

## **REVIEW AND ADJUSTMENT**

### **INTRODUCTION**

#### **GENERAL INFORMATION**

Once an order has been entered, a periodic review can be performed to evaluate any changes in the circumstances for the client, noncustodial parent (NCP), or child that might warrant an adjustment to the support order.

This chapter contains information on the following topics:

1. [Review and Adjustment policy;](#)
2. [Review and Adjustment procedures.](#)

### **REVIEW AND ADJUSTMENT POLICY**

#### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Review and adjustment of support order amounts;](#)
2. [Exemptions to the mandatory review requirement;](#)
3. [Review and adjustment time frames;](#)
4. [Review selection criteria;](#)
5. [Pre-review notification requirements;](#)
6. [Case assessment/review policy;](#)
7. [Barriers to review;](#)
8. [Notification of the completion of the review;](#)
9. [Adjustment of the support order.](#)

#### **REVIEW AND ADJUSTMENT OF SUPPORT ORDER AMOUNTS**

Federal Regulation 45 CFR 303.8 governs the review and adjustment process for child support orders.

- This regulation states that review and adjustment of support orders in all NPA cases and MAO cases requesting full CSS services are necessary only upon request of either party every three (3) years. If there is an assignment of rights to the State, the case is automatically reviewed every thirty-six (36) months after establishment of the order or the most recent review of the order.
- CSS agencies automatically review support obligation amounts in TANF and Foster Care cases every three (3) years. Using the 36-month time frame, proof of a change in circumstances is not necessary to conduct a review. However, requests outside the 36-month time frame require proof of a substantial change in circumstances by the requesting party.
- The CSS agency shall take into account the best interest of the child(ren) involved, then review, and if appropriate, adjust the order in accordance with the guideline amount.
- Upon the initiation of a CSS case and subsequently once every three (3) years, the parties that are subject to the order must be sent notification of their right to request a review and, if

appropriate, an adjustment of the order. The initial notice can be included in the order.

- Requests for reviews are made to the local CSS office.

#### **MONTHLY ORDERS**

When modifying an order where the ordered payments for the support of a minor child are not monthly, due, and payable on the first day of each month, caseworkers are to request that the order be modified to reflect a monthly obligation, due and payable on the first day of each month. This is not a basis for modification of an order; however, any order that meets the criteria for modification should be reviewed for payment date and frequency change, if applicable.

#### **EXEMPTIONS TO MANDATORY REVIEW**

The following categories of cases are exempt from the mandatory review requirement:

1. Cases in which child support rights are assigned to the state, but a IV-A, IV-E, or Title XIX agency has made a finding of Good Cause that a review is not in the best interest of the child and cannot proceed without risk of harm to the child or caretaker, and neither party has requested a review.
2. Cases in which support rights are not assigned to the state, if neither party requests a review.
3. Any case in which medical support rights are assigned to the state, child support is not assigned to the state, the child support order contains a provision for health insurance, and neither party requested a review.

#### **REVIEW AND ADJUSTMENT TIME FRAMES**

Federal Regulation 45 CFR 303.8(e) requires CSS agencies to have procedures for conducting 3-year reviews that include the following time frame requirements:

- Every three (3) years, CSS must notify both parents of their right to request a review;
- Every three (3) years, CSS must conduct a review for Public Assistance cases;
- Every three (3) years, CSS must conduct a review for Non-Public Assistance cases, but only if requested by a parent;
- CSS must allow parents thirty (30) days to contest the review after they have been notified of the review's completion;
- Within one hundred-eighty (180) days of receiving a request for review or locating a parent (whichever occurs later), CSS must conduct the review and adjust the order (or determine that the order should not be adjusted).

#### **REVIEW SELECTION CRITERIA**

The following criteria identify eligible cases:

1. NPA cases, TANF cases, Foster Care cases, Interstate Initiating cases, and Medicaid cases including support that contain an order that is at least thirty-five (35) months old;

*NOTE: This gives local CSS the opportunity to process the case before the end of the 36-month time frame.*

2. Cases in open or re-open status; and
3. Cases in which the children are not older than seventeen and a half (17.5) years of age.

#### **PRE-REVIEW NOTIFICATION REQUIREMENTS**

Each party must be notified of a planned review at least thirty (30) calendar days before the review commences. A review is defined as an objective evaluation of information that is necessary for the application of the state's guidelines for support to determine an appropriate support award or the availability of medical support. "Party" is defined as the client, NCP, or any person or entity having an interest in the case.

