



# Frequently Asked Questions

(and Answers from SCAO/FOCB)

FAQ 2008-02

May 22, 2008

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## Ordering Child Support in Child Protective Proceedings

This FAQ answers common questions and clarifies policy related to Administrative Memorandum 2008-01 on Ordering Child Support in Child Protective Proceedings. If court staff have questions or would like additional information or clarification, please contact Angel Sorrells at [sorrellsa@courts.mi.gov](mailto:sorrellsa@courts.mi.gov) or (517)373-5975.

1. **Q. Where can I find a copy of Administrative Memorandum 2008-01?**
  - A. A copy of this administrative memorandum may be found on the State Court Administrative Office's (SCAO) website at: <http://courts.michigan.gov/scao/resources/other/scaoadm/2008/2008-01.pdf>
  
2. **Q. The administrative memorandum states in section F that when a court receives a child support payment that was assigned to the court to reimburse the county for caring for a child in county-funded foster care, the money may be deposited into appropriate funds or accounts pursuant to "policy." To which policy does this refer?**
  - A. Department of Human Services (DHS) policy explains how courts should report child support payments assigned to a court to reimburse the county for cost of care. This policy is entitled "General Information for: Court Ordered Support Collections, Governmental Benefit Collections, County Chargeback Process, Adjustments to Incorrect Chargeback Charges, County Child Care Fund Payment Processing, County Detention Payment Processing, Fund Source Changes Involving State and County Funds." If courts have questions about this policy, please contact DHS by calling Keith Schafer at (517) 373-8620 or Andy Thalhammer at (517) 241-1938.

Courts report their monthly foster care statistics on forms provided by DHS. This ensures that the county is reimbursed for expenses it shares with the state while caring for children in county-funded foster care programs. **Child support payments must be treated differently than reimbursement payments.** According to DHS, only reimbursement payments collected by the court are subject to the 25% administrative fee; child support is not reimbursement and, therefore, is not subject to this same fee.

**3. Q. Will our county child care fund get the money owed to it if child support is ordered? Also, can child support arrears that accrue while a child is in foster care be collected once the child is returned home or if some other permanent placement option is ordered?**

A. The answer to both questions is yes. The Michigan Child Support Enforcement System (MiCSES) is programmed to categorize the debt based on the foster care services funding stream (e.g., IV-E, County Child Care Fund, or State of Michigan).

If the child receives IV-D or state-funded foster care services, MiCSES is already programmed to send the child support to the state. If the county has paid for any part of the child's foster care services, the administrator of the county's child care fund should contact the county's FOC immediately so FOC staff can manually enter the appropriate debt type to ensure that child support collected for that child is redirected to the county child care fund.

The Office of Child Support (OCS) has prepared a Customer Information Guide (CIG) which explains how payments are routed and how arrears in child welfare cases are assigned and managed within the MiCSES. You can access the CIG at: <http://mi-support.cses.state.mi.us/systems/micses/document.aspx?id=473>.

If your county child care fund was supposed to receive child support, but that money has been redirected to the state, a court can get that money back for its county fund. Instructions on how to do this can be found in [OCS Action Transmittal 2004-034](#).

**4. Q. Our court's computer system will not allow me to schedule an "NA"(child protective proceeding) case before a family court judge who would normally handle all child support matters. What can I do?**

A. If your court's computer scheduling system is unable to schedule hearings with specific judges based on case type codes, SCAO recommends that the child support order be filed with the circuit court clerk, who then should assign the case a new number. SCAO recommends courts use the DZ case code because it is a "catch-all."<sup>1</sup> This approach also will be useful if the abuse and neglect part of the case closes, but the child support order remains in effect and needs to be enforced. Once the new case is opened, the clerk should immediately close it for purposes of case load reporting, since the child support order is the final order in the matter.

As for any filing fee for the "new" case, SCAO recommends coming to consensus internally with your court clerk. Keep in mind that this isn't the filing of a new case, but simply the filing of an existing court order.

**5. Q. Who applies for IV-D services? The administrative memorandum states that the court can apply, but this seems incorrect.**

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<sup>1</sup> If the DS case code is used, for example, but the case file has no pleadings related to the Family Support Act, this may cause confusion for the court, even if the support was established under this Act. The case originated as an abuse and neglect proceeding. Therefore, the DZ code is more appropriate.

A. The court should order the legal guardian, parties, or LGAL to explore all possible sources of services that can be used to help the family support the child. Before the FOC can enforce the child support order, someone must file a IV-D application for the children who are not categorically eligible for IV-D services (e.g., children in DHS-supervised foster care who receive IV-E funds or Medicaid). If none of the parties or guardians is willing to submit the application, then SCAO recommends that FOCs handle these non-IV-D cases like all other cases that do not have IV-D applications on file.

**6. Q. Does the court lose jurisdiction over the child support order if the underlying abuse and neglect case closes?**

A. No. The court properly issued an order based on statutory authority. Therefore, it retains the jurisdiction necessary to enforce that order.

