TITLE 290: DEPARTMENT OF HUMAN SERVICES
DIVISION OF CHILD SUPPORT SERVICES
CHAPTER 290-7-1 RECOVERY AND ADMINISTRATION OF CHILD SUPPORT

Ga. Comp. R. & Regs. r. 290-7-1-.01 (2011)

290-7-1-.01 Legal Authority and Table of Contents.

These Rules are adopted and published pursuant to the Official Code of Georgia Annotated sections 19-6-15, 19-6-28.1, 19-6-30 through 19-6-33.1, 19-7-40, 19-7-43, 19-7-46.1, 19-7-52, 19-11-1 through 19-11-37, 19-11-100 through 19-11-190, and 50-13-1 through 50-13-11.

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AUTHORITY: O.C.G.A. §§ 19-6-15, 19-6-17, 19-6-28.1, 19-6-30 through 19-6-33.1, 19-7-40, 19-7-43, 19-7-46.1, 19-7-52, 19-11-1 through 19-11-37, 19-11-100 through 19-11-190, and 50-13-1 through 50-13-11.

ADMINISTRATIVE HISTORY. Original Rule entitled "Legal Authority" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.02 Purpose and General Provisions.

(a.) The purpose of these rules is to specify procedures for the establishment and enforcement of child support obligations as authorized and required by certain laws of Georgia, including but not limited to, the "Child Support Recovery Act" ("CSRA"), codified at sections 19-11-1 through 19-11-39 and the "Uniform Interstate Family Support Act," codified at sections 19-11-100 through 19-11-191.

(b.) In compliance with State and Federal Laws, the Department of Human Services hereby operates a program for locating parents or putative parents, establishing paternity, establishing or modifying support obligations, enforcing support obligations, and collecting child support. The program shall operate in accordance with the requirements of Title IV-D of the Social Security Act, applicable requirements of Title IV-A of the Social Security Act, and applicable State law. The program will cooperate with other states by providing assistance in carrying out program functions.

(c.) When carrying out its child support responsibilities, the Department proceeds on behalf of the child or children involved. Neither the Department nor its attorneys (including Assistant District Attorneys and Special Assistant Attorneys General) represent any recipient of child support enforcement services nor any person who has applied for services. The submission of an application for services does not create a contractual relationship between the Department and any person or persons.

(d.) The Department will provide services or activities required to be provided and described in Title 45 of the Code of Federal Regulations, Chapter III, Part 302 and Part 303. Any optional services or activities specified in Part 302 or Part 303 may be provided where, in the Department's sole discretion, on a case by case basis its application is determined to further the goals of the child support program. The aforementioned federal regulations are hereby adopted by these Rules by specific reference.

(e.) Pursuant to section 19-11-24 of the Official Code of Georgia Annotated, conformity with federal law is required and the Department is specifically authorized by Georgia law to "adopt regulations necessary to prevent conflict with federal law or the loss of federal funds."

(f.) The Department is categorically unauthorized to address issues of custody or visitation. Thus, in any action initiated by the Department pursuant to the CSRA or the Uniform Interstate Family Support Act ("UIFSA"), the action shall be limited solely to the issue of support and shall exclude issues of visitation, custody, property settlement, or other similar matters otherwise joinable by the parties. A court proceeding under UIFSA may not condition the payment of a support order upon compliance by a party with provisions for visitation. The sole exception to this provision shall be in an action involving the enforcement or modification of a child support order containing a "parenting time" deviation entered under O.C.G.A. § 19-6-15(i)(2)(K).

(g.) The “child support guidelines” of Georgia are established by the General Assembly and are published at section 19-6-15 of the Official Code of Georgia Annotated and must be considered by all courts and administrative tribunals in any proceeding involving child support.

(h.) In any administrative hearing held pursuant to these Rules, the procedural rules of the Office of State Administrative Hearings apply, except where an applicable federal or state law or a federal regulation would require that a different procedure be applied.

AUTHORITY: O.C.G.A. §§ 19-11-1 through 19-11-39, 19-11-100 through 19-11-191, 50-13-1 through 50-13-11, 42 U.S.C. § 651 et seq.; 42 U.S.C. § 663; 45 C.F.R. §§ 205-235, 301-306

ADMINISTRATIVE HISTORY. Original Rule entitled "Title and Purpose" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.03 Definitions.

In these rules, unless the context otherwise requires, words and phrases set forth herein shall mean the following:

(a.) "Administrative Hearing" means the evidentiary hearing conducted by an administrative law judge ("ALJ") appointed by the Office of State Administrative Hearings ("OSAH") in accordance with these Rules, any rules promulgated by OSAH, and the statutory provisions of the Georgia Administrative Procedure Act.

(b.) "Administrative Procedure Act" means that law codified at Official Code of Georgia sections 50-13-1 through 50-13-22.

(c.) "Arrearage" means an amount of money calculated by the Department or a court representing the total amount of support owed less the actual amount of support paid by an obligor. An obligor who is "in arrears" is subject to any administrative or civil enforcement action allowed by law.

(d.) "Child support" means any periodic or lump-sum payment of cash as well as the duty to provide health insurance on behalf of a child or to pay for uninsured medical expenses of a child or any other obligation imposed or imposable under Georgia's child support guidelines (see O.C.G.A. § 19-6-15).

(e.) "Child support obligation" means any obligation of support imposed or imposable by law, court or administrative order, decree or judgment or final administrative decision.

(f.) "Consent agreement" means an agreement entered into between the Department and one or more obligors setting forth the obligor's child support obligation.

(g.) "Consent order" means the order issued by the administrative law judge based on a signed consent agreement.

(h.) "CSRA" refers to Georgia's "Child Support Recovery Act," codified at sections 19-11-1 through 19-11-39 of the Official Code of Georgia Annotated. The CSRA is the enabling legislation of the Department.

(i.) "Department" means the division within the Georgia Department of Human Services which provides and administers child support services under the IV-D program.

(j.) "Enforcement" refers to the entire array of administrative or civil actions available to the Department to collect child support or an arrearage from one or more obligors.

(k.) “Enforcement deferral” is a non-contractual writing between the Department and the obligor providing that the Department shall voluntarily refrain from taking specified enforcement actions so long as the obligor is making payments in accordance with the schedule specified in the document.

(l.) “Establishment” means the process, whether administrative or civil, of adjudicating the establishment of legal paternity and the duty of a parent or parents to pay child support.

(m.) "Final administrative decision" means a decision of the Department for which all administrative appeal procedures have been exhausted or waived.

(n.) "FIW" means either an income deduction order issued by a court pursuant to O.C.G.A. § 19-6-30 et seq. or an administrative order for income withholding issued by the Department pursuant to section 19-6-32. FIW is also an acronym for the federally-issued “Federal Income Withholding” form (OMB Form # 0970-0154) which must be utilized by all IV-D agencies.

(o.) "Foreign order" means an order issued by a court or an administrative entity located in a jurisdiction other than Georgia, including other countries if the United States government or Georgia has a reciprocity agreement with said country.

(p.) "IV-D order" means any order or judgment of a court of this state, any order or judgment of a court of another state or any final administrative decision of this state issued under O.C.G.A. § 50-13-1 et seq. or any final administrative decision or order of another state setting forth an obligation to pay child support if a proper person has either applied for services from the Department or has received public assistance..

(q.) “Modification” refers to either the administrative or civil process of reviewing a child support order and then seeking a court order adjusting the original child support order. Modification is triggered when a support order: (1) provides for a support amount which is no longer consistent with the provisions of O.C.G.A. § 19-6-15; or, (2) contains a legal defect of any sort which the Department deems necessary to correct to make an order fully enforceable under the laws of this state; or, (3) requires the inclusion of medical support when available at reasonable cost. Review and modification may also be triggered by the mere passage of time if the obligee or child is receiving public assistance.

