

QUESTIONS AND ANSWERS: A GUIDE FOR NONCUSTODIAL PARENTS

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1. Will I be asked to show proof of immigration status at the child support hearing?

No. Immigration status is not considered in establishing the obligation to pay child support or collecting and enforcing payments.

2. How does the court decide how much I have to pay in child support?

In New York State, child support orders are based on the Child Support Standards Act (CSSA), a law that was passed in 1989 to make child support orders fair and consistent. Under the law, the basic amount that you have to pay is a fixed percentage of your income and depends on how many children are listed on the petition. The following will be deducted from your income before the order is calculated: NYC taxes, Social Security deductions, child support or spousal support actually paid to another family, based on a court order or written agreement.

<i>1 child</i>	<i>17%</i>
<i>2 children</i>	<i>25%</i>
<i>3 children</i>	<i>29%</i>
<i>4 children</i>	<i>31%</i>
<i>5 or more</i>	<i>at least 35%</i>

In addition, the child support order must include medical support and may include child care and education expenses for the child.

3. What is included in the child support order?

Your order will state how much and how often you have to pay child support. The order will also include medical support which means medical insurance and unpaid medical expenses for the child. The order may include child care and education expenses for the child.

4. If I have children with two different women, how will the child support orders be calculated?

The first custodial parent to file for a child support order in family court will get an order based on the New York State Child Support Standards Act (CSSA), which means 17% of your adjusted gross income for 1 child, 25% for two children and so on. The order for the second custodial parent will also be based on the CSSA, but it will be calculated using your adjusted gross income, minus the amount of child support you are paying on the first order.

5. What is medical support?

Medical support refers to health insurance coverage and unpaid medical expenses for the child. Every child support order must include a plan for paying the child's medical expenses. Either parent may be required to provide health insurance coverage for the child, if it is available at a reasonable cost, through work. OCSE will enforce the medical support portion of the child support order by sending a notice, called a MEDX, to your employer. The employer is required to provide health insurance coverage, where available, and OCSE will follow up to make sure that it happens. There may also be instructions in the child support order for payment of insurance deductibles and co-payments.

6. What is a default order?

A child support order may be established even if you do not provide sufficient financial information to the court or do not show up at the hearing, as required by law. That's called a default order. The Support Magistrate may issue a default order if paternity has already been established and the summons has been properly served to the satisfaction of the court. The order will be based on computerized financial information that OCSE provides, and any appropriate information that the custodial parent brings. You will have an opportunity to object to the order and appear at another hearing with your financial information, but it is in your best interests to follow the instructions on the summons and show up.

7. What if I disagree with the child support order that is issued at the hearing?

If either parent disagrees with the support order, he or she has 30 days from the date the order was made to file a written objection with the court clerk's office. A judge will review the case file and decide whether or not the order should be changed.

8. Can the amount of the child support order be changed?

Child support orders can be changed over time, depending on the situation. Orders may be increased by the Office of Child Support Enforcement with a Cost of Living Adjustment (COLA), when the case becomes eligible. Orders may also be modified by filing a petition in family court if there is a change in circumstances. If the needs of the child have increased, a petition may be filed for an upward modification. If your income is reduced and you cannot afford the amount of the child support order, you may file a petition for a downward modification. There will be a hearing in family court and the Support Magistrate will decide if the order should be changed. Your child support order will not be reduced unless you demonstrate a change of circumstances. Any change will go back to the date the petition was filed, not the date that the circumstances changed.

