**Section 160.60 Establishment of Support Obligations**

a) Definitions

1) "CSS" means any Child Support Specialist performing assigned duties, his or her supervisory staff and any other person assigned responsibility by the Director of the Department.

2) "Service" or "Served" means notice given:

A) by personal service, substitute service at the individual's usual place of abode with some family member or a person residing there who is at least 13 years old, certified mail (with or without return receipt requested) or restricted delivery;

B) *by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, and Locksmith Act of 2004* [225 ILCS 447] *or by a registered employee of a private detective agency certified under that Act;* or

C) by any method provided by law for service of summons. (See Sections 2-202, 2-203 and 2-206 of the Code of Civil Procedure [735 ILCS 5] and Sections 10-4 and 10-11 of the Public Aid Code [305 ILCS 5].)

3) "Support Statutes" means the following:

A) Article X of the Illinois Public Aid Code [305 ILCS 5];

B) The Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5] or "IMDMA";

C) The Non-Support Punishment Act [750 ILCS 16];

D) The Uniform Interstate Family Support Act [750 ILCS 22];

E) The Illinois Parentage Act of 2015 [750 ILCS 46]; and

F) Any other statute in another state that provides for child support.

4) "Retroactive support" means support for a period prior to the date a court or administrative support order is entered.

5) "Needs of the child" means the term as it is used in Section 505(a) of the IMDMA.

6) The definitions contained in Section 103 of the Illinois Parentage Act of 2015 shall apply to the same terms in this Section.

b) Responsible Relative Contact

1) Timing and Purpose of Contact

A) The Department shall contact and interview responsible relatives in Title IV-D cases to establish support obligations, following the IV-D client interview.

B) The purpose of this contact and interview shall be to obtain relevant facts, including income information (for example, paycheck stubs, income tax returns) necessary to determine the financial ability of such relatives for use in obtaining stipulated, consent and other court orders for support and in entering administrative support orders, pursuant to the support statutes.

2) At least ten working days in advance of the interview, the Department shall notify each responsible relative in accordance with Section 5/10-4 of the Illinois Public Aid Code of the following:

A) the IV-D case name and identification number;

B) the names and birthdates of the persons for whom support is sought or other information identifying those persons, such as a prior court number;

C) that the responsible relative has a legal obligation to support the named persons;

D) the date, time, place and purpose of the interview and that the responsible relative may be represented by counsel; and

E) that the responsible relative should bring specified information regarding his or her income and resources to the interview.

3) The Department shall notify each IV-D client of the date, time and place of the responsible relative interview and that the client may attend if he or she chooses.

c) Determination of Financial Ability

1) The CSS and other staff designated by the Division of Child Support Services (DCSS) calculate child support and enter administrative support orders in IV-D cases by utilizing and considering the following factors in accordance with Section 505(a) of the IMDMA, including but not limited to:

A) the Gross to Net Income Conversion Table Using Standardized Tax Amounts as published on the Department's website at https://www.illinois.gov/hfs/ChildSupport/parents/Pages/

IncomeShares.aspx;

B) the Schedule of Basic Child Support Obligations Table as published at the link in subsection (c)(1)(A);

C) the Income Shares calculator accessed through the Key Information Delivery System (KIDS) or any successor Department Statewide automated child support system;

D) rebuttable presumption of minimum orders;

E) health care;

F) gross income;

G) net income; and

H) standardized tax amount;

2) In de novo hearings as ascribed in subsection (d)(2)(G) and 89 Ill. Adm. Code 104.102, calculation and review of support orders by Department hearing officers will be conducted in accordance with the following:

A) The Department's hearing officers may utilize and consider the factors in subsection (c)(1) when calculating and reviewing support orders, as well as the following factors:

i) individualized tax amount;

ii) business income;

iii) unemployment or underemployment;

iv) deviation factors;

v) income in excess of the Basic Child Support Obligation Table; and

vi) extracurricular activities and school expenses.