(r.) “Nonparent custodian” means, in accordance with O.C.G.A. § 19-6-15(a)(15), an individual who has been granted legal custody of a child, or an individual who has a legal right to seek, modify, or enforce a child support order (such as a guardian or guardian ad litem). Nonparent custodians are usually, but not always, a relative of the child such as a grandparent.

(s.) "O.C.G.A." refers to the Official Code of Georgia Annotated. The specific references to sections of O.C.G.A. in these rules are to those laws in effect at the time these rules were promulgated. If, at some later date, the O.C.G.A. is revised, then these rules are to be construed in accordance with current law. If O.C.G.A. section numbers are changed, the O.C.G.A. references herein shall refer to the then-applicable law.

(t.) "Obligee" means the person to whom a child support obligation is owed under any court order or administrative order for child support.

(u.) "Obligor" means the person who is responsible for paying a child support obligation under any court order or administrative order for child support.

(v.) “Putative obligor” means any person who is alleged to owe a duty to support a child or children.

(w.) “UIFSA” refers to the “Uniform Interstate Family Support Act,” codified at sections 19-11-100 through 19-11-191 of the Official Code of Georgia Annotated.

(x.) "Underemployed" means either a complete failure to seek employment or the acceptance of employment at a level of compensation which does not reasonably reflect a person’s earning potential or a refusal without good cause to accept employment which is otherwise reasonably available.

AUTHORITY: O.C.G.A. §§ 19-6-30, 19-6-31, 19-6-32, 19-6-33, 19-11-4, 19-11-24, 49-5-1, 50-30-1- et seq.

ADMINISTRATIVE HISTORY Original Rule entitled "Definitions" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.04 Establishment of Child Support Obligation.

(a.) Initial investigation. In cases in which no child support order already exists, the Department may conduct an investigation in accordance with O.C.G.A. § 19-11-10 to determine the ability of a putative obligor to support his/her child(ren). The Department will calculate the amount of the support award based on the standards set forth at O.C.G.A. § 19-6-15. An obligor shall not be relieved of his/her duty of support when he/she has brought about his/her own unstable financial condition or when it is determined that he/she is underemployed. If paternity is contested, the Department shall pursue a determination of paternity as permitted by law. The Department will generally pursue genetic testing in any case in which paternity is at issue because, in the majority of cases, it is in the best interest of the child(ren) to know the identity of both biological parents; however, genetic testing will normally not be pursued in cases involving adoption or the use of reproductive assistance techniques which would negate biological relations (such as embryo donation, egg donation, sperm donation, etc.). Genetic testing will also generally not be pursued in the case of married persons. The decision regarding whether or not to seek genetic testing shall be at the sole discretion of the Department based upon the facts known to it at the time.

(b.) Consent agreement. When the investigation is complete, the Department will request that the putative obligor enter into a consent agreement to provide child support (including medical support) and to provide medical insurance when available to the putative obligor in accordance with O.C.G.A. § 19-11-26. Subsequently, the Department will submit a signed consent agreement to OSAH for the issuance of a support order and will issue an FIW after entry of the consent order if the obligor is employed.

(c.) Establishment at Hearing. If the Department is unable to secure a consent agreement from the putative obligor, the Department will file a request for hearing before an administrative law judge appointed by OSAH to determine the duty of and ability of the putative obligor to provide child support. The amount of the support shall be determined in accordance with O.C.G.A. § 19-6-15 and shall include medical insurance for his/her children when available at reasonable cost pursuant to O.C.G.A. § 19-11-26. A putative obligor shall not be relieved of his/her duty of support when the administrative law judge determines that the obligor is underemployed or has brought about his/her own unstable financial condition. An administrative hearing and any appeal therefrom under this Rule shall be in accordance with the procedures set forth at Rule 290-7-1-.19.

(d.) If a nonparent custodian is the party seeking establishment, the Department may proceed against all natural or adoptive parents of the child in the same proceeding unless jurisdictional defects require separate proceedings. Although a nonparent custodian applying for services may seek establishment against only one parent, the Department in its sole discretion may choose to proceed against both parents of the child(ren).

(e.) As required by federal law, when TANF, Medicaid, or other public assistance is paid by the State of Georgia on behalf of a child, a referral is automatically made to the

Department for establishment services. In such public assistance cases, the Department may proceed without an application for services in order to collect a public debt owed to the State of Georgia. In such public assistance cases only, the Department may seek to establish a support obligation even though the custodian of the child does not have legal custody.

(f.) The Department may, in its sole discretion, elect to proceed in superior court to establish any child support obligation rather than proceed through OSAH.

AUTHORITY: O.C.G.A. §§ 19-6-15, 19-6-17, 19-11-8, 19-11-10, 19-11-15.

ADMINISTRATIVE HISTORY: Original Rule entitled "Administrative Establishment of Child Support Obligation" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.05 Fees and Collection Procedures.

(a.) Application Fees: all persons applying for services from the Department are required to pay a $25 application fee, or other amount as federally required, unless the applicant is currently receiving TANF or some other form of public assistance.

(b.) FSR Fees: The Department controls the "family support registry," a central registry which operates on behalf of the department to receive, process, disburse, and maintain a record of all child support payments paid to the Department or paid pursuant to an income deduction order.

(1) The Department shall collect a fee of up to $30.00 for processing of insufficient funds checks.

(2) The Department shall collect an administrative fee of up to $2.00 per payment or 5 percent of each payment, whichever is the lesser.

(c.) DRA Fees: The Department is required by the federal Deficit Reduction Act to collect certain annual fees from both obligors and obligees who have never received public assistance in any case in which $500 or more has been collected.

(1) Obligees: The annual fee is $12.00, collectible at the rate of $1.00 per month. This fee is deducted and retained from child support collections before disbursement to the obligee.

(2) Obligors: The annual fee is $13.00, to be paid in 12 monthly installments. The department shall retain and collect this fee through income withholding or any other enforcement remedy available to the Department.

(d.) Other Fees

(1) For any person not currently receiving TANF or Family Medicaid assistance, or whose gross monthly income is not less than $1,000.00, a non-refundable fee of up to $100.00 is required for review and modification pursuant to code section 19-11-12, payable upon completion of the review process, except in cases proceeding under UIFSA.

(2) A fee of $15.00 shall be retained and deducted from any intercept of federal tax refunds, as required by federal law.

(3) A fee of $12.00 shall be retained and deducted from any intercept of state tax refunds.

(4) Genetic testing may be utilized in appropriate circumstances to establish a putative parent's biological relationship to a child. The genetic testing fee will be

based on the contracted rate at the time the test is administered. If the putative obligor is confirmed as a parent and paternity is established, the obligor is responsible for paying the genetic testing fee.

(5) The Department shall charge a fee of up to $10.00 for each certification regarding entries on the putative father registry (see O.C.G.A. § 19-11-9(f)).

(e.) An applicant for services from the Department is not permitted to close his/her case if any fees required by this Rule remain unpaid.

(f.) An applicant for services who closes his/her case after a civil action has been initiated by the Department shall be responsible for reimbursing the Department for any court costs arising from said civil action for which the Department was required by law to pay.

(g.) In any enforcement proceeding brought by the Department, should it prevail, the court may award the Department its reasonable attorney's fees and actual court costs.

(h.) In the collection of overdue fees, the Department may utilize any collection mechanism existing within Title 19 of the Georgia Code, from either the obligee or the obligor. The Department is authorized to add an amount to any order for income withholding as needed to offset the total amount of fees owed under this Rule.

