

	INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL	
	Chapter 12: Enforcement	Effective Date: 5/20/19
	Section 6: Administrative Hearings	Version: 1.0 Date: 5/20/19

BACKGROUND

Federal law mandates that states have an administrative procedure in place to allow individuals the opportunity to request an administrative review, and take appropriate action when there is evidence that an error has occurred or an action should have been taken on their case.¹

POLICY

The Indiana Administrative Code establishes procedures for the Child Support Bureau (CSB) to administratively adjudicate, upon a request for an administrative hearing by an obligor aggrieved by the enforcement of a child support obligation including: the withholding of income, the suspension of licenses and permits, or the interception of a state tax refund applied to a delinquent child support obligation.²

REFERENCES

- [IC 4-21.5-3](#): Adjudicative Proceedings
- [IC 4-31-2-5.5](#): “Delinquent”
- [IC 4-33-2-5.8](#): “Delinquent”
- [IC 4-35-2-3.5](#): “Delinquent”
- [IC 6-8.1-9.5-5](#): Notice by Claimant Agency of Intent to Refund Set Off
- [IC 6-8.1-9.5-6](#): Contest of Agency’s Claim; Notice
- [IC 14-11-3-0.5](#): Delinquent defined
- [IC 31-16-12-7](#): Suspension of Delinquent Person’s Driving Privileges
- [IC 31-16-12-8](#): Suspension or Denial of Delinquent Person’s Professional License
- [IC 31-16-12-9](#): Suspension of Delinquent Person’s Horse Racing Commission or Gaming Commission License
- [IC 31-16-12-10](#): Suspension, Denial, or Nonrenewal of Delinquent Person’s Insurance, Recovery, or Bail Agent’s License
- [IC 31-16-12-13](#): Suspension, Denial, or Nonrenewal of Delinquent Person’s Employee’s Permit
- [IC 31-16-15-3.5](#): Notice to Withhold Income
- [IC 31-16-15-4.3](#): Income Withholding Order; Contesting Implementation
- [IC 31-25-4-2](#): Delinquent
- [IC 31-25-4-32](#): Finding Obligor Delinquent; Notice; Order to Suspend Driving Privileges; Licenses and Permits: Sanctions

¹ 45 C.F.R. § 303.35

² 465 IAC 3-3-1

- [IC 31-25-4-33](#): Objections to Order; Hearing
- [465 IAC 3-1-3](#): Administrative Law Judge or ALJ defined
- [465 IAC 3-3-1](#): Purpose
- [465 IAC 3-3-3](#): Request for Hearing
- [465 IAC 3-3-5](#): Review of Child Support Hearing Requests
- [465 IAC 3-3-8](#): Appointment of Administrative Law Judges
- [465 IAC 3-3-9](#): Scheduling of Hearings
- [465 IAC 3-3-14](#): Burden of Proof
- [465 IAC 3-3-16](#): Hearing Decision
- [CSB-LTR-5-29-99](#): State Tax Offset Threshold Change
- [42 U.S.C. § 666](#): Requirement of Statutorily Prescribed Procedures to Improve Effectiveness of Child Support Enforcement
- [45 C.F.R. § 303.35](#): Administrative Complaint Procedure
- [45 C.F.R. § 303.100](#): Procedures for Income Withholding

PROCEDURE

1. Enforcement Actions Eligible for Administrative Hearing

A. Income Withholding

When the Title IV-D Prosecutor or the CSB issues an income withholding order (IWO), a notice of intent providing information about the IWO and details on how the obligor can contest implementation of the IWO shall be issued to the obligor concurrently with the initial IWO issued to the income payor.³ If required by local rules established by the Title IV-D Prosecutor, this notice may be issued concurrently with each subsequent IWO issued on the case. Upon receiving the notice of intent, the obligor may appeal the issuance of an IWO initiated by the Title IV-D Prosecutor or the CSB by sending a written request for an administrative hearing to the Centralized Enforcement Unit (CEU) of the CSB within 20 days of the date the notice of intent was mailed.⁴ The only basis for appeal is mistake of fact:⁵

1. The person to whom the notice was sent is not the person to whom the notice applies; or
2. An error in the amount of current or overdue support.⁶

CEU will initially review the written request for an administrative hearing within one to two business days after its receipt to determine if the request was timely, and whether the basis of the request for hearing asserts an issue that is eligible for administrative hearing.⁷ If the request is determined to be untimely or presents an issue that is not eligible for administrative hearing, CEU will notify the obligor who submitted the written request and state the reason upon which the hearing request is to be denied.⁸ If the obligor is denied a hearing request, and administrative remedies

³ IC 31-16-15-4.3; 42 U.S.C. § 666(b)(4)

⁴ 465 IAC 3-3-3(c); IC 31-16-15-4.3

⁵ IC 31-16-15-4.3

⁶ 45 C.F.R. § 303.100(c)(2)

⁷ 465 IAC 3-3-5(a)

⁸ 465 IAC 3-3-5(b)

have been exhausted, the obligor may seek a judicial determination to prevent the enforcement action.

