

137-055-3430

Substantial Change in Circumstance Review and Modification of Child Support Order Amounts

(1) For purposes of this rule the definitions provided in ORS 25.321, OAR 137-050-0320, OAR 137-050-0410, OAR 137-050-0430 and OAR 137-055-3420 apply.

(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstance.

(3) The administrator will conduct a review based upon a request for a change of circumstance modification when:

(a) Oregon has jurisdiction to modify; and

(b) The administrator receives a written request for modification based upon a change of circumstance and at least 60 days have passed from the date the existing support order was entered, except for those cases where a review is requested pursuant to paragraphs (3)(d)(H) or (I); or

(c) The administrator determines that a modification should be initiated based on the administrator's own motion; and

(d) At least one of the following criteria are met:

(A) A change in the written parenting time agreement or order has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(D) Veterans' benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;

(F) Since the date of the last order, the obligor has been incarcerated, as defined in OAR 137-055-3300;

(G) The needs of the child(ren) have changed;

(H) There is a need to order health care coverage or cash medical support for the child(ren) pursuant to OAR 137-050-0410, OAR 137-050-0430 or OAR 137-055-3340;

(I) A change in the physical custody of the minor child(ren) has taken place;

(J) An order is being modified to include a subsequent child of the parties; or

(K) A child no longer qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110 and the order is being modified pursuant to ORS 107.108(10) as a tiered order. Tiered order has the meaning given in OAR 137-055-1020.

(e) And the requesting party (if other than the administrator):

(A) Completes a written request for modification based upon a substantial change of circumstance;

(B) Pursuant to ORS 416.425, provides appropriate documentation for the criteria in subsection (d) of this section showing that a substantial change of circumstance has occurred; and

(C) Completes a Uniform Income Statement or Uniform Support Affidavit.

(4) Upon receipt of a written request for a review and modification, or upon the administrator's own initiative, the administrator will notify the parties of the review in writing. The notice will inform the parties:

(a) Of the opportunity to provide information, with regard to themselves and the other party(ies) if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines and the need to order appropriate health care coverage or cash medical support, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator will consider written information received from any party prior to:

(A) Calculating the presumed correct amount of support;

(B) Ordering appropriate health care coverage or cash medical support.

(c) That the administrator will not conduct a review until 30 days have passed since the date of the notice unless documentation or written information is received from all parties before the 30 days have passed; and

(d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.

(5) A request for review will be granted unless:

(a) The conditions in section (3) have not been met; or

(b) The review was requested due to one of the criteria in paragraphs (3)(d)(A) through (3)(d)(G), and the order is in substantial compliance with the guidelines. The determination of substantial compliance will be made as outlined in OAR 137-055-3420(1)(e).

(6) If the request for review is granted, the administrator will:

(a) Initiate a motion or petition to modify the current support order pursuant to applicable statutes and administrative rules. If there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020;

(b) Advise the parties in writing of the presumed correct child support amount under the child support guidelines and if required, the need to order appropriate health care coverage or cash medical support.

(c) This notification:

(A) Must be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(B) Must advise the parties that each party has 30 days from the date of service of the notice to object to the proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has elapsed; and

(C) Must include the request for hearing form for each of the parties as provided in OAR 137-055-2160, if the administrator uses an administrative motion form.

(d) Send a copy to the adult child who has requested notification of any modification proceeding pursuant to ORS 107.108.

(7) If a party wishes to object to the proposed modification, the party must file a written request for hearing with the administrator or court before the 30 day period has passed.

(8) Upon receipt of a written request for hearing opposing the proposed modification, the administrator will:

(a) Review the case to determine whether the monetary child support or medical child support provisions should be redetermined and, if so, notify the parties of the new presumed child support amount or medical child support provisions;

(b) Seek a consent order; or

(c) Ensure that the matter is set for hearing if no other resolution is achieved.

(9) If a party submits, in writing, newly acquired information after a proposed modification has been served, the administrator will review the case pursuant to subsection (8)(a).

(10) If no request for hearing is filed within the 30 day period, the administrator will submit the modification of the support order to the circuit court for entry in the court register.

(11) If the request for review is denied, the administrator will notify the requesting party of the denial in writing within 30 days and inform the party of their right to file a motion for modification as provided in ORS 416.425. The administrator will advise the party on how to obtain the Oregon Judicial Department packet that has been prescribed for this purpose.

(12) An appeal under this rule will be as provided in ORS 416.427.

(13) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

(14) If a request for review and modification is received because a change in the physical custody of the minor child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

Stat. Auth.: ORS 180.345 and 416.455

Stats. Implemented: ORS 25.080, 25.287, 25.321 - 25.343, 107.108, 107.135, and 416.425

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