(i.) In compliance with O.C.G.A. § 50-16-18, the Department has limited authority to "write off" any fees otherwise due under this Rule and zero out a fee account if, upon review by accounting personnel or by counsel, and subsequent certification by the Commissioner, the Department concludes that the account receivable is no more than $100 and that the account is uncollectible or that the cost of collecting on the fee account would likely equal or exceed the fee amount owed.

(j.) Any person aggrieved by an effort of the Department to collect a fee under this Rule shall be entitled to an administrative hearing. An administrative hearing and any appeal therefrom under this Rule shall be in accordance with the procedures set forth at Rule 290-7-1-.19.

AUTHORITY: O.C.G.A. §§ 19-6-33.1, 19-11-6, 19-11-9.3, 19-11-12, 50-16-18.

ADMINISTRATIVE HISTORY: Original Rule entitled "Redetermination at the Request of AP" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.06 Periodic Review and Modification of Child Support Obligations.

(a.) This Rule applies to periodic redeterminations of support requested under sections 19-11-16 and 19-11-17 of the Georgia Code as well as review and modification under section 19-11-12 of the Georgia Code.

(b.) The Department may conduct periodic redeterminations and reinvestigations of the ability of the parent to furnish support upon the written request of an obligor or obligee. If either party requests redetermination under section 19-11-17, the party shall be informed that Georgia law has changed since section 19-11-17 was enacted and that, now, all redeterminations must proceed under section 19-11-12 and this Rule.

(c.) The Department shall notify the obligor and obligee of the opportunity for a review of their IV-D order at least once every three years in accordance with the provisions of O.C.G.A. § 19-11-12 and these regulations. The Department, either parent, a nonparent custodian may request a review of the IV-D order for potential modification at that time. If no review is requested in writing by any proper person, no action need be taken by the Department prior to the expiration of the next applicable review period unless the case involves the receipt of TANF benefits - such orders shall, as mandated by federal law, be subject to mandatory review every three years without request.

(d.) Where a child is born to an obligee and obligor who are already subject to a child support order being enforced by the Department, the procedures of this Rule may be utilized to add the child to the order by consent. If the obligor and obligee do not consent to adding the child to the order, the Department shall initiate a new civil action in superior court seeking to establish support for the new child and modifying the original order to add that child as a dependent covered by the order.

(e.) When a review is requested, the Department shall notify the obligee and the obligor(s) at least 30 days before the commencement of the review of the time and place of the review unless notice is waived by the obligee and obligor(s). However, both the obligee and obligor(s) may be asked to submit necessary information during the aforementioned 30 day period. At the review, the child support guidelines codified at O.C.G.A. § 19-6-15 shall be used to determine the appropriate amount of the child support obligation under the facts existing at the time of review. In determining whether a change in circumstances exists necessitating modification of a IV-D order, the Department shall consider the following:

(1) The Department may seek an upward modification if the calculated support award is a 15% or greater increase than the current support award with a minimum $ 25 per month increase. The Department may consider evidence that the obligor is underemployed or otherwise artificially suppressing income.

(2) The Department may seek a downward modification if the obligor

is not underemployed and if the calculated support award would result in a 15% or greater decrease of the current support award with a minimum $25 per month decrease. The Department may consider evidence that the (1) obligor is medically certified disabled to work and such condition is expected to continue one year or longer; or (2) the obligor has experienced an involuntary loss of income in accordance with O.C.G.A. § 19-6-15(j); or (3) the obligor has subsequently incurred an additional child support obligation.

(3) The Department may seek a modification requiring any obligor to procure health insurance for his/her child(ren) if health insurance is reasonably available to the obligor at reasonable cost. See O.C.G.A. §§ 19-6-15, 19-11-26. If the IV-D order does not provide for the payment of uninsured medical expenses, modification will be sought to provide for medical support payments as appropriate under the circumstances of the case.

(f.) After a review is conducted, the agency recommendation will be sent by first-class mail to the obligor and obligee at their last known addresses of a proposed adjustment or a determination that there should be no change in the child support award amount.

(g.) In the case of an administrative support order, the Department shall file the agency recommendation with OSAH. If neither the obligor nor obligee objects to the agency recommendation in writing sent to the Department within 33 days of mailing of the agency recommendation, the ALJ shall, after being notified by the Department of the lack of objection, enter an order adopting the agency recommendation. If a written objection is received within the 33 day period following mailing of the agency recommendation, the ALJ shall schedule a hearing. The parties may, at any time following the filing, enter into a consent agreement to modify the support order.

(h). In the case of a judicial order, the Department shall file a petition with the court to adopt the agency recommendation contemporaneously with the mailing of the agency recommendation under paragraph (f). The petition shall be served upon the obligor and obligee in accordance with O.C.G.A. § 9-11-4. If no party files an objection with the clerk of court within 30 days from the date of service of the petition, the court shall issue an order adopting the agency recommendation. If any party files an objection within 30 days of having been served, the court shall schedule a de novo hearing. The parties may, at any time following filing of the petition, enter into a consent agreement to modify the support order.

(i.) Any order, whether administrative or judicial, modified under this Rule shall also provide that medical insurance must be provided in accordance with O.C.G.A. § 19-11-26.

(j.) If arrears are owed by the obligor at the time of the review, the Department shall seek to have the amount of arrears established by the tribunal, along with a repay amount to be added as needed to pay off the arrearage. The repay amount is limited to a maximum of 20% of the support amount as modified.

(k.) If the Department is hindered in its review of a IV-D order because it is unable to secure sufficient financial or other information necessary to complete the review from the applicant seeking modification, the Department may terminate the review due to lack of cooperation and no further action need be taken by the Department prior to the expiration of the next applicable review period. If any necessary party who is not the applicant for services fails or refuses to timely supply requested information, an administrative subpoena may be issued in accordance with O.C.G.A. §§ 19-11-11 and 31-5-4. In its discretion, the Department may temporarily halt the review and seek judicial enforcement of the administrative subpoena by the appropriate superior court.

(l.) An administrative hearing and any appeal therefrom under this Rule shall be held in accordance with the procedures set forth at Rule 290-7-1-.19..

AUTHORITY: O.C.G.A. §§ 19-6-15, 19-11-12, 19-11-26, 50-13-13.

ADMINISTRATIVE HISTORY: Original Rule entitled "Periodic Review of Child Support Obligation" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.07 Eligibility for Services (Non-intergovernmental cases)

(a.) The Department is authorized by law to accept applications for services only in circumstances where a dependent child is involved. If there is no dependent child involved, the Department is not authorized to accept a new application for services. For example, if all children owed support under an order have emancipated, married, or turned 18 years of age and only arrears are owed, the Department cannot accept a new application for services. However, if the Department is already providing services under the CSRA when the child or children emancipate(s), the Department may continue to provide any services allowed by law.

(b.) The Department may accept applications for services from any parent of a child residing in Georgia (meaning the natural or adoptive parents of a child who resides in Georgia).

(c.) The Department is authorized to accept an application for establishment services from a father of a child born out of wedlock only if his paternity of the child has been established in a judicial proceeding or if he has acknowledged paternity under oath either in open court, in an administrative hearing, an acknowledgement of paternity as defined in O.C.G.A. § 19-7-46.1, or in a notarized affidavit attached to an application for services.

(d.) The Department is authorized to accept an application for services from a nonparent custodian of a child or children residing in Georgia.

(e.) The Department is authorized to accept any application for services from a parent or nonparent custodian of a child residing anywhere if the putative obligor is located within the boundaries of the State of Georgia.

(f.) The Department will not accept an application for services submitted by any individual or entity on behalf of someone else unless the individual or entity submitting the application is a legal guardian of the obligee or a private collection agency duly registered and authorized under Georgia law.