9. What is a Cost of Living Adjustment (COLA)?

Any child support order payable through OCSE is periodically eligible for a Cost of Living Adjustment (COLA). The amount of the COLA is based on yearly increases to the Consumer Price Index for Urban Areas (CPI-U), which measures the cost of day-to-day living expenses like food, clothing, shelter, transportation, fuel and medical expenses. COLA may be added to a child support order when the yearly CPI-U increases add up to at least 10% from the date the order was established or last modified. Although cases may be eligible for COLA 2 years after they are established or modified, it usually takes 3-4 years to reach the required 10% increase to the CPI-U. When an order is eligible for a COLA, both parents are notified of the COLA adjusted order amount. If the custodial parent is on public assistance, the COLA will be automatically applied. If the custodial parent is not on public assistance, he/she must consent to the COLA by contacting OCSE. If either parent objects to the COLA, an objection is filed in the court where the order was made and a new child support hearing will be scheduled. At the hearing, the Support Magistrate will use the percentage guidelines stated in the Child Support Standards Act to calculate what the order should be.

10. How does OCSE collect child support payments?

Most child support payments are collected automatically from salary deductions or other income/benefits like pensions, military allowances, social security and unemployment insurance. If you are self-employed, you will be directed to send certified checks or money orders to the New York State Processing Center in Albany or make your payments at any participating Western Union office which will charge a small fee.

11. How much of what I pay goes to the custodial parent?

If the custodial parent is receiving public assistance benefits, she is entitled to receive up to the first \$50.00 collected per month in child support. The rest is used to pay back the Department of Social Services for cash benefits. Custodial parents who are not on public assistance are entitled to all of the payments collected, except for arrears that are owed to the Department of Social Services.

12. What is an income execution (IEX)?

Income Execution (IEX) is the process used by OCSE to collect payments for current and/or overdue child support from your wages or other income. OCSE sends an IEX to the employer, who is then required to deduct the amount of the support order directly from your paycheck or other source of income. This income execution follows you from job to job and also allows OCSE to automatically add an additional amount to the order to pay for any arrears that may add up if payments are missed.

13. How does the custodial parent receive the child support payments collected by OCSE?

Non-public assistance clients receive payments within 48 hours after receipt by the New York State processing center in Albany. In most cases, payments are sent electronically, by direct deposit to participating banks, or through the New York State EPPICard Debit MasterCard Program. Public Assistance clients will receive their bonus/pass through payments on their EBT cards.

14. What happens to the child support order if I join the military?

If you already have a child support order at the time you join the military, the obligation to make child support payments will continue, regardless of where you are stationed. The military will honor the court order and garnish your allotment for the purpose of child support.

15. Will I be required to pay child support if I go on disability?

Yes. Disability benefits are considered a source of income for child support collections. If you are on SSI or public assistance, child support payments cannot be taken from your benefit check.

16. If I lose my job and go on unemployment, can the order amount be lowered?

Unemployment benefits are considered a source of income for child support collections. The amount of child support that can be taken from your unemployment check or any other source of income is limited by law. But, even if you are not paying the full amount, you would still owe the full amount of the order. If you have a change in circumstances, like going on unemployment, you should immediately go to family court and file a petition for a downward modification. Any change to the order will go back to the date you filed the petition, not the date you actually went on unemployment.

17. Can I give payments directly to the custodial parent?

Once a child support order is made payable to OCSE, any money you give directly to the custodial parent is considered to be in addition to the court ordered amount. You will not receive credit for them. If the custodial parent is receiving public assistance, it is considered fraud for her to accept direct child support payments directly from you. All payments received by a public assistance client directly from the noncustodial parent are supposed to be turned over to the Department of Social Services.

18. What if I don't think that child support payments are being used for the child?

As the noncustodial parent, you do not have the day-to-day responsibility of caring for the child. Therefore, you cannot control how the child support payments are used. Child support payments may be used by the custodial parent for any expense related to the child's well being. In addition to things like school, medical and dental expenses, and clothing, child support payments may be used for household expenses like rent and food.

19. If I am paying support, shouldn't I be entitled to see my child?

Child support and visitation/custody are handled separately in family court. Paying court ordered child support does not guarantee that you will be able to see your child. A petition for visitation may be filed with the court if you are being denied access to the child. You are still responsible for paying child support according to the order, even if you are not seeing your child.