Advance notice must be provided prior to conducting a review, regardless of whether the case is proceeding with a mandatory review or the review was requested by one of the parties. Once pre-review notifications have been issued, a request for review cannot be withdrawn by the requesting party. The assessment/review process must be completed and the parties informed of the results. The CSS agency must not commence a review until the thirty (30) calendar days have elapsed, unless both parties consent to waive the 30-day waiting period.

#### **CASE ASSESSMENT/REVIEW**

Upon identification of the cases that meet the criteria for review, local CSS must assess the modification potential of each case. This assessment must include consideration of both parties' ability to provide support, as well as any significant changes pertaining to the welfare of the child(ren).

##### ***ABILITY TO PROVIDE SUPPORT***

1. Local CSS obtains information pertaining to both parties' ability to provide support. Additionally, the availability of health insurance is pursued if no medical support provision is included in the order. If health insurance is being added to an obligation or any change in the actual premium cost has occurred, the appropriate credit is applied to the computation of the support obligation. Division of Employment Security (DES) records and other wage data for either party are used to ascertain significant changes in income and/or resources. If a TANF client has earned income, the information is verified through IV-A or other resources.
2. If the review of DES records or other wage data indicates significant changes in either parties' income, every effort is made to verify financial information for the adjustment process.
3. Some methods of verifying income include written verification from employers, tax records, bank statements, health insurance

coverage verification, or other financial information that can be subpoenaed. Written verification from employers should be the primary source of third party verification since under the provisions of G.S. 110-139(c1), North Carolina employers are required to cooperate with the CSS agencies in providing identifying information pertaining to NCPs as well as income information. The Employer Letter (DSS-4685) signed by the NCP's employer or a written, signed statement from the NCP's employer attesting to income is admissible evidence if the case should result in court action.

4. Local CSS agencies should never introduce the actual DES record as evidence in court. However, the Employer Letter (DSS-4685) signed by the NCP'S employer or a written, signed statement from the NCP's employer attesting to the NCP's income is admissible evidence if the case should result in court action.

#### **CHANGE IN CIRCUMSTANCES**

G.S. 50-13.7 allows a court to modify a support order based on a change in circumstance of either party. Upon determination of significant change in circumstances by the CSS caseworker, adjustment should be considered.

Circumstances might warrant a review more often than every three (3) years, such as:

- G.S. 50-13.4 outlines special needs of the child(ren), such as physical and emotional health needs, day care costs or needs related to the child's age, and changes in custody status.
- If either party requests a review outside the 36-month time frame, the requesting party must provide verification or information of significant changes in circumstances.
- According to North Carolina Child Support Guidelines, a fifteen percent (15%) difference in the previous court order and the amount resulting from application of the guidelines in the present action is a presumption of change of circumstances if it has been three (3) years since current support was last established and modified. If the order is less than three (3) years old, this provision does not apply.

#### **BARRIERS TO REVIEW**

If the local CSS agency discovers obvious barriers to reviewing the case, such as the NCP's incarceration, hospitalization, temporary disability, layoff, unemployment or similar problems, the review can be postponed. Local CSS must document the particular circumstances that require the review to be delayed and notify the client and NCP.

Sometimes the barrier to review can be a long-term situation of more than three (3) years duration, such as the incarceration of an NCP who is not eligible for work release or parole during the three-year period. If the situation can be substantiated and verified, local CSS must document the case accordingly so that it is not identified for review for the next thirty-five (35) months.

## **NOTIFICATION OF REVIEW COMPLETION**

Once the review is completed, all parties involved must be advised of the results of the review. This applies to cases for which reviews have been completed but did not qualify for adjustment as well as to cases for which adjustment appears to be justified. Both parties must be allowed thirty (30) calendar days to provide additional information that might affect the outcome of the review. No action to adjust the order can be taken by the CSS agency until the end of the thirty (30) days.

Parties must also be informed of their right to initiate proceedings to challenge the decision within thirty (30) calendar days from the date of the notice of the results of the review. The court is the appropriate forum to review the adequacy of the support award absent an action of the CSS agency to adjust the order.

