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| ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 98 ADM-2

TO: Commissioners of
Social Services

DIVISION: Temporary
Assistance;
Child Support

DATE: March 4, 1998

SUBJECT: Change of Payee Policy & Procedure
for Child Support Enforcement

SUGGESTED

DISTRIBUTION: | Child Support Enforcement Unit Coordinators
| Support Collection Unit Supervisors

CONTACT
PERSON:

| Child Support: Your County Representative at
| 1-800-343-8859

ATTACHMENTS: | 1-4 Forms (not available on line)
| FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
none			FCA 571		

I. PURPOSE

This directive is released in order to transmit the policy, procedures, and forms for implementing change of payee procedures.

II. BACKGROUND

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) requires under Section 325, Expedited Procedures, that states have procedures which allow for a change of payee of orders through the child support agency. A "change of payee" is an administrative action used to redirect support payments payable under an existing order of support to the IV-D agency. So for example, a respondent who is ordered to pay the petitioner will, pursuant to the change of payee process, pay the SCU instead.

Subdivision (10) of Section 571 of the Family Court Act was added by Chapter 398 of the Laws of 1997 to provide that upon notice to the parties a change of payee may occur if a person is in receipt of public assistance or has made application to the child support enforcement program in this state or in any other state and has a New York court order issued pursuant to the Domestic Relations Law or the Family Court Act which is not otherwise payable to the Support Collection Unit (SCU).

Districts have requested guidance with regard to whether an individual who lives in another state may request services directly from a child support program in New York. Federal law does not provide for residency restrictions upon applicants for services. Therefore, a person in another state may apply for services directly from a child support program in New York. Federal law further provides that child support services must be made available to residents of other states on the same terms as to residents of the state (42 U.S.C. 654 (6)(A)).

Districts have also requested policy guidance with regard to appropriate actions to take when clients request that child support payments be made payable directly to them. Section 571 (3) (a) of the Family Court Act provides that when a person is no longer in receipt of public assistance, the obligee may request that the SCU direct payments to the obligee without the need for further judicial intervention. Similarly, Section 571 (7) provides that non-public assistance recipients of child support services may also request that payments be made payable direct to them.

III. PROGRAM IMPLICATIONS

Child support staff should make a determination as to whether the change of payee procedure is appropriate to expedite child support payments through the Support Collection Unit (SCU).

IV. REQUIRED ACTION

(A) For cases in which there is no order payable to the SCU.

(1) Identify eligible cases.

(a) After a case is built on CSMS, the SCU will determine if the case may be eligible for the change of payee process. A case may be determined eligible if:

(i) either the client has applied for or is receiving public assistance or has applied for child support services in this state or in another state; and

(ii) the SCU has been provided with a copy of the New York child support order and any modifications thereto (including dispositions establishing arrears) and the order is not payable to an SCU.

(2) Send notices.

(a) SCU through CSMS will complete the following forms:

(i) "Change of Payee Notice" (ATTACHMENT 1);

(ii) "Affidavit of Arrears" (ATTACHMENT 2) if the client indicates there are arrearages and completes an affidavit regarding the arrears. Note: if there has been a judgment or other court ordered disposition regarding arrears, the affidavit of arrears should reflect the court ordered balance and be completed for payments and balances which have accrued after the court order;

(iii) "Child Support Payment Responsibilities" (ATTACHMENT 3); and

(iv) "Notice to Dispute Change of Payee" (ATTACHMENT 4).

(b) SCU will send completed copies of the "Change of Payee Notice", the "Child Support Payment Responsibilities" and the "Notice to Dispute Change of Payee" forms by first class mail to the respondent at his/her last known address or such other place the person is likely to receive notice or in the same manner as a summons may be served.

(c) SCU must also send a copy of the "Change of Payee Notice" to the court which issued the order and to the petitioner. If the petitioner is receiving child support services through another state the SCU should send the form to such agency.

(d) The "Change of Payee Notice" must contain the following information:

(i) The caption of the order, the date the order of support was entered, the name of the court in which the order was entered, the amount of periodic payments directed by the order, and, if any, the amount of arrears/delinquency as indicated on the "Affidavit of Arrears", and the name and date of birth of the dependents. In addition, the notice must include:

(ii) the name and address of where the child support payments must be made, the effective date of when such payments shall commence, and the manner in which such payments may be made;

(iii) an explanation of the action(s) required pursuant to paragraph (3) below to be taken by the respondent to dispute the "Change of Payee Notice"; and

(iv) the address of the SCU that the respondent or petitioner may contact to raise a dispute or to ask questions about the requirements set forth in the "Change of Payee Notice".

(e) The SCU must document change of payee activities on CSMS by using:

(i) IVDJSI E001 00 "Enforcement Action Initiated"; and

(ii) IVDJSI E003 02 "Change of Payee Notices Sent".

(3) Dispute Review.

