

137-055-3220

Establishment of Past Support Orders

(1) For purposes of this rule the following definitions shall apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(b) "Supported by the parent" in (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the Oregon Child Support Guidelines from the non-custodial parent to the custodial parent or other custodial adult for purposes of support of the child(ren).

(c) The Oregon Child Support Guidelines means the formula for calculating child support specified in OAR 137-050-0320 through 137-050-0490.

(2) The administrator may establish "past support" when establishing a child support order under ORS 416.400 through 416.470.

(3) When a non-custodial parent has made payments in cash or in kind to a custodial parent or other custodial adult for the support of the child(ren) during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the Oregon Child Support Guidelines, no past support shall be ordered.

(4) When such payments as described in section (3) were made in amounts less than the amount of support presumed correct under the Oregon Child Support Guidelines, the amount of the past support judgment shall be the correct amount presumed under the Oregon Child Support Guidelines minus any amounts of support paid.

(5) The non-custodial parent must provide evidence of such payments as described in sections (3) and (4) by furnishing copies of:

(a) Canceled checks;

(b) Cash or money order receipts;

(c) Any other type of funds transfer records;

(d) Merchandise receipts;

(e) Verification of payments from the custodial parent or other custodial adult;

(f) Any other record of payment deemed acceptable by the administrator.

(6) It shall be within the discretion of the administrator to determine whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If either party disagrees with this determination, the support determination may be appealed to an administrative law judge per ORS 416.427.

(7) Past support may not be ordered for any period of time prior to the later of:

(a) October 1, 1995; or

(b) The date of the initiation of IV-D services from any state by application for services; or in case of a mandatory referral based on the receipt of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services, the date of the referral to the Child Support Program (CSP).

(8) If the support case was initiated from another state, the date of application for services shall be considered to be either:

(a) The date the initiating state requests past support to begin but not before October 1, 1995; or

(b) If the initiating state requests that past support be established for multiple periods of time, the beginning date of the most recent period but not before October 1, 1995; or

(c) If the initiating state does not specify a beginning date for past support, the date of the initiating petition but not before October 1, 1995.

(9) Where CSP services did not produce a support order and CSP services were terminated by the applicant or by the CSP agency per state and federal regulations and subsequently CSP services were initiated again, the administrator shall not establish past support prior to the date of the most recent initiation of CSP services. If an initiating state requests that past support be established for two or more periods of time, past support shall be established only for the most recent period.

(10) If there is or was a child support judgment in existence in any state for the non-custodial parent to pay support to the obligee for the same child(ren), no order for past support shall be entered for a period of time before entry of the child support judgment already or previously existing except as provided in OAR 137-055-3200.

(11) Where the order to be entered is for past support only and does not include current support and the past support would be owed only to the State of Oregon or another state, the administrator shall not enter an order for past support for a period of less than four months.

(12) Past support shall be calculated per the Oregon Child Support Guidelines and shall use current income for the parties in calculating past support monthly amounts. Parties may rebut use of current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: ORS 180.320 - 360

Stats. Implemented: ORS 416.422