If either party disagrees with the decision of the CSS agency, both the client and the NCP have the right to file a motion with the court to review the case for possible adjustment of the support obligation. Both clients and NCPs should be instructed to notify the CSS agency if such a motion is filed so that the agency can be present at the hearing. Any time a party receives notification of an adjustment of a support order, a copy of the document must be included.

## **ADJUSTMENT OF THE SUPPORT ORDER**

Following the review, the CSS agency must adjust the order or determine that there should be no adjustment in accordance with support guidelines. This would include determination of the need to include health insurance in the order. The adjustment procedure should be considered an administrative process to the extent possible. Every effort should be made to obtain a voluntary adjustment. However, if a voluntary modification cannot be accomplished, a court action must be initiated.

### ***STANDARD FOR PURSUIT OF ADJUSTMENT***

The minimal amount of potential increase or decrease in the support obligation should be equal to at least fifteen percent (15%) of the obligation to justify an attempt at adjustment. This threshold is used only as a basis to justify proceeding with a petition for adjustment, not as a criterion for deciding whether to review or as a restriction placed on the court to adjust the order. This standard protects the local CSS agency from frivolous requests for review, but at the same time allows those requests that are substantiated to be processed.

### ***POTENTIAL DOWNWARD ADJUSTMENT***

A review of the parties' income might indicate the potential for a downward modification. If so, the local CSS agency must advise both parties that a downward adjustment could be warranted, subject to the discretion of the court. Local CSS should provide the parties with information that is relative to the filing of the Motion And Notice For Modification Of Support Order (AOC-CV-600). The local CSS agency in no way represents the NCP in this action. If the local CSS agency is notified of a hearing on the matter, the CSS attorney must be present to represent the agency as in any other legal action.

### ***MULTIPLE COUNTY INVOLVEMENT***

A review for possible adjustment of a support order is conducted in the county that has the order. The county that has the support order is responsible for the review and adjustment process and, if necessary, should seek assistance from the county where the client resides.

## **REVIEW AND ADJUSTMENT PROCEDURES**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Review and adjustment for Public Assistance cases;](#)
2. [Review and adjustment for Non-Public Assistance cases;](#)
3. [Review processing;](#)
4. [Instructions for CSS case assessment;](#)
5. [Scheduling a court hearing for a Motion To Modify.](#)

### **REVIEW AND ADJUSTMENT OF PUBLIC ASSISTANCE CASES**

Public Assistance (PA) cases must be reviewed at a minimum of every three (3) years.

#### ***SELECTION CRITERIA***

Once each month, open PA case records are examined to determine if thirty-five (35) months have passed since the date that the case was last reviewed and/or modified.

PA case records meeting the 35-month condition are further evaluated to determine if a review can be conducted. The following conditions are checked:

1. The case cannot be in the Locate Processing Status;
2. The case must be workable;
3. The case must have a current support obligation;
4. The case must have a court order in North Carolina;
5. The Case must have at least one (1) child participant less than seventeen and one half (17.5) years of age.

If the PA case does not meet all of the review criteria, it is currently unreviewable.

### **REVIEW AND ADJUSTMENT OF NON-PUBLIC ASSISTANCE CASES**

Non-Public Assistance cases are only reviewed at three (3) year intervals, when requested by either the NCP or client. Both parties in NPA cases and MAO cases requesting full CSS services are notified that the case is approaching three (3) years review eligibility.

The responsible caseworker examines the case data to determine if any barriers to the review exist. When caseworkers determine that the request is warranted, they a Notice of Impending Review (DSS-4490) for both the NCP and client. This Notice states that the review request is being honored and indicates that the review will begin thirty (30) days from the date identified on the notice. This notice also requests any pertinent information that would affect the review process or its final outcome. When ACTS generates this Notice, it also sets the Review Date.

When responsible caseworkers determine that the request for review is unwarranted, they end the review process for that case, document the reason for the review denial, and notify the client and NCP.

## **REVIEW PROCESSING**

From this point forward, the review process is the same for both PA and NPA cases.

The responsible caseworker reviewing the case must complete the necessary steps to ensure that the review process begins within the allotted time frame. Once the most current income information becomes available, caseworkers use the obligation calculation worksheets as part of the evaluation process.

According to N.C. Child Support Guidelines, an increase or decrease of fifteen (15%) or more is considered a change of circumstances warranting modification of an order that is three (3) years old or older. However, if the order is less than three (3) years old, additional evidence of a significant change in circumstances is required for review and potential adjustment of the order.