(g.) The Department is authorized to accept an application for any and all services available under the CSRA from an obligee or an obligor, including applications for review and modification of a support order.

(h.) The Department is authorized to dictate the form and substance of its application for services and shall accept only those applications made on approved forms or through the Department's web portal.

(i.) Any applicant who fails to provide information requested by the Department as needed to accurately calculate an amount of child support under Georgia's child support guidelines shall be deemed to be non-cooperative and the application shall be subject to rejection at the Department's sole discretion.

(j.) The applicant must pay all fees required under these rules at the time the application for services is submitted unless federal law provides otherwise.

AUTHORITY: O.C.G.A. §§ 19-11-3, 19-11-6, 19-11-7, 19-11-8, 19-11-12.

ADMINISTRATIVE HISTORY: Original Rule entitled "Modification of Child Support Obligation Established by Administrative Order" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.08 Federal and State Tax Refund Intercept Program

(a.) As used in this Rule, the following terms shall have the following meaning:

(1) "tax refund intercept program" also known as "tax offset program"; the program through which tax refunds are intercepted to satisfy support obligations that are in arrears.

(2) "tax offset processing year" the year that tax refunds are actually sent to the taxpayer. For example, a name certified for tax offset in September 2009 is certified for the 2010 "tax offset processing year."

(3) "legitimately in dispute" used to denote that the obligor has presented cancelled checks, copies of money orders, court records, court orders, etc., which appear to refute the claim by the obligee that support payments have been missed. The obligor's "word" that he or she has made the payments is not sufficient evidence that support payments have been made. The term is not intended to convey the settlement of the dispute. Ultimately, the court issuing the child support order will have to determine what is actually owed.

(4) "federal tax offset fee" a fee of $15.00 will be deducted each time a federal tax offset payment is received..

(5) "TANF arrearage" past-due support debts which accrued during the time an obligee or child receives TANF assistance (including foster care); except that if the obligee or child no longer receives TANF, the past-due support certified as a "TANF arrearage" must be limited to the debt owed to the State of Georgia.

(6) "non-TANF arrearage" past-due support owed to obligees or nonparent custodians of qualified children or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent. A qualified child is a child who is a minor and for whom an order is in force.

(7) "affidavit of past-due support" in the absence of a court order adjudicating the arrears, the obligee must sign an affidavit which itemizes all missed support payments. The statement will serve as the basis for documenting past-due support until such time as a court rules on the matter and may be admitted as evidence.

(8) "state tax offset fee" a fee of $12.00 will be deducted each time a state tax offset payment is received.

(b.) Eligible Cases

(1) Intercept enforcement remedies may be used for cases which involve a delinquent court or administrative ordered amount of child support and the State has an assignment of rights to support as a result of the receipt of TANF public assistance or the non-TANF recipient of services has made application for or is otherwise receiving IV-D enforcement services. Requirements for the various programs are provided below:

(A.) TANF (including Foster Care) Tax Offset Certification Requirements

(i) The support obligation must have been established by court order or an administrative order from a IV-D agency of competent jurisdiction.

(ii) The TANF arrearages must be at least $150.00 for tax offset.

(iii) The arrearages must be at least $500.00 for state tax offset regardless of case type.

(iv) Before submittal, the Department or the Department of Family and Children Services has verified the accuracy of the obligor's name and social security number and the amount of past-due support for which there is a TANF assignment in effect.

(v) The Department has a copy of the payment record or an affidavit completed in the manner prescribed by the Department and signed by the obligee attesting to the amount of support owed.

(vi) The validity of the debt is not legitimately in dispute.

(vii) In intergovernmental cases, the federal certification can only be made by the state which has the TANF assignment. Any enforcing state must be advised that the obligor's name is being certified for federal refund offset. It may also be necessary to communicate with the enforcing state for purposes of verification of arrears, obtaining a copy of the payment record, etc.

(B.) Non-TANF (including Foster Care) Tax Offset Certification Requirements

(i) The obligee (including a nonparent custodian) must have applied for the child support services. The support obligation must have been established by court order or an administrative order from a IV-D agency of competent jurisdiction.

(ii) The non-TANF arrearages must be at least $500.00 for Federal and State certification. (NOTE: If the obligee currently receives TANF, all arrearages are certified under the TANF category. If the obligee previously received TANF, but does not currently receive it, the debt due the Department must be certified under the TANF category. Any remaining arrearages due the obligee would be certified under the non-TANF category.)

(iii) The validity of the arrearage is not legitimately in dispute.

(iv) In intergovernmental cases, the federal certification can only be made by the state where the obligee resides or has made application for child support services. Any enforcing state must be advised that the obligor's name is being certified for federal refund offset. It may also be necessary to communicate with the enforcing state for purposes of verification of arrears, obtaining a copy of the payment record, etc.

(v) Before submittal, the Department has verified the accuracy of the obligor's name and SSN and the amount of delinquent support.

(vi) The Department has a copy of the order and any modifications and has a copy of the payment record or an affidavit completed in the manner prescribed by the Department and signed by the obligee attesting to the amount of support owed.

(vii) TANF and foster care records have been checked to see if there is an arrearage amount owed to the State of Georgia.

(viii) The department has the obligee's current address.

(c.) Notice and appeal rights

(1) Prior to certifying a tax intercept to either the Internal Revenue Service or the Georgia Department of Revenue, the Department must send written notice to the obligor by first-class mail at the address known to the Department. An obligor notified of a planned tax intercept who wishes to contest the certification of the intercept must request an administrative hearing within 30 days of the date of the written notice. If no written request for a hearing is received by the Department within 30 days of the date of the written notice, the Department shall certify the tax intercept. It ***shall not be deemed timely*** for an obligor to request review *after* a tax intercept has already taken place.

(2) If an obligor timely seeks administrative review of the planned tax certification, the Department shall, within 21 days of receipt of the written request, initiate an administrative hearing before OSAH (see Rule 19).

(3) Federal regulations require the Department to initiate a pre-offset hearing if timely requested by an obligor. *See* 45 C.F.R. §§ 303.102, 303.72.

(d.) Under no circumstances shall any tribunal hearing a tax intercept appeal retroactively reduce or modify child support arrears.

(e.) If an obligor in a case being enforced by the Department relocates without notifying the Department of his or her new address, the obligor shall be deemed to have waived his or her right to any written notices otherwise required by this Rule.

(f.) An administrative hearing and any appeal therefrom under this Rule shall be held in accordance with the procedures set forth at Rule 290-7-1-.19.

AUTHORITY: O.C.G.A. §§ 19-11-18, 19-11-24, 42 U.S.C.S. § 664.

ADMINISTRATIVE HISTORY: Original Rule entitled "Modification of Child Support

Obligation Established by Judicial Order" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.09 Garnishment and Orders to Withhold and Deliver.

(a.) If any Georgia court has issued a final order adjudicating an amount of child support arrears owed by an obligor, the Department shall be entitled to commence a garnishment proceeding or to issue an FIW to an obligor's employer in accordance with these Rules, or shall be entitled to issue an "Order to Withhold and Deliver" to any employer of the obligor without further notice or proceedings.

(b.) If an amount of arrears has not been previously adjudicated by a Georgia court or a foreign court, the Department shall be entitled to commence a garnishment proceeding or to issue an order to withhold and deliver if:

(1) the obligor has received notice of a final administrative decision of his/her support obligation; or

(2) the obligor has entered into a written agreement with the Department to provide child support; and

(3) the obligor fails to make support payments within thirty days of the due date specified in the civil order, administrative decision or written agreement and the Department has mailed a written notice to the obligor notifying obligor of its intent to withhold funds and obligor fails to send a written notice contesting the amount of arrears within 15 days of mailing of a notice by the Department.