B) Calculations for support made by hearing officers begin with the Income Shares calculator accessed through the KIDS or any successor Department Statewide automated child support system, which contain the standardized factors provided for in Section 505(a) of the IMDMA and subsection (c)(1) of this Section.

C) However, the hearing officer may find the application of subsections (c)(1) and (c)(2)(A) are inappropriate after considering the best interests of the child in light of evidence, and the hearing officer may use discretion to consider other factors, including but not limited to:

i) financial resources and needs of the child;

ii) financial resources and needs of the custodial parent;

iii) standard of living the child would have enjoyed had the marriage or civil union not been dissolved, the separation not occurred, or the parties married;

iv) physical and emotional condition of the child and his or her educational needs;

v) financial resources and needs of the non-custodial parent; and

vi) child's physical care arrangements.

D) Each order requiring support that deviates from the factors in subsection (c)(2)(B) shall state the amount of support that would have been required under those factors and the reasons for the deviation.

3) A copy of the Support Obligation Worksheet or a Shared Physical Care Support Obligation Worksheet is to be attached to each administrative support order. These worksheets contain the information in Section 505(a) of the IMDMA and subsections (c)(1) and (c)(2) of this Section.

4) The Department refers IV-D cases for judicial review, in accordance with subsection (f), that involve the following factors:

A) child care;

B) shared parenting in accordance with a court order;

C) split care in accordance with a court order; and

D) healthcare, but only when:

i) health insurance is not currently held or available to the parent or parents, and is unlikely to become available to the parent or parents; or

ii) the parents cannot agree as to who should provide coverage for the child.

5) Extra curricular activities and school expenses will not be referred for judicial review, as they are not IV-D functions.

6) The Gross to Net Income Conversion Table, the Schedule of Basic Child Support Obligations Table, and the Illinois Child Support Calculator are based on:

A) the percentage of combined net income that parents living in the same household in this State ordinarily spend on their children;

B) the parents' combined adjusted net income estimated to have been allocated to the child if the parents and children were living in an intact household; and

C) the amount of child support to be paid by each parent based upon the child support order and the child's physical care arrangements.

d) Contents of Administrative Support Orders

1) All administrative support orders are stated in dollar amounts and address the provision of health care coverage of the child. In all cases in which health insurance coverage is not being furnished, the Department shall enter administrative, or request the court to enter, support orders requiring coverage when a child can be added to an existing health insurance policy at reasonable cost or indicating what alternative arrangement for health insurance coverage is being provided.

2) An administrative support order shall include the following:

A) the IV-D case name and identification number;

B) the names and birthdates of the persons for whom support is ordered;

C) the beginning date, amount and frequency of support;

D) a provision for retroactive support ordered under subsection (d)(8), including the total retroactive support obligation and the beginning date, amount (that shall not be less than 20 percent of the current support amount) and frequency of payments to be made until the retroactive support obligation is paid in full;

E) the amount of any arrearage that has accrued under a prior support order and the beginning date, amount (that shall not be less than 20 percent of the support order) and frequency of payments to be made until the arrearage is paid in full;

F) a provision requiring that support payments be made to the State Disbursement Unit;

G) a statement informing the client and the responsible relative that they have 30 days from the date of mailing of the administrative support order to petition the Department for a release from, or modification of, the order and petition for a hearing in accordance with subsection (c)(2) and 89 Ill. Adm. Code 104.102. For orders entered as a result of a decision after a de novo hearing, the statement shall inform the client and the responsible relative that the order is a final administrative decision of the Department and that review is available only in accord with provisions of the Administrative Review Law [735 ILCS 5/3], unless:

i) the order was based upon the factors listed in subsection (c); and

ii) other factors listed in Section 802(e) of the Illinois Parentage Act of 2015 and Section 505 of the IMDMA are to be considered. In this case either the responsible relative or the client must request a de novo hearing within 30 days after mailing of the administrative support order;

