost under section 5 of this rule based on both parents' income at the time support was calculated, regardless of whether that cost exceeds either:

(a) The providing parent's individual contribution to the reasonable cost cap, or

(b) The actual cost of insurance allocated to the providing parent under section 14 of this rule.

### Past Support

ORS 25.515(1) provides:

Past support may not be ordered for any period of time prior to the later of:

(a) The date of the most recent application for service from the Child Support Program administered under Title IV-D of the Social Security Act; or

(b) In the case of a mandatory referral based on the receipt of public assistance, the date of the last referral to the Child Support Program administered under Title IV-D of the Social Security Act.

OAR 137-055-3220 provides, in part:

(1) For purposes of this rule the following definitions apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

\* \* \* \* \*

(2) The administrator may establish past support when establishing a child support order under ORS 25.501 to 25.556.

\* \* \* \* \*

(7)(a) Past support may not be ordered for any period of time prior to the first day of the month the Notice and Finding of Financial Responsibility and proposed Order Establishing Support are issued. For any month or part of a month for which past support is ordered, the amount of support shall be a full month increment and shall not be prorated[.]

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(9) Past support will be calculated under the Oregon Child Support Guidelines based on current guideline factors. If the resulting amount is unjust or inappropriate, it may be rebutted as provided in OAR 137-050-0760.

## Order

## Language is unique to each order

## Notice of Income Withholding

This support order is enforceable by income withholding under ORS 25.372 to 25.427. On all orders and modifications, withholding on both current support and arrears will occur immediately. The District Attorney or, as appropriate, the Division of Child Support of the Department of Justice will assist in securing such withholding. Exemptions may apply in some circumstances under the provisions of ORS 25.396. If the obligor is granted an exemption from immediate income withholding, withholding shall occur whenever there is an arrearage at least equal to the support payment for one month, whenever the obligor requests such withholding, or whenever one of the other parties requests

withholding for good reason. Even if current support is being paid, the obligor's state and federal income tax refunds can be taken to pay past due support.

s/ Judge

Administrative Law Judge

Office of Administrative Hearings

ISSUANCE AND MAILING DATE

## Appeal Rights

Under the provisions of ORS 25.513(6), you may appeal this Final Order by filing a petition for review in the circuit court of the county in which the order has been entered. Your petition must be filed with the circuit court clerk within 60 days of the date the order is entered, and may be filed only with the circuit court clerk's office. If you file a petition for review with the Office of Administrative Hearings, the Division of Child Support, or the District Attorney's office, you will not have preserved your appeal rights with the circuit court.

Once your petition for review is properly filed, under the provisions of ORS 25.513, the circuit court will conduct a hearing de novo. A "hearing de novo" simply means that the court will hear the entire matter all over again and make its own decision, rather than reviewing the decision issued by the administrative law judge in this order. The circuit court then will issue its own order addressing all the issues.

## Rehearing and Reconsideration

Under the provisions of OAR 137-003-0675 and OAR 137-055-2180, you may request reconsideration or rehearing of this order within 60 days from the date this Final Order is mailed. The Administrative Law Judge does not have authority to decide a request for reconsideration or rehearing if more than 60 days have passed since the Final Order was mailed. Even if you seek rehearing or reconsideration, your 60 day petition for review time in the circuit court is still running. That means that if you seek rehearing or reconsideration instead of filing a petition for review in the circuit court, your appeal time to the circuit court may run out before the rehearing or reconsideration issue is decided. If the rehearing or reconsideration issue is decided against you, then you may have no appeal rights left.

If you decide to request rehearing or reconsideration, your request must be in writing, and must state why you are seeking rehearing or reconsideration. Mail an original copy of your request to the Office of Administrative Hearings; PO Box 14020, Salem, OR 97309-4020. You must also mail copies of your request to (Office language is unique to each order) that started the case, and to all other parties in the case. Your request must include a statement that you have mailed complete copies of the request to (Office language is unique to each order), and to all other parties. **If you do not mail copies of your request to all parties and include a statement that you have done so, your request may be denied.**

If the Administrative Law Judge does not respond to your request for rehearing or reconsideration, your request shall be deemed denied.

Remember that your appeal rights continue to run in the circuit court, whether you or any other party seeks rehearing or reconsideration. If any party does file a petition for review in the circuit court, then we immediately lose our authority to address rehearing or reconsideration, and all issues must then be decided by the circuit court by hearing de novo.

## Request to Reschedule

Pursuant to OAR 137-055-2165, the party that requested a hearing, but did not appear for the hearing, may request that the case be rescheduled. **To do so, provide a written request to** (Office language is unique to each order) **explaining all of the reasons why you did not appear and why you still want to have a hearing.** You must mail copies of your request to all other parties to the case. Your request must include a statement that you have mailed complete copies of the request to all other parties. If a final order by default has not been entered in circuit court (Office language is unique to each order) will forward your request to the Office of Administrative Hearings. The administrative law judge will defer responding to the request for 10 calendar days after the request is mailed to allow all parties an opportunity to submit written testimony as to why the request should be allowed or denied. Any written testimony submitted must be sent to all parties, including (Office language is unique to each order) in addition to the administrative law judge, and include a statement that you have done so.

## Request for Review

Any party, including the Division of Child Support or District Attorney, may request a review of the child support amount ordered after 35 months have passed.  Any party may also request review at any time upon a substantial change of circumstances. Requests for review should be made to the Division of Child Support or the District Attorney.

## Changes to Personal Information

Pursuant to ORS 25.020, you must notify the court and the child support agency assigned to your case (Division of Child Support or District Attorney), within 10 days whenever there is a change in your address, telephone number, driver’s license, employment, or health care coverage information. Failure to timely provide this information could result in you not receiving important notices about your case.

**Servicemembers' Civil Relief Act**

No party, unless stated above, has notified the Office of Administrative Hearings (OAH) that any participant is a person in military service subject to the Servicemembers' Civil Relief Act (SCRA). The OAH has no reason to believe that a party to this matter is subject to the SCRA. If a party to the proceeding is a service member and did not appear for the hearing, within the service members period of service, or 90 days after his/her termination of service, the OAH will review any request from the service member to reopen or vacate the decision if the service member can show that he or she has a good and legal defense to the claim and can show prejudice resulting from not being able to appear personally in the matter.