CEU sends eligible hearing requests to the DCS Hearing and Appeals (H & A) for the scheduling of the administrative hearing. CEU will also contact the order county to obtain copies of court orders, payment history, and arrearage calculation to be used as evidence at the administrative hearing. It is imperative that the county respond promptly to this request as the hearing shall be set within 25 days of CEU receiving the obligor's request for an administrative hearing.⁹

B. License Suspension

When an obligor has an arrearage of at least \$2,000.00 or is past due in the equivalent of three (3) months current child support on a case, the Title IV-D Prosecutor shall issue a notice of intent to initiate administrative sanctions against the obligor's professional or occupational license or permit with the appropriate licensing entity; initiate administrative action to suspend the non-custodial parent's driver's license with the Indiana Bureau of Motor Vehicles; river boat license or gambling license issued by the Indiana Gaming Commission; horse racing license issued by the Indiana Horse Racing Commission; fishing, hunting, and trapping licenses, Lake Michigan commercial fishing license, bait dealer's license, mussel license, fur buyer's license, nursery dealer's license, and ginseng dealer's license issued by the Indiana Department of Natural Resources; insurance producers license, surplus line producers license, bail agent license, and recovery agent license issued by the Indiana Department of Insurance; or employee's permit to be a bartender, waiter, waitress, or manager in a retail establishment issued by the Indiana Alcohol and Tobacco Commission.¹⁰

Upon receiving the notice of intent, the obligor may appeal the administrative license sanctions initiated by the Title IV-D Prosecutor by sending a written request for an administrative hearing to the CEU within 20 days of the date the notice of intent was mailed.¹¹ The only basis for appeal is mistake of fact:¹²

1. The person to whom the notice was sent is not the person to whom the notice applies; or
2. The arrearage is less than the amount required to initiate the action.¹³

CEU will initially review the written request for an administrative hearing within one to two business days after its receipt to determine if the request was timely, and whether the basis of the request for hearing asserts an issue that is eligible for administrative hearing.¹⁴ If the request is determined to be untimely or presents an issue that is not eligible for administrative hearing, CEU will notify the obligor who submitted the written request and state the reason upon which the hearing request is

⁹ 465 IAC 3-3-9(c)(3)

¹⁰ IC 14-11-3-0.5; IC 31-25-4-2; IC 25-1-1.2; IC 4-31-2-5.5; IC 4-33-2-5.8; IC 4-35-2-3.5; IC 31-16-12-7; IC 31-25-4-32(a)(5)(A); IC 31-25-4-32(a)(5)(D); IC 31-25-4-32(a)(5)(E); IC 31-25-4-32(a)(5)(F); IC 31-25-4-32(a)(5)(G); IC 31-16-12-7; IC 31-16-12-8; IC 31-16-12-9; IC 31-16-12-10; IC 31-16-12-13

¹¹ 465 IAC 3-3-3(i)

¹² IC 31-25-4-33(b)

¹³ 465 IAC 3-3-3(k)

¹⁴ 465 IAC 3-3-5(a)

to be denied.¹⁵ If the obligor is denied a hearing request, and administrative remedies have thus been exhausted, the obligor may seek a judicial determination to prevent the enforcement action.

CEU sends eligible hearing requests to the DCS H & A for the scheduling of the administrative hearing. CEU will also contact the order county to obtain copies of court orders, payment history, and arrearage calculation to be used as evidence at the administrative hearing. It is imperative that the county respond promptly to this request as the hearing shall be set within 25 days of CEU receiving the obligor's request for an administrative hearing.¹⁶

C. State Tax Offset

When the obligor has an arrearage balance of \$150.00 or more among all of the obligor's cases, the CSB will submit the obligor's arrears balance to the Indiana State Department of Revenue (SDOR) for state tax offset.¹⁷ The CSB shall send a notice of intent to offset the state tax refund to the obligor within 15 days of receiving notice from the SDOR that the obligor is entitled to a state tax refund.¹⁸

Upon receiving the notice of intent, the obligor may appeal the administrative state tax offset sanction initiated by the Title IV-D Prosecutor by sending a written request for an administrative hearing to the CEU within 30 days of the date the notice of intent was mailed.¹⁹ The only basis for appeal is mistake of fact:²⁰

1. The person to whom the notice was sent is not the person to whom the notice applies; or
2. The arrearage is less than the amount required to initiate the action

CEU will initially review the written request for an administrative hearing within one to two business days after its receipt to determine if the request was timely, and whether the basis of the request for hearing asserts an issue that is eligible for administrative hearing.²¹ If the request is determined to be untimely or presents an issue that is not eligible for administrative hearing, CEU will notify the obligor who submitted the written request and state the reason upon which the hearing request is to be denied.²² If the obligor is denied a hearing request, and administrative remedies have thus been exhausted, the obligor may seek a judicial determination to prevent the enforcement action.