H) a statement that a support obligation required under the order, including judgments, arrearages or judgments for retroactive support, judgments by operation of law or any portion of a support obligation required under the order, that becomes due and remains unpaid for 30 days or more shall accrue simple interest as required by law at the rate of nine percent per annum (see Sections 10-10, 10-11 and 10-16.5 of the Illinois Public Aid Code, Sections 505(b) and 505(d) of the IMDMA, Sections 801(b), 802(f) and 812 of the Illinois Parentage Act of 2015, Sections 20(e) and 20(j) of the Non-Support Punishment Act, Sections 2-1303 and 12-109(b) of the Code of Civil Procedure; and

I) an income withholding provision based upon and containing the same information in Section 160.75. The Department shall prepare and send income withholding notices after entry of an administrative support order and effect income withholding in the same manner ascribed in Section 160.75.

3) In cases in which the net income of the responsible relative cannot be determined because of default or any other reason, and the IV-D client requests that an order for retroactive support be entered or requested, the Department shall order, or request the court to order, the responsible relative to pay retroactive support for the prior period in the amount consistent with subsection (d)(8).

4) If there is no net income because of the unemployment of a responsible relative who resides in Illinois and is not receiving General Assistance in the City of Chicago and has children receiving cash assistance in Illinois, the Department, when proceeding under subsection (e), shall order, or, when proceeding under subsection (f), shall request the court to order the relative to report for participation in job search, training or work programs established for those relatives. In TANF cases, the Department shall order, when proceeding under subsection (e), or, when proceeding under subsection (f), shall request the court to order payment of past-due support pursuant to a plan and, if the responsible relative is unemployed, subject to a payment plan and not incapacitated, that the responsible relative participate in job search, training and work programs established under Section 9-6 and Article IXA of the Illinois Public Aid Code.

5) All administrative support orders, or request the court to enter support orders, shall include a provision requiring the responsible relative to notify the Department, within seven days:

A) of any new address of the responsible relative;

B) of the name and address of any new employer or source of income of the responsible relative;

C) of any change in the responsible relative's Social Security Number;

D) whether the responsible relative has access to health insurance coverage; and

E) if the responsible relative has access to health insurance, the policy name and number and the names of persons covered under the policy.

6) All administrative support orders, or request the court to enter support orders, must include a date on which the current support obligation terminates. The administrative support order termination date shall be no earlier than the date on which the child covered by the order will attain the age of majority or is otherwise emancipated. The order for support shall state that the termination date does not apply to any arrearage that may remain unpaid on that date. The provision of a termination date in the administrative support order shall not prevent the order from being modified.

7) All administrative support orders, or request the court to enter support orders, must include a statement that if there is an unpaid arrearage or delinquency equal to at least one month's support obligation on the termination date stated in the order for support or, if there is no termination date stated in the order, on the date the child attains the age of majority or is otherwise emancipated, then the periodic amount required to be paid for current support of that child immediately prior to that date shall automatically continue to be an obligation, not as current support but as periodic payment toward satisfaction of the unpaid arrearage or delinquency.

8) At the request of the IV-D client, the Department shall enter administrative support orders, or request to the court to enter support orders, will address retroactive support, as follows:

A) The Department shall order the period of retroactive support to begin with the later of two years prior to the date of entry of the administrative support order or the date of the parties' separation (or the date of birth of the child for whom support is ordered, if the child was born out of wedlock). Retroactive support is calculated by applying the relative's current net income (unless the relative provides necessary information to determine net income for the prior period) to the financial ability factors in accordance with subsection (c) and reducing the total by the amount of actual monetary contributions made by the responsible relative to the IV-D client for the benefit of the child during the retroactive period as specified in the IV-D client's affidavit of direct contribution. In no event shall credit be given in excess of the total amount of the retroactive support determined.

B) In de novo hearings provided for in subsection (d)(2)(G) and 89 Ill. Adm. Code 104.102, the Department's hearing officer shall order retroactive support in accordance with subsection (d)(8)(A), unless, in cases in which the child was born out of wedlock, the hearing officer, after having examined the factors set forth in Section 802(e) of the Illinois Parentage Act of 2015 and Section 505 of the IMDMA decides that another date is more appropriate.

