

137-055-3430**Substantial Change in Circumstance Modification of Child Support Order Amounts**

(1) For purposes of this rule: “Substantial compliance” means that the difference between the existing support order and the amount calculated using current guidelines is not greater than \$50 or 15% of the current guideline amount, whichever is less.

(2) Notwithstanding OAR 137-055-3420 and except as provided in paragraph (3)(b)(A) of this rule, 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 of the existing order to determine whether it qualifies for a change of circumstance modification when:

(a) Oregon has jurisdiction to modify; and

(b) The administrator:

(A) Receives a request for modification based on a change of circumstance and at least 60 days have passed from the date the existing support order was entered. For those cases where a review is requested pursuant to paragraphs (3)(c)(H), (I), or (J) of this rule, there is no need for 60 days to have passed; or

(B) Determines that a modification should be initiated based on the administrator’s motion; and

(c) At least one of the following criteria is 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 have changed;

(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;

(D) Veterans benefits received on behalf of a child due to a parent’s disability or retirement were not previously considered in the order;

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

(F) The needs of the children have changed;

(G) The support order has been suspended and reinstated under OAR 137-055-3300 and qualifies for a review pursuant to ORS 25.247;

(H) There is a need to add or change medical support provisions for a child;

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

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

(K) A child who is 18 years of age or older and under 21 years of age does not qualify as a child attending school under ORS 107.108 and OAR 137-055-5110 and, pursuant to ORS 107.108(10), tiered order provisions will be added, removed, or changed. The definition of tiered order is provided in OAR 137-055-1020.

(d) And the requesting party (if other than the administrator) submits the following documentation, or its equivalent:

(A) A written request for modification based on a substantial change of circumstance (signature is not required if it can be determined who submitted the request);

(B) Appropriate information for the criteria in subsection (3)(c) of this rule showing that a substantial change of circumstance has occurred; and

(C) A completed Uniform Income and Expense Statement or Uniform Support Petition.

(4) When a review is initiated, the administrator will notify the parties in writing that they have 30 days to provide information regarding the calculation of support.

(5) If the order is currently suspended pursuant to OAR 137-055-3300 or 137-055-5400, a request for modification will be denied unless the basis of the request is paragraph (3)(c)(I) of this rule, whereby the children are now in the custody of the obligor and the obligor would now be the obligee under a new calculation.

(6) If the review determines that the conditions in section (3) of this rule are met and the request is based on the criteria in paragraphs (3)(c)(A), (B), or (F) of this rule, a modification will be initiated only if the order is not in substantial compliance with the guidelines and the change that has been identified occurred after the following date:

(a) The date of the hearing, when the existing order resulted from a judicial or administrative hearing;

(b) The date the order was signed by a judge, when the order was issued by a court and no hearing was held; or

(c) The date the order that became final was generated as a proposed order when the order was issued by the administrator and no hearing was held.

(7) A modification will be initiated regardless of whether the order is in substantial compliance with the guidelines when:

(a) The review determines that the conditions in section (3) of this rule are met and the request is based on the criteria in paragraphs (3)(c)(C) through (E) and (G) through (K) of this rule; or

(b) The review determines that the conditions in section (3) of this rule are met and the request is based on paragraphs (3)(c)(A), (B), or (F) of this rule, and any of the following are true:

(A) The parties have consented to the support amount as provided in OAR 137-050-0765;

(B) The calculation includes compelling factors as provided in OAR 137-050-0750; or

(C) The calculation includes application of rebuttals, as provided in OAR 137-050-0760.

(8) If the request for modification is granted, the administrator will advise the parties of the guideline child support obligation. Notification may be by motion for modification and will include a request for hearing form.

(9)(a) If the parent with more parenting time is owed support under the current support judgment but the calculation results in the parent with more parenting time owing support to the parent with less parenting time, and the parent with less parenting time does not apply for services after being notified of the result of the calculation, the administrator may modify the current support obligation to zero.

(b) For the purpose of a hearing before the Office of Administrative Hearings, the failure of the parent with less parenting time to apply for services as provided in subsection (9)(a) of this rule creates a rebuttable presumption that the parent does not want support, which can be rebutted only by live testimony of the parent at the hearing.

(10) If there is an adult child on the case:

(a) A tier as defined in OAR 137-055-1020 may be included for the adult child; or

(b) The order may be modified to remove support provisions for the adult child but can be modified later to include support provisions for a child attending school if the adult child qualifies for support under ORS 107.108.

(11) If a request under this rule is denied, a party may contest the administrator's finding as provided in ORS 183.484.

(12) No provision of this rule prevents the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order.

(13) If a request for review and modification is received because a change in the physical custody of the minor children 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 25.247, 25.505 & 180.345

Stats. Implemented: ORS 25.080, 25.245, 25.247, 25.287, 25.321 to 25.343, 25.527, 107.108 & 107.135

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