Other factors specific to the case, such as the needs of the children involved, must also be taken into consideration as the review process continues.

Once the case evaluation is completed, caseworkers determine if an adjustment is needed. Whether or not an adjustment is necessary, caseworkers notify both the NCP and the client of the review results.

When a downward modification is indicated, it is the caseworker's responsibility to notify the client and NCP. However, it is the responsibility of the NCP (not the CSS agency) to pursue any further action regarding a modification. When no modification is indicated and neither party has protested the review results, caseworkers end the review process for the case and document the reason for the review denial.

If an upward adjustment is appropriate, caseworkers should use ACTS to generate the Request To AP To Voluntarily Modify Order (DSS-4678) along with a Modified Voluntary Support Agreement (DSS-4524) or a Consent Order To Modify (DSS-4657).

The Modified VSA (DSS-4524) or the Consent Order To Modify (DSS-4657) are generated with an effective date that is at least forty-five (45) days in the future. The 45-day lead time allows for the required 30-day time frame during which either party can protest the adjustment.

An attorney must review the Modified VSA (DSS-4524) or the Consent Order To Modify (DSS-4657) before the caseworkers mail it to the NCP. Then caseworkers can send the documents to the NCP.

If the NCP voluntarily signs the Modified VSA (DSS-4524) or the Consent Order To Modify (DSS-4657), caseworkers obtain the judge's signature, and then the order is filed with the court. Caseworkers also generate a Notice Of Review Hearing Results (DSS-4682) and mail copies to both the NCP and client. If the NCP has an attorney of record, the Notice Of Review Hearing Results is mailed to the attorney.

If the NCP does not voluntarily amend the order, caseworkers should print a hard copy of the Obligation Calculation Worksheet, along with a Motion To Modify Order (DSS-4654), and file these documents with the court. Then caseworkers schedule a hearing, generate a Notice Of Hearing (DSS-4621) for both the NCP and the client, and mail it to them.

In addition, caseworkers should generate an Order To Modify (DSS-4689), which should include the appropriate language in the free-form text fields to appear in "The Court Finds As Fact", "The Court Concludes As A Matter Of Law", and "The Ordered, Adjudged, And Decreed" sections of the order. Caseworkers should get this order signed by a judge.

Caseworkers also generate a Notice Of Review Hearing Results (DSS-4682) and mail copies to both the NCP and the client. If the NCP has an attorney of record, the Notice Of Review Hearing Results is mailed to the attorney.

Caseworkers should generate an Order To Modify (DSS-4689) and obtain the judge's signature on it. Caseworkers also should generate a Notice Of Review Hearing Results (DSS-4682) and mail copies to both the NCP and the client. If the NCP has an attorney of record, the Notice Of Review Hearing Results should be mailed to the attorney.

#### **INSTRUCTIONS FOR CASE ASSESSMENT**

The case assessment must include consideration of both parties' ability to provide support as well as significant changes in circumstances pertaining to the welfare of the child(ren). Caseworkers can use a variety of automated sources, self-generated documents, and interview methods to obtain current financial, assets, and wage data for the responsible parents. Additionally, the availability of health insurance must be pursued if no medical support provisions are included in the order. Written verification from employers should be the primary source of third-party verification.

Once the most current income information becomes available, caseworkers should use the Obligation Calculation Worksheets to determine the change in the support obligation. Fifteen percent (15%) is the minimum amount of potential increase or decrease in the support obligation to justify an attempt at adjustment by CSS.

#### **SCHEDULING A COURT HEARING FOR MOTION TO MODIFY**

If the NCP does not cooperate and sign a Modified Voluntary Support agreement (DSS-4524) or a Consent Order To Modify Order (DSS-4657), CSS caseworkers generate a hard copy of the Obligation Worksheet, a Motion To Modify An Order (DSS-4654), a Notice Of Hearing (DSS-4621), and the appropriate Service papers (depending on whether the NCP is to be served by certified mail or personal service) and file these documents with the court for processing.

After caseworkers submit the necessary documents to the Clerk of Court, the Clerk informs the caseworkers when the hearing is to take place. Once the hearing is set, caseworkers schedule a court hearing in ACTS for review and adjustment. While scheduling the hearing in ACTS, caseworkers can generate the documents that are mentioned above.