C) In cases referred for judicial action under subsection (f), the Department's legal representative shall ask the court to determine the date retroactive support is to commence in accord with Article X of the Illinois Public Aid Code, Sections 510 and 505 of the IMDMA, and Section 802(e) of the Illinois Parentage Act of 2015.

e) Administrative Process

1) Use of Administrative Process

A) Unless otherwise directed by the Department, in IV-D cases, the CSS shall establish support obligations of responsible relatives through the administrative process set forth in this subsection (e) wherein the court has not acquired jurisdiction previously, in matters involving:

i) presumed parentage as set forth in Section 204 of the Illinois Parentage Act of 2015 and support is sought from one or both parents;

ii) alleged parentage and support is sought from the other parent;

iii) an administrative paternity order entered under Section 160.61 and support is sought from the man determined to be the child's father, or from the mother, or both;

iv) an establishment of parentage in accordance with Article 3 of the Illinois Parentage Act of 2015; and

v) an establishment of parentage under the laws of another state, and support is sought from the child's father, the mother, other parent, or all three.

B) In addition to those items specified in subsection (b)(2), the notice of support obligation shall inform the responsible relative of the following that:

i) the responsible relative may be required to pay retroactive support as well as current support;

ii) in its initial determination of child support under subsection (c), the Department will only consider factors listed in subsection (c);

iii) the Department will enter an administrative support order based only on those factors listed in subsection (c);

iv) in order for the Department to consider other factors listed in subsection (c), Section 802(e) of the Illinois Parentage Act of 2015, and Section 505 of the IMDMA, either the responsible relative or the client must request a de novo hearing within 30 days after mailing of the administrative support order;

v) both the client and the responsible relative have a right to request a de novo hearing not later than 30 days after the mailing of an administrative support order, at which time a Department hearing officer may consider other factors listed in subsection (c), Section 802(e) of the Illinois Parentage Act of 2015, and Section 505 of the IMDMA;

vi) unless the client and/or the responsible relative requests a de novo hearing not later than 30 days after the order's mailing, the administrative support order will become a final enforceable order of the Department; and

vii) upon failure of the responsible relative to appear for the interview or to provide necessary information to determine net income, an administrative support order may be entered by default or the Department may seek court determination of financial ability based upon the guidelines.

2) The CSS or Department hearing officer shall determine the ability of each responsible relative to provide support by issuing an administrative support order in accordance with subsection (c) when the relative appears in response to the notice of support obligation and provides necessary information to determine net income.

3) Failure to Appear

A) In instances in which the responsible relative was served with a notice of support obligation and fails to appear at the interview in response to the notice of support obligation or fails to provide necessary information to determine net income, the CSS or other staff designated by DCSS, shall enter an administrative support order by default, except as provided in subsection (e)(3)(D).

B) The CSS, other staff designated by DCSS, or Department hearing officer may issue a subpoena to a responsible relative who fails to appear for interview, or who appears and furnishes income information, when the CSS, other staff designated by DCSS, or Department hearing officer has information from the IV-D client, the relative's employer or any other reliable source indicating that:

i) financial ability, as determined from the factors contained in subsection (c), exceeds the amount indicated in case of default, as indicated in subsection (e)(3)(A); or

ii) income exceeds that reported by the relative.

C) The CSS, other staff designated by DCSS, or Department hearing officer will not issue a subpoena under subsection (e)(3)(B) when the information from the IV-D client, the responsible relative's employer or other source concerning the relative's financial ability is verified through documentation such as payroll records, paycheck stubs or income tax returns.

D) In instances in which the relative fails or refuses to accept or fully respond to a Department subpoena issued to him or her pursuant to subsection (e)(3)(B), the CSS, other staff designated by DCSS, or Department hearing officer may enter a temporary administrative support order by default, in accordance with subsection (e)(3)(A), and may then, after investigation and determination of the responsible relative's financial ability to support, utilizing existing State and federal sources (for example, Illinois Department of Employment Security), client statements, employer statements, or the use of the Department's subpoena powers, enter a support order in accord with subsection (c).