(c.) If an obligor whose arrears have not been judicially adjudicated contests the amount of the garnishment or the Order to Withhold and Deliver in a timely manner in accordance with this Rule, the Department shall initiate an administrative hearing before OSAH.

(d.) An administrative hearing and any appeal therefrom under this Rule shall be held in accordance with the procedures set forth at Rule 290-7-1-.19..

AUTHORITY: O.C.G.A. §§ 19-6-32, 19-6-33, 19-11-19.

ADMINISTRATIVE HISTORY: Original Rule entitled "Garnishment and Orders to Withhold and Deliver" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.10 Issuance of Orders for Income Withholding.

(a.) The Department is authorized by law to issue an order for income deduction without need for any amendment to the order involved or any further action by the court or entity that entered the order. The Department shall utilize the "FIW" or Federal Income Withholding form when issuing such an order for income deduction, as required by federal regulations. The FIW shall be issued immediately *after* entry of a child support order in any case wherein the obligor is currently employed. The obligor is responsible for direct payment of support (to the Department's family support registry) between the effective date of the order and the issuance of the FIW. The Department may adjust the starting date of an order to coincide with the issuance of the FIW at its discretion. For example, if the putative obligor and the obligee both consent to a support order on June 1, the Department may make the support obligation effective on July 1 in order to ensure that the FIW is implemented prior to the first support payment coming due.

(b.) Copies of the support orders, which include a provision for income deduction, issued by the Department shall be mailed to the obligee and obligor. All obligees and obligors are required to notify the Department of any change of residential address; obligors must also inform the Department of any change in employment. The failure by an obligor or obligee to notify the Department of a change of address will be deemed to waive the notice requirement of this Rule with regard to that person.

(c.) The enforcement of the order for income deduction may only be contested on the ground of mistake of fact regarding the amount of support owed pursuant to a support order, the amount of the arrearages, or the identity of the obligor.

(d.) A person wishing to contest the enforcement of an income withholding by the Department on one of the grounds listed above must request an administrative hearing within 14 days of the mailing date of the notice of income deduction. The request for hearing must be mailed to the DCSS office that issued the FIW The request for a hearing does not stay enforcement of the withholding unless the administrative law judge enters an order granting relief for good cause shown.

(e.) An administrative hearing and any appeal therefrom under this Rule shall be held in accordance with the procedures set forth at Rule 290-7-1-.19.

(f.) The Department is authorized to add arrears repayment amounts ordered by a superior court or OSAH, as well as amounts sufficient to cover any fees owed by the obligor under these Rules.

(g.) Employers

(1) An employer receiving an FIW may collect up to $25 against the obligor's income to reimburse the employer for administrative costs for the first income

deduction and up to $3.00 for each deduction thereafter. The employer may not impose or deduct any other fee for complying with the FIW.

(2) Any payor subject to an FIW or Order to Withhold and Deliver may not discharge or terminate an obligor by reason of the fact that income has been subjected to income withholding. The Department is authorized to impose civil penalties against any payor who violates this provision.

(3) Employers are hereby informed that an FIW has priority over all other legal processes under state law pertaining to the same income. Payment as required by the FIW is a complete defense by the payor against any claims of the obligor or his creditors as to the sum paid. *See* O.C.G.A. § 19-6-33(e)(9).

AUTHORITY: O.C.G.A. §§ 19-6-30 through 19-6-33

ADMINISTRATIVE HISTORY: Original Rule entitled "Income Deduction Orders (IDOs)" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.11 Passport Suspension.

(a.) Section 454(31) of the Social Security Act makes participation in the Passport Denial program a IV-D State plan requirement. All States are required to have in effect a procedure to certify to the Federal Office of Child Support Enforcement ("OCSE") individuals who owe child support arrears in excess of $2,500. The States are also required to provide notice to individuals and give them an opportunity to contest the Department's determination of the arrears amount. When a State submits a case to OCSE with arrears in excess of $2,500 (or the State submits an increase to an existing case that causes the arrears to exceed $2,500), OCSE automatically forwards the case to the United States Department of State for passport denial.

(b.) The passport of an obligor may be denied, revoked, or restricted through the Federal Passport Program, if the child support debt is in excess of $2,500.

(c.) In an intergovernmental case, only the certifying state has the authority to delete a noncustodial parent from the passport denial, revocation, or restriction process.

(d.) The Department periodically issues letters setting forth the amount of arrears owed. An obligor who wishes to contest the determination of arrears must send a letter to the DCSS office that certified the case to OSCE requesting an administrative hearing. If an obligor receives a notice stating that the arrears amount is in excess of $2,500 and fails to seek a hearing within 30 days of mailing of the notice, the passport may be suspended by federal authorities without further notice or opportunity for hearing. If a hearing is timely requested, the issue at hearing is strictly limited to the amount of arrears or misidentification of the obligor. Neither the Department nor an administrative law judge ("ALJ") is authorized to reinstate a passport, only the federal government can do that. The Department is authorized only to certify the amount of arrears owed. In order to be removed from the certified list, an obligor must pay the arrears either in full or in an amount sufficient to bring the arrearage amount below the $2,500 threshold.

(e.) The Department is authorized to remove an obligor from the certified list only upon payment of the arrears or upon receipt of a decision from the ALJ finding that the obligor is not in arrears or has been misidentified. However, the Department may, in its sole discretion, "exempt" an obligor from the certified list if:

(1) The Department is convinced that the passport is necessary and indispensable to the obligor for the purpose of generating income needed to pay current support or arrears; and,

(2) The obligor posts bond or some other form of surety payable to the Department for the full amount of the arrears owed; and,

(3) The obligor enters into a written Enforcement Deferral with the Department setting forth the schedule for repayment of the arrears amount in addition to current support, if applicable. Failure by the obligor to adhere in full with the Enforcement Deferral shall result in forfeiture of the bond or surety posted by the obligor.

(f.) An administrative hearing and any appeal therefrom under this Rule shall be held in accordance with the procedures set forth at Rule 290-7-1-.19.

AUTHORITY: O.C.G.A. §§ 19-11-19, 19-11-24.

ADMINISTRATIVE HISTORY: Original Rule entitled "Access to Fair Hearing Review Process" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.12 License Revocations or Suspensions.

Provision is made to withhold, restrict the use of, suspend, or revoke licenses for failure to pay child support and to establish criteria for reissuing the licenses. “License” means a certificate, permit, registration, or any other authorization issued by a licensing entity that allows a person to operate a motor vehicle or to engage in a profession, business, or occupation. “Licensing entity” means any Georgia agency, department, or board which issues or renews any license, certificate, permit, or registration to authorize a person to drive a motor vehicle or to engage in a profession, business, or occupation, including but not limited to those relating to: pest control; mortgage lenders and mortgage brokers; securities salespersons and investment adviser representatives; foresters; pharmacists; insurance agents, counselors, and other personnel; professions and businesses under Chapter 1 of Title 43; real estate appraisers; and real estate brokers and salespersons.

(a.) The Department shall maintain a state-wide certified list, updated on a monthly basis, of all obligors who are not in compliance with a child support order being enforced by the Department. All licensing entities shall review the certified list and notify the Department if any applicant or licensee of the licensing entity is on the certified list. That notification shall include the applicant’s or licensee’s last known mailing address on file with the licensing entity.

(b.) When an obligor accumulates an arrearage equal to or greater than 60 days’ worth of support (which does not have to accumulate in consecutive months), the Department may seek to have the obligor’s license withheld, restricted, suspended or subsequently revoked by the licensing entity. This rule applies to support ordered by a court of this or any other state, territory, or district of the United States, including support ordered by any administrative agency having the authority to issue a support order.

