

Collecting Child Support from SSI and SSDI Benefits

Massachusetts Department of Revenue
Child Support Enforcement Division
May 2008

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State Child Support Agencies

- Title IV, Part D of the Social Security Act (42 USC 651, et seq.) requires every state which receives TANF funding to have a child support agency and administer its program according to federal law.
- DOR's Child Support Enforcement Division is the Mass. IV-D agency.
- G.L. c. 119A is CSE's enabling statute and sets out most of its authority.

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DOR's Core Functions

- Locate the other parent.
- Establish paternity of children born out of wedlock.
- Establish child support and medical support orders.
- Collect and distribute child support payments.
- Review child support orders for potential modification.
- Enforce child support orders.

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Support Orders

- DOR helps custodial parents and guardians to obtain or modify child support orders.
- Child support is set in accordance with Child Support Guidelines issued by the Chief Justice of the Trial Court.
- Federal law requires states to have mandatory guidelines and to review them every four years.
- DOR also obtains orders for parents to provide health insurance for their children.

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Modification of Support Order

- Modification of order allowed if the current order is inconsistent with Guidelines
- Must file a complaint for modification
- Very important to file and serve as soon as circumstances change
 - Court can only modify the order back to the date the complaint was served

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SSDI Dependent Benefits

- *Rosenberg v. Merida*, 428 Mass. 182 (1998) gives method for computing dependent benefits credit and requires modification to receive the credit.
- DOR cannot give credit unless this is done.
- Extremely important to file modification complaint as soon as possible.

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Administrative Enforcement

- Legislature has granted DOR broad powers to collect child support using administrative means.
- Chapter 119A of the Massachusetts General Laws sets out most of DOR's powers.
- Many of the provisions are federal requirements as part of the IV-D Program.
- This is much faster and more efficient than judicial enforcement.

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Income Assignment

- Mandatory under state and federal law since 1998
- Every support order must include income withholding provision
- "Income" includes any periodic payments:
 - Wages, salaries, commissions and bonuses
 - Unemployment, retirement, Workers' Compensation and disability payments
 - Severance pay and salary advances

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25% Acceleration/Adm. Increase

- State law requires that every income assignment include a provision for 25% acceleration in amount withheld once arrears accrue. G.L. c. 119A, § 12 (b)(6)
- Court order may provide for different acceleration amount to be paid toward arrears.

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Income Withholding Limits

DOR uses Consumer Credit Protection Act caps:

- 50% head of household (55% if arrears are more than 3 months)
- 60% not head of household (65% if arrears are more than 3 months)
- SSA will withhold 65% of retroactive award if notified of child support debt

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SSI and SSDI Withholding

- SSI is not subject to income withholding orders.
- SSDI is subject to income withholding orders.
- When combination of both SSI and SSDI, DOR policy is not to attach.
 - DOR may not know there is combination

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Bank Levy

- Financial institutions doing business in the Mass. must provide account information, against which DOR matches its delinquent obligor information.
- DOR also matches information at the federal level through the Multi-State Financial Institution Data Match (MSFIDM).
- Since FY93, DOR has collected more than \$60M through its bank levy program.

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Levy of SSI and SSDI Benefits

- No prohibition against levy of SSDI benefits.
- SSI is not subject to levy and DOR will exempt the account in which SSI is deposited provided:
 - No other funds are deposited into that account
 - Obligor notifies DOR of SSI

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Bank Levy Exemption

- DOR has a policy that allows an obligor to designate one checking account for which the first \$2,500 is exempt from levy. To qualify:
 - Obligor must have made all required payments over the prior 6 months.
 - If SSDI benefits, DOR will work with obligor to get income withholding order in place.

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License Suspension

- DOR has authority to suspend both professional and driver licenses of delinquent obligors.
- The goal is not to suspend licenses but to bring people into compliance.
- Since 2001, DOR has collected more than \$130M through the license suspension program.

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SSI and SSDI and License Susp.

- Very important to respond to notices.
- If an obligor receives SSI, DOR will not suspend his license provided a complaint for modification is filed (if appropriate).
- If an obligor receives SSDI, the obligor must make regular payments to avoid having license suspended.
 - DOR will issue an income withholding order to SSA.

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Interest and Penalties

- DOR assesses interest and penalties when:
 - An obligor owes \$500 or more on last day of month; and
 - The total amount of monthly support not paid.
- Interest is assessed at 1% and penalty at .5% per month
- Certain obligors are exempted.

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Interest & Penalty Exemptions

- Payment exemption: Obligor not assessed interest or penalty in any month in which monthly obligation is paid in full.
- Needs-based benefits exemption: No interest or penalty for month in which obligor receives benefits such as SSI.
 - Obligor must notify DOR to qualify, although DOR will enter exemption if knows.

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Waiver of Interest and Penalties

- DOR will waive interest and penalties owed to the Commonwealth if the obligor pays the total arrears and any interest owed to the other parent.
- The payment must be voluntary and cannot result from enforcement action.
- This has been a very successful program.

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Arrears Management

- DOR has authority to settle or equitably adjust arrears owed to the Commonwealth.
- This authority only applies to permanently assigned arrears only.
- It is very difficult to meet the requirements to qualify for the program.
 - Serious doubt as to liability or collectibility.

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Equitable Adjustment

- DOR may equitably adjust arrears if an obligor has no present ability to pay, principles of equity warrant an adjustment, and it is in best interest of Commonwealth.
- The factors DOR considers are: the obligor's receipt of public assistance; disability or unemployment; reconciliation and children still minors; communication with DOR.

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Contact Information

Dolores O'Neill
Director, Special Litigation
(617) 626-4208
oneilld@dor.state.ma.us

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