4) The Department shall register, enforce or modify an order entered by a court or administrative body of another state, and make determinations of controlling order where appropriate, in accordance with the provisions of the Uniform Interstate Family Support Act.

5) The Department shall provide to each client and each responsible relative a copy of each administrative support order entered, no later than 14 days after entry of the order, by:

A) delivery at the conclusion of an interview during which financial ability to support was determined. An acknowledgment of receipt signed by the client or relative, or a written statement identifying the place, date and method of delivery signed by the Department's representative, shall be sufficient for purposes of notice to that person.

B) US registered mail, certified mail, or regular mail as specified in Section 5/10-11 of the Public Aid Code, or by any method provided by law for service of summons as provided in subsection (a)(2).

6) In any case in which the administrative support process has been initiated for the custodial parent and the child, and the custodial parent and the child move outside the original county, the administrative support case shall remain in the original county unless a transfer to the other county in which the custodial parent and the child reside is requested by either party or the Department and the hearing officer assigned to the original county finds that a change of venue would be equitable and not unduly hamper the administrative support process.

7) In any case in which an administrative support order is entered to establish and enforce an arrearage only, and the responsible relative's current support obligation has been terminated, the administrative support order shall require the responsible relative to pay a periodic amount equal to the terminated current support amount until the arrearage is paid in full.

f) Judicial Process

1) The Department shall refer IV-D cases for court action to establish support obligations of responsible relatives, pursuant to the support statutes in matters requiring the determination of parentage (except when paternity is to be determined administratively under Section 160.61), when the court has acquired jurisdiction previously, in instances described in subsection (c)(4), and as otherwise determined by the Department.

2) The Department shall prepare and transmit pleadings, with appropriate signatures, including, but not be limited to, petitions to:

A) intervene;

B) modify;

C) change payment path;

D) establish an order for support;

E) establish retroactive support when the IV-D client requests it;

F) establish past-due support;

G) establish parentage;

H) obtain a rule to show cause;

I) enforce judicial and administrative support orders; and

J) Judicial Registration of Administrative Support Orders and Administrative Paternity Orders; and

K) combinations of any of the above.

3) Department legal representatives shall request that judicial orders for support require payments to be made to the State Disbursement Unit in accordance with Section 10-10.4 of the Illinois Public Aid Code, Section 507.1 of the Illinois Marriage and Dissolution of Marriage Act, Section 320 of the Uniform Interstate Family Support Act, Section 815 of the Illinois Parentage Act of 2015 and Section 25 of the Non-Support Punishment Act.

4) A copy of the Support Obligation Worksheet or a Shared Physical Care Support Obligation Worksheet is to be attached to each judicial support order.

g) Petitions for Release from Administrative Support Orders – Extraordinary Remedies

1) Notwithstanding the statements required by subsections (d)(2)(G) and (d)(2)(H), more than 30 days after the entry of an administrative support order under subsection (e), a party aggrieved by entry of an administrative support order may petition the Department for release from the order on the same grounds as are provided for relief from judgments under Section 2-1401 of the Code of Civil Procedure.

2) Petitions must:

A) cite a meritorious defense to entry of the order;

B) cite the exercise of due diligence in presenting that defense to the Department;

C) be filed no later than two years following the entry of the administrative support order, except that the following times shall be excluded when computing the two years:

i) time during which the person seeking relief is under legal disability;

ii) time during which the person seeking relief is under duress;

iii) time during which the ground for relief is concealed from the person seeking relief;

D) be supported by affidavit or other appropriate evidence as to matters not supported by the record.

3) Notice of the filing of the petition and a copy of the petition must be served on the other parent, caretaker or responsible relative by certified mail, return receipt requested, or by any manner provided by law for service of process. The filing of a petition under this subsection (g) does not affect the validity of the administrative support order.

(Source: Amended at 44 Ill. Reg. 6277, effective April 13, 2020)