20. How do I get credit for payments made directly to the custodial parent?

Only payments made to the OCSE Support Collection Unit will be credited to your account. It is possible to get credit for direct payments but you may have to go to a hearing in family court and bring proof of payments. Paying bills and buying gifts are not considered part of the child support payment.

21. Is Family Court the appropriate place to go if I receive a notice of an enforcement action and I feel it is unfair and should not be put in place?

No. Most enforcement measures are administrative. That means that OCSE is authorized by law to initiate them to ensure that the court order is honored. Family Court does not have authority to order OCSE to remove an administrative enforcement measure.

22. What happens if I do not make regular payments?

Most child support is collected through payroll deductions or other sources of income/benefits like pensions, military allowances, disability and unemployment insurance. If payments fall behind or aren't coming in at all, OCSE can increase the amount of the regular collections to make up for what is owed. If necessary, enforcement actions can be taken, including:

- Seizure of bank accounts, income tax refunds and lottery winnings
- Suspension of drivers licenses
- Reporting unpaid child support to credit reporting agencies
- Denial of new and renewed passports and business and professional licenses
- Referral for criminal prosecution
- Violation petition filed in court resulting in a money judgment with interested added on
- Mandatory participation in a job training program called STEP (Support Through Employment Program), if you are not paying because you are unemployed or have a low paying job.

Before any of these things can happen, you will receive a notice in the mail with instructions on what to do to stop the enforcement action. Read it carefully and respond according to the instructions. If paying child support is causing a hardship, you may be eligible for a reduction in payments through OCSE Customer Services, if the hardship is based on the add-on amount for arrears. However, that will not change the amount owed. If your circumstances have changed since the order was established, it may be appropriate to file a petition in family court for a downward modification of your child support order.

23. What can I do if I receive a notice that a specific enforcement measure is being taken against me?

Read the notice carefully. There will be instructions on how to pay what is owed, enter into a payment plan with OCSE, or file an objection or challenge if the amount owed is incorrect. **Follow the instructions.** No response or action will result in enforcement as stated in the notice.

24. Why was my tax refund taken even though I paid up what I owed?

OCSE can seize your New York State and federal tax refunds to pay outstanding child support. This process is called tax offset. If your name is on the list for tax offset, you will be notified in August that you have six weeks to pay what is owed or have your tax refund taken in the following year. In the middle of October, the list of people certified for tax offset becomes final, along with the amount owed. You will receive a letter from 5/9/2006 to 5/9/2006 from the State Department of Taxation and Finance and/or the IRS when your refund is being forwarded to OCSE. Because the list for tax offset is made up several months before the tax refund is taken, you may have paid what you owed in the interim. If you no longer owe back child support, a refund will be sent to you six to eight weeks after receiving the notification stating that your refund has been sent to OCSE. If you filed a joint tax return, the funds collected must be held for six months before any refund can be sent out, unless the other party signs an agreement that (s)he will not seek return of the funds directly from the IRS.

25. Why is my employer taking out more than the court ordered amount?

If you owe back child support, the amount you usually pay may be temporarily increased so that you can pay off what you owe. Your employer will be notified to add on \$50.00 or 50% more per payment, whichever is more. Your employer will be notified again when your account is paid up so that you can go back to paying the basic child support order without the extra amount.

26. If I enter into a payment agreement with OCSE to avoid having my drivers license suspended, will that end all other enforcement processes against me?

No. Each enforcement process has its own requirements. You must carefully read all correspondence about enforcement actions and respond according to the instructions in each notice.

27. Is there a limit to how much child support can be taken out of my paycheck?

The total amount that can be taken from any employee's paycheck, or any other source of income, is limited by the Federal Consumer Credit Protection Act (FCPPA). An employer can withhold 60% of your disposable income (income minus taxes and social security income) if there is no second family. If there is a second family, the amount is lowered to 50%. These limits are increased to 65% and 55% respectively, if payments are in arrears for 12 weeks or more. Disposable income is your gross income minus federal, state, and local income taxes and FICA. You may be eligible to have less money deducted from wages if the current amount taken out causes you to take home less than the self-support reserve, which changes yearly. This must be determined by OCSE.