**7. Q. Should the court order child support in every abuse and neglect case where the child is placed out of the home? Can you provide specific examples of when a court should order child support, reimbursement, or both?**

A. The court should not necessarily order child support in every abuse and neglect case where the child is placed outside of the home. The court should consider factors like the expected length of placement, the permanency plan, the ability of the parents to pay, and whether the parents are currently living together.

Example 1: The child is removed from the home and placed in foster care. The permanency plan calls for the child to be placed back in the custody of only one parent. If a child support order does not currently exist in this case, the court may consider ordering child support in addition to reimbursement. Sometimes the child support order should be set to zero during the placement and later amended once the child returns to the custodial parent.

Another variation of this approach may be best if both parents are making payments (e.g., the future custodial parent may be ordered to pay reimbursement while the future non-custodial parent may be ordered to pay child support). Both sums could be used to cover the cost of caring for the child in foster care. Once the child is returned home, the child support would then be redirected back to the custodial parent.

Example 2: The child will have a short stay in a foster home with a permanency plan that recommends returning the child to the home of only one parent. It may be appropriate to set interim reimbursement at a nominal amount and also enter a child support order if one does not already exist. While the child support will be assigned to the state during the child's stay in foster care, it will immediately be redirected to the custodial parent once the child is placed back in the home and the FOC is notified of this change in placement.

Example 3: The child is placed in foster care for an unknown duration and the child's parents are living together. In this circumstance, the courts should not order child support but instead order reimbursement.

Courts are encouraged to rely on the permanency plan and the case service plan in making a decision on whether to order child support in child protective proceedings. The court's order should reflect the needs of the family as reflected in these plans.

Please note that if your court prefers to order reimbursement rather than child support, the court may still wish to order child support with the amount set to zero while the abuse and neglect case is pending. Then, if the case is resolved and the child returns home, the court can order the parties to report to the FOC and establish the amount of support before the court closes the abuse and neglect case.

**8. Q. The administrative memorandum recommends using form FOC 100 (judgment information form). Without it, the FOC can't enforce the child support order, because the form contains all of the parents' pertinent information. How can FOCs ensure receipt of this form?**

A. Because the order cannot be enforced without the information required in the judgment information form and the verified statement required by [MCR 3.206\(B\)](#)<sup>2</sup>, the court should direct the person who prepares the support order to file these forms as well.

**9. Q. Can the FOC collect reimbursement if it's ordered?**

A. No. The FOC can collect only child support. The court clerk's office will collect reimbursement.

**10. Q. What role should the FOC play if the local prosecutor refuses to present and prepare child support orders in abuse and neglect cases?**

A. SCAO encourages courts to work with their prosecuting attorneys. However, [MCR 3.914](#) provides that, on request of the court, "the prosecuting attorney shall review the petition for legal sufficiency and shall appear at any child protective proceeding or any delinquency action." Because prosecutors must appear at the proceeding, the court may request that they prepare a child support order. If the judge does not order the prosecuting attorney to prepare the child support order, there are other attorneys present who can be ordered to do so (e.g., the lawyer-guardian ad litem).

**11. Q. If the child's placement changes, how can the FOC know when an assignment or redirection of the support collected is appropriate?**

A. SCAO recommends that the court require DHS to contact the FOC to report a change in the placement of the child. Since DHS is generally the agency that decides where the child will be placed or when replacement will occur, it is most appropriate for the caseworker to keep the FOC informed of the child's whereabouts.

**12. Q. Where should the child support be sent when the child is in foster care placement?**

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<sup>2</sup> The foster care worker can complete the verified statement if the parent is unavailable.

- A. SCAO [Administrative Memorandum 2005-04](#) explains the processes of administrative abatement and redirection for child support. However, a child in foster care does present a special case.

The definition of “recipient of support” in MCL 552.602 specifies who may receive child support. These individuals include the custodial parent, guardian, or DHS, if support has been assigned to it. MCL 552.605d also states that for a guardian to have support redirected to him or her, that individual must be legally responsible for the child. This could include a legal guardian or a court-ordered foster care placement with an unlicensed relative of the child who is not receiving Family Independent Program (FIP) benefits.

If a child in foster care is receiving IV-E services, then the child support collected for that child is assigned to the state pursuant to MCL 552.605d. If the child is placed with a relative who is a licensed foster care provider, the relative will receive a “foster care payment” and, therefore, the support is assigned to the state. If the relative receives FIP benefits, the support is also assigned to the state, but only for the amount of the FIP benefits. If the child receives county-funded services, then the support collected will be distributed from the state to the county.<sup>3</sup>

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<sup>3</sup> The funding is split 50-50 between the state and county for state- and county-funded foster care. Therefore, the assignment law in [MCL 552.605d](#) also applies to the county child care fund, as the money is split with the state.