



ASSISTING NON-CUSTODIAL PARENTS TO MODIFY CHILD SUPPORT AND ARREARS PAYMENTS

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Legal services providers and community agencies throughout New York State are seeing an alarming increase in the number of very low income parents burdened with onerous child support obligations and arrears debt that adversely affect their ability to avoid homelessness, remain employed, cope with illness and disability, and maintain a relationship with their children. For the most part, legal services offices do not offer legal representation for child support matters. Parents are left to navigate the family court and child support enforcement system without any assistance, often without success.

With this posting, we urge legal services and other community agencies to consider offering some guidance to *pro se* poor parents who may be entitled to a modification of their support obligation or can reduce their monthly arrears payments based on their limited income. Using the steps outlined below, parents can determine the amounts owed, whether there is a basis for modification, and which forum will entertain an appeal. We do not assert that offering guidance will make up for the lack of legal representation and assistance available, but many parents may be able to obtain some adjustment to the amounts they must pay on their own if they understand what information they need to provide to either the county's Child Support Enforcement Bureau (CSEB) or the court. Although not a comprehensive list, here are some straightforward ways to assist parents to proceed *pro se*:

1. The first step is to understand what is being garnished from their paycheck or disability payment. Does the amount represent current child support, arrears, an "add-on" to arrears (see below for explanation), or some combination of these? If the payment is made to the NYS Division of Child Support Enforcement and parents know their account number, they can obtain a PIN number by applying online at the Non-Custodial Parent page on the OTDA website at https://www.childsupport.ny.gov/dcse/non_custodial_parent_services.html, or by calling the Child Support Helpline at **1-888-208-4485**. With a PIN number, parents can view their accounts and figure out whether they are paying ongoing support, arrears, and/or add-ons and how much they owe. They can also obtain copies of their child support orders that the Division has on file. A copy of the order is needed to petition in family court for a modification of support.

2. Reduce the monthly payment amount. In some cases, the Child Support Enforcement Bureau (CSEB) will reduce the amount of monthly payment, even though it cannot reduce the total amount of arrears. If part of the garnished amount is the "add on," an administratively imposed garnishment that is applied when a child support respondent is in arrears, application can be made to reduce or eliminate this portion of the amount of the arrears payment. The "add-on" portion of the payment will be reduced or eliminated if the payment of the add-on brings the individual's income below the self-support reserve (135% of poverty for a household of one – this year the SSR is \$15,755). The self-support reserve is adjusted annually and is posted on-line at https://www.childsupport.ny.gov/dcse/child_support_standards.html. There is an application on the NYS DCSE webpage for Non-Custodial Parents, entitled Request for Review of Additional Amount that must be submitted along with a Statement of Income and Expenses and other income documentation such as a tax return or a Social Security statement. These forms are also available at https://www.childsupport.ny.gov/dcse/non_custodial_parent_services.html. When completed, the forms are submitted to the local child support enforcement office. The addresses of the local offices are available at https://www.childsupport.ny.gov/DCSE/LocalOffices_input.action. To read more about the add-on see 18 NYCRR 347.9(e) and 09 ADM-02, available at <http://otda.ny.gov/policy/directives/2009/ADM/09-ADM-02.pdf>

3. Apply to stop collection of arrears from exempt income and to correct mistakes. If the parent's sole income is SSI, public assistance, or another exempt source, there is an application on the same Non-Custodial Parent Page of the NYCSE website to stop garnishment from a bank account. This application, Mistake of Fact and/or Exempt Money Claim Form, should also be submitted if the support amount being collected does not agree with the order amount or if the order has been vacated. If parents are receiving exempt income in a check that is being garnished, they should submit the Request for Review of Additional Amount and Statement of Income and Expenses described above and state that the income being garnished is exempt.

4. Reduce amount of ongoing child support. The parent must petition in Family Court for this relief and it can be difficult without legal assistance. However, the state now offers DIY (do-it-yourself) programs with which *pro se* petitioners can work their way through a series of questions that result in a petition and affidavit to file in court. The link is <http://www.nycourts.gov/courthelp/diy/familycourt.html> and the program is quite good. Currently, it is available in English and Spanish. The Spanish version produces a petition in English for submission with a translated copy in Spanish for the litigant.

If the support order includes an amount of arrears that must be paid periodically in addition to ongoing support, a request to reduce that amount should be included in the same petition. Please note that there is no reference to arrears payments in the standardized or DIY petition forms, so the request will have to be added by the petitioner.

5. Cap the amount of arrears owed at \$500. Family Court Support Magistrates cannot reduce the total amount of arrears owed, except in very narrow circumstances. However, pursuant to the Family Court Act § 413 (1) (g), a noncustodial parent can petition the Family Court to limit the amount of arrears owed to \$500 if his/her income was below the federal poverty line for a single individual at the time the arrears accrued. Case law dictates that the parent must make application to the court for such relief and must show that the income limitation was due to disability or some other inability to earn income. Proof that the individual is receiving public assistance should be sufficient as well. If appropriate, this claim for relief needs to be added manually to the DIY or standardized Petition for Modification, as neither form includes it.

A cap on arrears may provide the best relief to indigent parents, but there are few published decisions to date in which the petitioner was successful. If you are interested in offering legal representation to a client who can assert such a claim for relief, please free feel to contact us for assistance.