

137-055-5520

Request for Credit Against Child Support Arrears for Social Security or Veterans' Benefits Paid Retroactively on Behalf of a Child

(1) In accordance with ORS 107.135, the purpose of this rule is to define the process for allowing a credit against child support arrears for Social Security or Veterans' benefits paid retroactively to the child, or to a representative payee administering the funds for the child's use and benefit.

(2) As used in this rule, Social Security benefits are as defined in OAR 137-050-0320.

(3) As used in this rule, Veterans' benefits include both apportioned Veterans' benefits and Survivors and Dependents Educational Assistance, as defined in OAR 137-050-0320.

(4) The request for credit against arrears will be considered if submitted within 180 days of the date of the determination letter from the Social Security Administration (SSA) or the Department of Veterans' Affairs (DVA) regarding a retroactive payment on behalf of the child.

(5) A request for credit against a child support arrears for Social Security or Veterans' benefits paid retroactively on behalf of the child must be made either:

(a) With a request for a periodic review and modification or a substantial change in circumstance modification if there is a current support obligation for that child. The modification must have an effective date on or after October 23, 1999; or

(b) Independently of a request for a modification if there is no longer a current support obligation for that child.

(6) A request for credit against arrears made within the time frames set out in section (4) will be treated as a request for a change of circumstances modification. The party may otherwise qualify for a modification pursuant to OAR 137-055-3420.

(7) A party must provide documentation of the SSA or DVA retroactive payment paid on behalf of the child.

(8)(a) The credit for Survivors and Dependents Educational Assistance will be a dollar for dollar credit against the child support arrears; and

(b) The credit for Social Security and apportioned Veterans' benefits may be a dollar for dollar credit against the child support arrears.

(9) Notwithstanding subsections (8)(a) and (b), the maximum credit allowed will be limited to the amount of the child support arrears. In no circumstances will the credit exceed the amount of the retroactive SSA or DVA payment made on behalf of the child.

(10) The administrator will send to the parties by regular mail notice and proposed order of the intended action, including the amount to be credited and how the amount was calculated. Such notice will advise the parties of the right to an administrative hearing regarding this action:

(a) Within 30 days from the date of this notice, a party may request an administrative hearing as specified in the notice;

(b) The request for hearing must be in writing;

(c) The only basis upon which a party may object is that:

(A) The lump sum payment was not received; or

(B) The lump sum payment amount used in the calculation is not correct.

(d) Any appeal of the decision made by an administrative law judge will be to the circuit court for a hearing de novo.

(11) If no timely written request for hearing is received, the order will be filed in circuit court.

(12) If the credit determined in subsections (8)(a) and (b), is less than the amount of arrears owed per section (9), the file credit will be applied as follows:

(a) If none of the arrears are assigned to the state, the credit will be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state and the child was receiving assistance during any time period covered by the retroactive payment per the SSA or DVA determination letter, the credit will be applied in the following sequence:

(A) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(B) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(C) Family's unassigned arrears;

(D) Family's conditionally assigned arrears.

(c) If there are arrears assigned to the state and the child was not receiving assistance during any time period covered by of the retroactive payment per the SSA or DVA determination letter, the credit will be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(D) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020 and 107.135

Effective: January 3, 2006