(1) The arrearage which determines qualification for withholding, restricted use, suspension, or revocation of a license is based upon current support obligations due (including child, spousal, medical support and interest when applicable).

(2) Withholding, restriction, suspension and revocation do not apply to an obligor who is paying child support and arrearages according to the terms of a court order.

(c.) Any obligor subject to this Rule shall be mailed a notice of delinquency via first class mail and receipt by the delinquent obligor shall be presumed if the mailing is not returned to the Department within 30 days from the date of mailing.

(d.) The obligor has 20 days from the date of mailing to come into compliance with the order or to reach an agreement with the Department to pay the delinquency. If an agreement cannot be reached within that time or the obligor does not respond within

those 20 days, the agency will send notice to the licensing entity requesting that the license be suspended or the licensure application be denied.

(e.) The obligor has 20 days from the date of mailing of the delinquency notice to request, in writing, an administrative hearing before OSAH. If a written request for a hearing is not received within 20 days of mailing of the delinquency notice, the obligor is not entitled to a hearing.

(f.) The licensing entity issuing the license shall notify the delinquent obligor by certified mail or statutory overnight delivery of the date that the license has been denied or suspended.

(g.) In an administrative hearing under this Rule timely requested by an obligor, the only issues at the hearing will be the following:

(1) Whether there is an order for child support being enforced by the Department pursuant to the Act;

(2) Whether the licensee or applicant is the obligor covered by that order;

(3) Whether the support obligor is or is not in compliance with the order for child support;

(4) Whether the obligor shall be entitled to pay past due child support in periodic payments; and,

(5) Whether the support obligor has been able and willing to comply with such order for support.

(h.) The administrative law judge ("ALJ") shall consider evidence relating to the ability and willingness of an obligor to comply with such order for support in making the decision to either suspend a license or deny the issuance or renewal of a license under this Rule. The ALJ shall be authorized to enter an order or a consent agreement requiring periodic payments or to issue a release for the obligor to obtain each license or licenses. Any such order or agreement shall not act to modify an existing child support order, but rather only affects the payment of the arrearage.

(i.) The initial decision of the ALJ may be affirmed, modified, or reversed by the Department within 30 days of issuance of the initial decision. If the Department declines to commence a review of the initial decision within 30 days, the ALJ's initial decision shall become the final agency decision.

(j.) The final agency decision shall be subject to appeal and judicial review pursuant to Article 2 of Chapter 13 of Title 50 but only as to those issues referred to in this Rule.

(k.) The right to administrative hearing under this Rule shall be the only hearing required to suspend a license or to deny the issuance of a license notwithstanding any hearing requirements otherwise applicable within the licensing entity involved.

AUTHORITY: O.C.G.A. Sec. 19-11-9.3.

ADMINISTRATIVE HISTORY: Original Rule entitled "Time Limits for Requesting a Fair Hearing" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.13 Intergovernmental Child Support Proceedings (UIFSA)

(a.) The Personal and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), mandated that all states adopt the 1993 Uniform Interstate Family Support Act ("UIFSA") Model Act, and the 1996 amendments adopted by the National Conference of Commissioners on Uniform State Laws. The UIFSA was duly enacted by the General Assembly and is codified at sections 19-11-100 through 19-11-190 of the Georgia Code. The UIFSA was created to force uniformity in procedures and law with regard to intergovernmental establishment, enforcement, and modification of child support orders.

(b.) The Department is the support enforcement agency in Georgia for all UIFSA actions.

(c.) Upon request from another state, the Department as the receiving tribunal will provide the following services in a UIFSA proceeding:

(1) Take all steps necessary to enable an appropriate court in this state or a tribunal of another state to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time, and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) Within seven days after receipt of a written notice from an initiating, responding, or registering court, send a copy of the notice to the petitioner;

(5) Within seven days after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(d.) UIFSA does not create a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency, nor between the attorney and the referring state.

(e.) Under UIFSA, the Department proceeds on behalf of the referring state, which in turn may be proceeding on behalf of an individual child or obligee.

(f.) The underlying goals of UIFSA are to avoid duplicate actions proceeding at the same time in more than one state and to ensure that there is only one controlling order for child support in existence at any time, through the concept of "continuing exclusive

jurisdiction" ("CEJ"). No state can modify an order in which Georgia has CEJ, and Georgia cannot modify an order of another state which itself has CEJ.

(g.) Except as otherwise provided within UIFSA, Georgia substantive and procedural law shall be applied. However, there are exceptions, notably:

(1) the law of the issuing state governs the nature, extent, amount, and duration of current support payments and other obligations of support under the order; and,

(2) in a proceeding to collect arrears, the statute of limitation under the laws of Georgia *or* the issuing state applies, whichever is *longer*.

(h.) A Georgia court cannot condition the payment of a foreign support order upon compliance with visitation provisions.

(i.) The filing of a UIFSA proceeding does not create personal jurisdiction over the individual whose interests are being served; further, if that individual is physically present in Georgia to participate in a UIFSA proceeding, he or she is not amenable to service of process. The petitioner's physical presence is not required and he or she may testify or be deposed by telephone or other electronic means.

(j.) The defense of non-parentage is disallowed if parentage has previously been determined by another tribunal by or pursuant to law.

(k.) A party seeking to enforce a support order or an order for income deduction may send it directly to the Department and the Department may use any administrative enforcement procedure available to it under Georgia law without registering the foreign order; however, if the obligor contests the administrative action, the Department must register the order under section 19-11-161 of the Georgia Code. Registration is required in order for the Department to pursue any civil action based upon the foreign order, including a petition for contempt.

(l.) The Department shall notify the "non-registering party" (almost always the obligor) of the registration by first class U.S. mail. The non-registering party has 20 days from receipt of the notice to request a hearing on the registration. If no request for a hearing is made within those 20 days, then the foreign order is confirmed by operation of law.

AUTHORITY: O.C.G.A. §§ 19-11-100 through 19-11-191

ADMINISTRATIVE HISTORY: Original Rule entitled "Fair Hearing Notice Procedure" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.14 Collection and disbursement of child support payments.

(a.) The payment of public assistance to or on behalf of a child creates a debt due and owing to the State of Georgia by the parent or parents responsible for the support of the child. By accepting such assistance on behalf of a child, the recipient assigns by law the Department the right to receive any child support owed for the child. The Department shall be subrogated to the right of the child or children or the person having custody to initiate any support action existing under the laws of Georgia and to recover any payments ordered by the courts of this or any other state.

(b.) In the absence of any such public assistance, the submission of an application to the Department for child support services shall constitute an assignment of the right to the Department to receive any and all child support payments owed.

(c.) Any collections received by the Department under the CSRA shall be distributed and deposited by the Department in conformity with state and federal law.

(d.) Distribution of any child support being held by the Department shall be paid to the obligee within two days from receipt of same unless the obligor is entitled to an appeal under these Rules or state law and has exercised his or her right to appeal. In such instances, the Department is required to retain the collected amount until all appeals have been resolved.

(e.) The Department is authorized to seek statutory interest only upon child support orders it was a party to, whether through establishment or modification, or, in intergovernmental cases, as permitted by the laws of a referring state or foreign jurisdiction as calculated by the referring state or foreign jurisdiction. The Department may collect interest charges awarded by a court and reduced to a judgment by any means permitted by law.