CEU sends eligible hearing requests to the DCS H & A for the scheduling of the administrative hearing. CEU will also contact the order county to obtain copies of court orders, payment history, and arrearage calculation to be used as evidence at the administrative hearing. It is imperative that the county respond promptly to this

¹⁵ 465 IAC 3-3-5(b)

¹⁶ 465 IAC 3-3-9(c)(3)

¹⁷ CSB-LTR-5-29-99

¹⁸ IC 6-8.1-9.5-5

¹⁹ IC 6-8.1-9.5-6; 465 IAC 3-3-3(e)

²⁰ 465 IAC 3-3-3(k)

²¹ 465 IAC 3-3-5(a)

²² 465 IAC 3-3-5(b)

request as the hearing shall be set within 25 days of CEU receiving the obligor's request for an administrative hearing.²³

2. Role of the CSB Attorney

The DCS H & A is a unit within the Indiana Department of Child Services that administers all DCS administrative hearings. The administrative hearings are held at the Indiana Government Center, and obligors, and private counsel if retained, are required to appear in person unless a telephonic hearing is requested.²⁴ Once the administrative hearing has been scheduled by the DCS H & A, the CSB attorney will represent the Title IV-D Agency in the administrative hearing process.

The CSB attorney may contact the Title IV-D Prosecutor for additional information and/or clarification, as well as contact the obligor, or private counsel if represented. When the obligor appears for the administrative hearing, the CSB attorney may conduct a pre-trial conference with the obligor, as well as exchange and explain exhibits that are to be admitted. It is the responsibility of the CSB attorney for entering into the record the list of exhibits to show the authority of the Title IV-D Agency to administer the action indicated in the notice of intent sent to the obligor. Further, it is the responsibility of the CSB attorney to review any exhibit presented by the obligor for its admissibility.

3. Role of the Administrative Law Judge

The administrative law judge (ALJ) is tasked with conducting the administrative hearings and rendering decisions based upon the evidence presented.²⁵ The obligor has the burden of proof, by a preponderance of the credible evidence, to establish facts applicable for the ALJ to consider in determining whether the proposed enforcement action should proceed.²⁶

Because the DCS H & A schedules the administrative hearing without consulting the availability of the obligor for the hearing, every obligor is granted one continuance without having to show good cause. After the first continuance, the obligor is required to show good cause to request a second continuance. The determination of good cause is a matter of discretion for the ALJ.

A request for an administrative hearing can also be withdrawn by the obligor. Meanwhile, the CSB may also elect to terminate the proposed enforcement action.

During the hearing, exhibits are presented by the CSB attorney, including the notice of intent, the obligor's request for hearing, the notice of hearing, any judicial orders supporting the calculation of arrearage, the Clerk of Court's record of payment history, as well as an affidavit of arrearage. The administrative hearing is limited in scope. The ALJ does not have the authority to modify an order, set the arrears balance, change custody, emancipate a child, nor give credit for any direct payments the obligor may have made to the obligee. Further, the ALJ does not have the authority to order the Title IV-D Agency, or the Clerk to change the record.

²³ 465 IAC 3-3-9(c)(3)

²⁴ 465 IAC 3-3-8; 465 IAC 3-3-9(b)

²⁵ 465 IAC 3-1-3(b)

²⁶ 465 IAC 3-3-14; IC 4-21.5-3-6(e)

If the ALJ has made a determination of a mistake of identity fact, or that arrearages are less than the amount required to initiate the enforcement action, the ALJ will deny the proposed enforcement action, or remand it to the CSB for further consideration. The ALJ determination is the final agency action, and the obligor will be required to seek judicial redress to prevent the addressed enforcement action involving income withholding and license suspension.²⁷

In cases where the ALJ has made a determination regarding state tax offset, either the obligor or the CSB may petition for review of that determination by the ultimate agency authority in a process similar to what is outlined in the Administrative Orders and Procedure Act (AOPA).²⁸ The DCS General Counsel is the ultimate agency authority and may designate that role. The final agency action review is limited to the evidence presented at the initial hearing and no new evidence may be considered. The final agency action process is rarely used.

FORMS AND TOOLS

1. [ISETS Income Withholding Complete Guide](#)
2. [License Suspension Application](#)
3. [Certifying Cases for Offsets](#)

FREQUENTLY ASKED QUESTIONS

N/A

RELATED INFORMATION

The Indiana Administrative Code establishes procedures to provide an administrative hearing based on an individual's request following the Title IV-D Agency's action to block or encumber an obligor's account with a financial institution by establishing a lien for child support on the account assets.²⁹ However, CSB initiated actions to enforce an obligor's child support delinquency through payment from assets in the obligor's financial institution account are accomplished through the issuance of an IWO to the financial institution, and not through the establishment of a lien. Therefore, these enforcement actions are subject to same notice and administrative hearing requirements as IWOs.³⁰

In addition, the Indiana Administrative Code establishes procedures to provide an administrative hearing based on request by a person aggrieved by the distribution of child support payments involving an assignment of rights to the State for the previous receipt of federal Temporary Assistance to Needy Families (TANF) by an obligee.³¹

²⁷ 465 IAC 3-3-16(h)

²⁸ IC 4-21.5-3-31(c)

²⁹ IC 31-25-4-31; 465 IAC 3-3

³⁰ IC 31-16-15-3.5; 465 IAC 303; See Section 2.1 of this Chapter; See Section 2.3 of this Chapter

³¹ 465 IAC 3-3-1(a)(3)(E)