Even if your employer is taking out less than the full amount of the child support order from your paycheck, that money is still owed. If your income has been reduced, making it impossible to pay the amount stated in the child support order, go to family court immediately and file a petition to have the order lowered. Any change to the order will go back to the date you filed the petition, not the date that your circumstances actually changed. If your inability to pay is due to an amount added to the income execution for arrears, a hardship review may be requested at the OCSE Customer Services Walk-In Center.

28. If I file for Bankruptcy, will I still owe child support?

Bankruptcy does not wipe out the obligation to pay current child support or arrears owed from before. How OCSE enforces your child support order depends on when the bankruptcy petition was filed.

Bankruptcy petition filed prior to October 17, 2005:

Chapter 7 (Liquidation) and 11 (Reorganization) Cases

- Income Execution (wage deductions) may be used to collect both current and past-due child support
- Establishment of paternity and child support orders in court may proceed
- Lottery intercept, passport suspension, and any criminal proceedings may continue
- Income tax intercept, property executions, credit bureau reporting, suspension of driver's licenses must be discontinued

Chapter 13 (Payment Plan) Cases

- Income Executions may continue, with permission from the debtor's attorney
- Income tax, lottery intercept and property execution must be discontinued
- Passport and driver's license suspension must be discontinued
- Referral to Department of Taxation and Finance must be discontinued
- Arrears owed to the custodial parent are a priority debt. Only a portion of arrears owed to the Department of Social Services may be recovered.

Bankruptcy petition filed on or after October 17, 2005:

If the bankruptcy petition was filed on or after October 17, 2005, enforcement of the child support order is the same, regardless of which chapter the bankruptcy petition was filed under. Child support debts, including arrears owed to the Department of Social Services, have priority over all other creditors.

OCSE will continue with the following actions:

- Establish paternity
- Establish and modify child support orders
- Withhold income (Income Executions) for payment of current and back child support
- Enforce medical support
- Withhold, suspend, or restrict drivers license, professional or occupational licenses
- Report delinquent parents to credit reporting agencies
- Intercept tax refunds and lottery winnings
- Suspend passports

OCSE may not do the following:

- Refer cases to the New York State Department of Taxation and Finance
- Seize bank accounts and property

It is important to remember that even if child support payments are not currently being collected because of your bankruptcy status, the child support obligation does not go away and your arrears will continue to increase.

29. When do child support payments end?

In New York State, you are required to pay support until the child reaches age 21. Support may stop earlier if it can be proven to the court that the child is emancipated. That means the child is not living with his or her parents and has a source of income, is in the military, or married. In some cases, support may continue through college or longer. If the support order was established in another state, the age of emancipation of that state will be followed. The child support order will not be terminated if you are incarcerated. The order will also not be terminated if the custodial parent's public assistance case closes. If that happens, all payments collected for current support will be sent to the custodial parent unless we are instructed otherwise. After the child support case is closed, you may still owe child support arrears to the custodial parent or the Department of Social Services, if your case was not paid up to date.

30. Where can I get more information?

To speak with a child support representative:

Call the New York State Child Support Customer Services Help Line

8:30 a.m. – 5:00 p.m. Monday – Friday (888) 208-4485

TTY (Hearing Impaired): (866) 875-9975

Visit the New York City OCSE Customer Services Office

151 West Broadway, 4th floor Monday – Friday 8:00 a.m. – 7:00 p.m.

Call weekdays for Saturday appointment (212) 274-6482 or (212) 274-4929

Monday is the busiest day. For a shorter wait time, visit OCSE Customer Services Tuesday – Friday between 11:00 a.m. and 6:30 p.m.