(f.) Any collection received directly by an obligee who has received public assistance or applied for services from the Department must be turned over to the Department and be disbursed through the Family Support Registry. Any obligor making payments through any means other than the Family Support Registry after the Department is assigned the right of support is running a grave risk of having those payments not credited as received. Any obligor wishing to receive credit for such payments is required to submit money order receipts, cancelled checks or other verifiable evidence of having made such payments directly to the obligee; otherwise the Department will proceed as if the support amount went unpaid.

(g.) Payments made pursuant to the Uniform Interstate Family Support Act, when collected on behalf of a foreign jurisdiction, shall be forwarded to the appropriate collection agent in the foreign jurisdiction.

(h.) An erroneous payment may be the result of an agency error. The Department has the responsibility to collect all erroneous payments. Collection methods which may be utilized to recover the payments are through voluntary repayment plans, income tax offset, recoupment from future support payments, referral to a collection agency and/or through legal action. Repayment may be accepted in a lump sum or in negotiated

payments. These may be in the form of cash, personal check, income tax intercepts or money orders. The use of tax intercept for cases involving agency error will be done as permitted under these Rules for collection of debts owed to the Department.

(i.) The date of collection for support is the date of receipt by the Family Support Registry.

(j.) Disbursement may be made to a private collection agency acting on behalf of the obligee only if the private collection agency is duly registered with the Governor's Office of Consumer Affairs and authorized under Georgia law to operate within this state. Additionally, no disbursements shall be made to a private collection agency of any funds collected solely through the Department's efforts.

AUTHORITY: O.C.G.A. §§ 19-6-33.1, 19-11-4 through 19-11-8, 19-11-18, 19-11-21, 19-11-30.1, 19-11-30.10, 19-11-32, 19-11-100.

ADMINISTRATIVE HISTORY: Original Rule entitled "Hearing Decision" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.15 Allocation and redirection of current child support payments

(a.) *Allocation*: When an obligor has more than one IV-D case being enforced by the Department or a Non IV-D case and does not make payment sufficient to cover all active cases, the Family Support Registry may split the payment to all active cases involving that obligor. Cases involving current support have priority over arrearages (i.e., if one case involves current support and the other case involves only an arrearage, the case having current support shall be paid first). If all active cases involve current support, the amount received shall be allocated among the cases based on the percentage of current support owed on each case. For example, if obligor is required to pay $60 on Case 1 and $40 on Case 2 but pays only $70 instead of the aggregate $100 required, the payment will be allocated proportionately between Case 1 (60% of the payment, $42) and Case 2 (40% of the payment, $28). The obligor shall not be permitted to dictate a different allocation between the active cases.

(b.) *Redirection*: The purpose of the CSRA is to ensure the support of a child or children, not the custodial parent/obligee. Therefore, it is the policy of the Department that the money shall follow the child(ren). If the Department has a good faith belief that a child is in the physical custody of a relative or other caretaker other than the obligee, the Department is authorized to redirect support payments to that caretaker of the child until such time as the child returns to the physical custody of the obligee. In a case involving multiple children, the Department may redirect a proportion of the payment received to the caretaker. For example, if a support order involving three children requires a monthly payment of $300 and one child is proved to be in the physical custody of a caretaker other than the obligee, the Department may redirect one-third ($100) to that caretaker. An obligee wishing to contest this redirection is entitled to an administrative hearing if he or she requests same within 30 days of notice of the redirection. The sole issue at such hearing shall be the physical custody of the child.

(c.) An administrative hearing and any appeal therefrom under this Rule shall be held in accordance with the procedures set forth at Rule 290-7-1-.19.

AUTHORITY: O.C.G.A. §§ 19-11-24, 50-13-1 et seq.

ADMINISTRATIVE HISTORY: Original Rule entitled "Dismissal of Requests for Fair Hearing" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.16 Confidentiality of Department records and information.

(a.) Georgia law provides that any information or records obtained by the Department pursuant to its duties under the CSRA or UIFSA shall be deemed confidential. Any information maintained by the Department shall be released *only by* written permission of the party or parties named in the information or records, by order of a court, or for those purposes specifically authorized by the CSRA. Those purposes are limited to:

(1) The Department's administration of any plan or program approved under Parts A, B, C or D of Title IV of the Social Security Act or under Titles II, X, XIV, XVI, XIX or XX of the Act or the supplemental security income program established under Title XVI of the Act;

(2) Any investigations, prosecution or criminal or civil proceeding conducted in connection with the administration of such plan or program; or

(3) The administration of any other federally assisted program (such as the food stamp program) which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need.

(b.) Due to this confidentiality, the Department will resist, through its attorneys, any non-party discovery requests or subpoenas seeking information held by the Department under this program, excepting subpoenas issued by law enforcement officers or entities pursuant to a criminal investigation which appears to be related to the Department's operation of this program (for example, potential fraud related to the receipt of disbursements of child support).

(c.) The Department may disclose to the applicant or recipient of services any support-related information which may be contained in his or her child support record when disclosed for the purpose of assisting them in making or enforcing a child support order, but only such information as relates to the individual himself or herself (e.g., the obligor may request information pertaining to him or her, but not information pertaining to the obligee). Moreover, information obtained directly through the state or federal tax offset program shall retain its confidentiality and shall only be used in pursuit of the Department's debt collection duties and practices. Federal tax return information can only be used in establishing appropriate agency records (or in defense of any litigation or administrative procedure ensuing from a reduction or intercept of the obligor's tax refund).

(d.) If there is a family violence indicator ("FVI") present on a file that is the subject of a request for disclosure, the Department shall refuse to release any records or information associated with that file without a court order, issued in conformance with O.C.G.A. 9-10-2, directing such release of records or information.

(e.) The public is reminded that it is not necessary (nor desirable) to subpoena information about payment histories maintained by the Department. Payment histories are available upon request to all obligors and obligees. Further, certified copies of payment records maintained by the Department "shall, without further proof, be admitted into evidence in any legal proceeding in this state." O.C.G.A. § 19-6-33(i). Any party or person wishing to obtain a certified copy of payment records maintained by the Department may send a written request setting forth the agency case number and a return-addressed envelope with first-class postage to the DCSS office that maintains the case. Any request for certified payment histories may be subject to fees equivalent to fees charged for open records requests under Department of Human Services Personnel Policy # 602.

(f.) The Department shall not release any information in its possession where such release would conflict with federal law or federal regulations.

AUTHORITY: O.C.G.A. §§ 19-6-33(i), 19-11-24

ADMINISTRATIVE HISTORY. Original Rule entitled "Appeal Rights Following Fair Hearing" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.17 Liens and Levies

(a.) The Department is authorized to file a notice of lien against the real and personal property of any obligor who resides in or owns property in the state and owes past-due child support. Liens against personal property other than personal property subject to a certificate of title, shall be filed with the office of the Secretary of State. Upon the filing of the notice, a lien arises by operation of law.

(b.) The Department has the authority to levy and seize a deposit or account (meaning a demand deposit account, checking or negotiable order of withdrawal account, savings account, time deposit account, or a money market mutual fund account) of any obligor who is in arrears in an amount equal to at least the support payment for one month from any financial institution (meaning every federal or state-chartered commercial or savings bank, including savings and loan associations and cooperative banks, federal or state-chartered credit unions, benefit associations, insurance companies, safe-deposit companies, trust companies, and any money market mutual fund).

(c.) If the child support order contains notice that the obligor is subject to the provisions of O.C.G.A. §§ 19-11-32 through 19-11-39, or the Department has previously sent the obligor a notice by regular mail to the last known address of the obligor referencing these same code sections, further notice is not required prior to levying on the deposit or account.

(d.) At the time the notice of levy is sent to the financial institution, the Department must notify the obligor and any obligee a notice of the impending levy via a writing containing the warnings required by O.C.G.A. § 19-11-36.