(a) Upon issuing the forms set forth in (2)(a) above, the SCU must review the case within (20) days of the date of the "Change of Payee Notice" to determine if the respondent sent back the "Notice to Dispute Change of Payee" or provided other written notice of dispute. If the respondent does not dispute the validity of the order or the affidavit of arrears within (20) days the SCU must do the following:

(i) establish an account on CSMS with the first payment due the SCU on the first due date (as directed by the court order payment frequency) which follows the date of the "Change of Payee Notice". Arrears/delinquencies (i.e. not court ordered) should be added to the 11__ or 21__ ledger. If there are court ordered arrears (e.g. petitioner provides a judgment for arrears) 12__ or 22__ ledgers may be created; and

(ii) if the request for change of payee has been initiated through an interstate "Child Support Enforcement Transmittal #1 (i.e., the client is receiving public assistance or has applied for child support services through another states' child support agency), the payee on the account should be that states' agency and agency address. If the non-public assistance client resides out-of-state but has applied directly for child support services from a child support agency within New York, the payee should be the client's name and address.

(iii) proceed to enforce the order by income execution and other administrative remedies when criteria are met. Note: if the order date is prior to November 1, 1990 a default income execution will be issued.

(b) If the respondent only disputes the "Affidavit of Arrears" the SCU must do the following:

(i) establish an account on CSMS for current support only as discussed in (3)(a) above;

(ii) if the order was issued by the Supreme Court file a petition to enforce the order of another court with the Family Court, indicate on the petition that the petitioner is a recipient of child support services, and include the original of the "Affidavit of Arrears" with the petition;

(iii) if the order was issued by Family Court, file a violation petition with the Family Court, indicate on the petition that the petitioner is a recipient of child support services, and include the original of the "Affidavit of Arrears" with the petition;

(iv) appear in court at any hearing to testify with regard to any CSMS records;

(v) promptly take action to modify the CSMS record as a result of the court order; and

(vi) proceed to enforce the order by income execution and other administrative remedies when criteria are met.

(c) If the respondent disputes the validity of the order and the arrears affidavit the SCU must do the following:

(i) do not establish an account on CSMS;

(ii) if the order was issued by the Supreme Court file a petition to enforce and modify (i.e. change the payee) the order of another court with the Family Court, indicate on the petition that the petitioner is a recipient of child support services, and include the original of the "Affidavit of Arrears" with the petition;

(iii) if the order was issued by Family Court, file a violation petition with the Family Court, indicate on the petition that the petitioner is a recipient of child support services and include the original of the "Affidavit of Arrears" with the petition;

Note: with regard to filing the petitions, if the case is public assistance related the commissioner/designee should sign the petition. If it is non-public assistance, the client should sign the petition. If the non-public assistance client is receiving services through another state the SCU should send the petition to such agency for signature.

(iv) appear in court at any hearing to testify with regard to any CSMS records;

(v) promptly take action to modify the CSMS record as a result of the court order; and

(vi) proceed to enforce the order by income execution and other administrative remedies when criteria are met.

(d) If the respondent disputes the "Change of Payee Notice" after the (20) day timeframe for review such respondent should be advised that such respondent must file an action in court with regard to their dispute.

(e) if the SCU receives the "Change of Payee Notice" sent to the respondent within 20 days of the date of the notice in return mail the SCU should initiate activities to locate the respondent. Upon locating the respondent the SCU may then proceed to reinstitute the change of payee process by sending the notices to the respondent's new address.

(5) Forms.

The SCU must implement the procedures set forth in this section using applicable forms developed by the State Office of Child Support Enforcement and provided through CSMS. Copies are being provided with this ADM as ATTACHMENTS 1-4. Districts should photocopy these forms until they become available on CSMS Document Generation Module.

(B) For cases in which the order is payable to the SCU and a request is made to the SCU by the client for payments to be made direct.

(1) Identify eligible cases.

When a public assistance case closes the client is sent the Continuation of IV-D Services Notice. This notice advises the petitioner of their right to have payments made direct to them. A former public assistance or non-public assistance client may request that payments be made direct. If they wish to have payments made direct the client should be advised that such a request be made in writing.

(2) Send a letter to respondent and the client.

(a) If a former public assistance client or a non-public assistance client requests the SCU to make payments direct the SCU should first review the account to see if arrearages are due and owing the department. If there are arrearages due and owing the department, the letter should state the amount of such arrears and should explain that the order can only be pay direct for current support and arrears owing to the client.

(b) The SCU must notify the respondent and client of the request by the client to make payments direct by sending a letter to the respondent with a copy to the client which advises the respondent that if the respondent wishes to continue to make payments to the SCU the respondent must, pursuant to Section 571 (3) of the Family Court Act, petition the court within (30) days of the date of the letter. The letter must also advise the respondent to notify the SCU if a petition will be filed. In addition, as noted in (a), the SCU must advise that arrears owing to the department will continue to be enforced by the SCU and payments toward such arrears must be paid to the SCU.

(3) Review for respondent action.

The SCU should review the case in (30) days to see if the respondent has filed a petition with the court. If the respondent applies to the court the SCU should take no further action on the case until the matter is decided by the court. If the respondent does not apply for an order within (30) days requesting that payments continue to go through the SCU, the SCU may take steps to close the case on CSMS. Note: a case should not be closed if there are any arrears owing to the district but should remain open (for public assistance arrears only) until all arrears are satisfied.

(C) Records of the SCU.

Each SCU must keep a record through CSMS of activities taken with respect to the administrative "change of payee" process as set forth in this administrative directive.

V. SYSTEMS IMPLICATIONS

Specific systems changes with regard to CSMS Document Generation Module and statuses will be issued under separate letter.

VI. EFFECTIVE DATE

This directive is effective March 20, 1998.

Robert Doar, Director
Office of Child Support
Enforcement