(e.) An obligor or an account holder of interest wishing to contest the levy must send the Department a written challenge within ten business days of the date of the notice to the obligor. The obligor or any account holder of interest who makes a timely challenge to the levy under this Rule is entitled to a hearing in the superior court in which the underlying support order was entered or registered.

(f.) The Department may reverse the levy prior to such hearing if its internal review following receipt of the challenge indicates that a mistake in identity has occurred or the obligor is not delinquent in an amount equal to the payment for one month.

(g.) The Department is also authorized to assert liens against any tangible and intangible property, whether real or personal, and any interest in property, whether legal or equitable, belonging to the obligor. Any property acquired by the obligor after the child support lien arises shall also be subject to such lien. The Department is further authorized to offset against worker’s compensation awards and lottery winnings.

(h.) The state IV-D agency of another state may determine that a noncustodial parent holds assets in a financial institution doing business in the State of Georgia. Full faith and credit shall be given to liens arising from any judicial or administrative action in another state or foreign jurisdiction. That state IV-D agency may send the levy directly to the financial institution in Georgia asking that it surrender the funds directly to that state IV-D agency. If the financial institution refuses to do so, the state IV-D agency may then send a UIFSA enforcement transmittal to the Department for enforcement.

(i.) If it is determined that the noncustodial parent in a Georgia case holds assets in a financial institution outside of Georgia, the Department may send the levy directly to the financial institution doing business in that state or foreign jurisdiction . A request shall be made that the funds be surrendered to the Department. However, if the financial institution refuses to remit the money or the obligor does not reside within Georgia and wishes to challenge the intergovernmental levy, the Department shall release the levy and send a UIFSA enforcement transmittal to the IV-D agency of the state or foreign jurisdiction where the obligor resides.

AUTHORITY: O.C.G.A. §§ 19-11-18, 19-11-30.2 through 19-11-37.

ADMINISTRATIVE HISTORY. Original Rule entitled "Recovery of Fees" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991. Repealed: New Rule of same title adopted. F. July 23, 2004; eff. Aug. 12, 2004.

290-7-1-.18 Remedies not exclusive.

(a.) The procedures, actions, and remedies provided in these rules shall in no way be exclusive but shall be in addition to and not in substitution of other proceedings provided by law. Both obligees and obligors have the right under Georgia law to pursue any legal rights either in concert with or independently of the Department. The exercise of such rights shall not serve as a basis of a finding of noncooperation unless the applicant for services neglects to keep the Department informed of any other related proceedings which would impact its enforcement efforts under the Act.

(b.) In light of this non-exclusivity, it is not uncommon for a superior court to issue a civil order containing provisions for child support (for example, in a divorce proceeding) subsequent to the existence of an administrative support order. Once a superior court issues an order, that order becomes the controlling order in the case and shall become the IV-D order being enforced by the Department.

AUTHORITY: O.C.G.A. §§ 19-11-22, 19-11-24.

ADMINISTRATIVE HISTORY. Original Rule entitled "Other Judicial and Administrative Remedies" adopted. F. Oct. 17, 1991; eff. Nov. 6, 1991.

290-7-1-.19 Administrative Hearing Procedures

(a.) Under these Rules, administrative hearings before OSAH are available with regard to certain enforcement actions taken by or decisions made by the Department. The availability of an administrative hearing and the deadlines for seeking an administrative hearing are controlled by the specific Rule addressing the action in question.

(b.) If an administrative hearing is available and is timely requested in accordance with the applicable Rule, the Department shall initiate an administrative hearing before OSAH by filing an "OSAH 1" form.

(c.) An administrative law judge ("ALJ") shall be assigned by OSAH in accordance with OSAH rules or operating procedures.

(d.) Any issue, procedure, process, or other matter related to administrative hearings that is not explicitly addressed in these Rules shall be controlled by the rules of OSAH.

(e.) After the ALJ hears the evidence at hearing, the ALJ shall issue an initial decision. The decision shall be deemed entered when it is filed with the Clerk of OSAH, and shall be mailed to all parties immediately upon entry.

(f.) Within 30 days of the entry of an initial decision by the ALJ, any obligee or obligor may request that the initial decision be reviewed by the Commissioner of Human Services ("Commissioner") or his designee. The Commissioner or his designee shall have 30 days after receipt of this request to issue a final agency decision affirming, reversing, amending, or remanding an initial decision for the taking of additional evidence. The Commissioner or his designee may extend this period at his/her discretion and must notify the parties in writing of the extension.

(g.) The Department may itself initiate review with the Commissioner or his designee without the request of any party if the Department believes the initial decision entered by the ALJ may be erroneous.

(h.) If no party or the Department seeks review of the initial decision, it becomes the final agency decision 30 days after entry of the decision.

(i.) Exhaustion of this administrative appeal process is required in order to seek judicial review in superior court under O.C.G.A. § 50-13-19.

(j.) If a party is aggrieved by the final agency decision and has exhausted his or her administrative remedies, the aggrieved party may file a petition for judicial review under O.C.G.A. § 50-13-19 in either the superior court of his/her county of residence or in the Superior Court of Fulton County. NOTE: the procedure is slightly different for appealing a final decision

affirming a tax refund intercept based upon an existing civil support order – an appeal of that type of action must be filed in the court that issued or registered the underlying child support order. *See* O.C.G.A. § 19-11-18(e). The petition for judicial review must be served personally on the Commissioner in accordance with O.C.G.A. § 49-2-15, or service shall be deemed defective and the petition for judicial review may be subject to dismissal by the court.

(k.) As required by O.C.G.A. § 50-13-19, judicial review shall be conducted by the court without a jury and shall be confined to the record made before the agency in accordance with the Georgia Administrative Procedure Act. The Commissioner or his designee shall file the administrative record with the court within 30 days of the Commissioner being served with the petition for judicial review personally by second original as required by law. The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(l.) Any appeal of the Department's final decision shall be limited solely to the issue of child support and shall exclude issues of visitation, custody, property settlement or other similar matters otherwise joinable by the parties.

(m.) Neither an ALJ nor a superior court may retroactively modify a child support order nor eliminate arrearages accrued under a valid child support order.

AUTHORITY: O.C.G.A. § 19-11-24, 19-11-18

ADMINISTRATIVE HISTORY. Original Rule entitled "Suspension or Denial of Licenses" adopted. F. Nov. 21, 1996; eff. Dec. 11, 1996.

290-7-1-.20 Waiver of Payment of Unreimbursed Public Assistance.

(a.) Pursuant to O.C.G.A. § 19-11-5(b) the Commissioner of Human Services hereby vests the Director of the Department and his or her designees with the authority to waive, reduce or negotiate the payment of unreimbursed public assistance. This authority is limited to administrative child support orders (not judicial orders) that create a debt owed to the state. In making a recommendation and determination regarding the waiver, reduction or negotiation of a debt owed under code section, the following factors shall be considered:

(1) The Department shall determine whether good cause existed for the nonpayment of the unreimbursed public assistance;

(2) The Department shall determine whether repayment of this debt would result in substantial and unreasonable hardship for the parent owing the debt; and

(3) The Department shall determine the obligor's current ability to pay the debt to include the consideration of the regularity of payments made for the current support of those dependents for whom support is owed.

(b.) Any determinations to waive, reduce or negotiate a settlement of the unreimbursed public assistance made pursuant to this rule must be put into writing and approved by the Director or designee. These records shall be available for review and subject to audit.

AUTHORITY: O.C.G.A. § 19-11-5.

ADMINISTRATIVE HISTORY. Original Rule entitled "Waiver of Payment of Unreimbursed Public Assistance - Administrative Orders Only" adopted. F. Nov. 2, 2005; eff. Nov. 22, 2005.