

**ATTORNEYS' GUIDE TO THE ILLINOIS
ADMINISTRATIVE ORDER ESTABLISHMENT
AND ENFORCEMENT REMEDIES PROCESSES**

*A Guide to the Administrative Process of
Child Support Adjudication in Illinois for Attorneys*

TABLE OF CONTENTS

<i>Topic</i>	<i>Page</i>
<u>Scope of the Administrative System</u>	<u>2 - 3</u>
<u>Obtaining an Administrative Order</u>	<u>4 - 9</u>
<u>Administrative Enforcement Remedies for Administrative and Judicial Orders</u>	<u>10 - 18</u>
<u>Modifying an Administrative Order</u>	<u>19 - 21</u>
<u>Terminating an Administrative Order</u>	<u>22 - 23</u>
<u>Appealing an Administrative Order</u>	<u>24 - 28</u>
<u>Defined Terms</u>	<u>29 - 30</u>

**Prepared and distributed by Chicago Appleseed Fund for Justice
and the Chicago Council of Lawyers with pro bono assistance
from Skadden, Arps, Slate, Meagher & Flom LLP**

SCOPE OF THE ADMINISTRATIVE SYSTEM

NOTE: While the terms "CP" and "NCP" are no longer in force, they will be utilized herein because the Illinois Department of Health and Family Services still uses them.

1. Scope of the Administrative System

- (a) This user's guide encompasses the Administrative, not the Judicial, Child Support System.
- (b) How the two systems differ:
 - (i) **Judicial Child Support System** is part of the Illinois court system. The case is heard before a judge in either a Divorce Court or Parentage Court.
 - (ii) **Administrative Child Support System** is administered by the Illinois Department of Healthcare and Family Services ("HFS"). This system is separate from the court system, so the case will be handled by a Child Support Specialist, and not a judge.
 - (iii) HFS case workers use a "decision tree" to determine whether a case should be in the Administrative or Judicial system. See "*Obtaining an Administrative Order*," below.
 - (iv) Certain tasks are outside the scope of the Administrative System. If the parent seeks such an action, you should request that the case be initiated in the Judicial System instead.
- (c) Tasks that are within the scope of the **Administrative System**:
 - (i) Locating a non-custodial (non-residential) parent ("NCP");
 - (ii) Establishing paternity if the child's parents are not married;
 - (iii) Establishing a Child Support Order;
 - (iv) Establishing an Order for health insurance as part of the Child Support Order;
 - (v) Modifying the amount of an administratively established Child Support Order (*but not a Judicially established Order*);

- (vi) Collecting payments (including past-due payments) on a Child Support Order;
 - (vii) Conducting an account review, which is an analysis of full child support history and a determination of arrearage; and
 - (viii) Otherwise enforcing Child Support Orders. See *“Enforcing an Administrative Order,”* below.
- (d) Tasks that are outside the scope of the **Administrative System**:
- (i) Providing a divorce or property settlement;
 - (ii) Establishing, modifying, or enforcing a Custody or Visitation Order;
 - (iii) Establishing, modifying, or enforcing an Order for childcare expenses; and
 - (iv) Providing college expenses or uninsured medical expenses.

OBTAINING AN ADMINISTRATIVE ORDER

1. Eligibility

- (a) A custodial parent ("CP") with children living in Illinois is eligible to receive child support services from the state of Illinois. The non-custodial parent ("NCP") need not live in Illinois.
- (b) A child is eligible for support at least until age 18. A child is also eligible until he or she either graduates from high school or turns 19.

2. Enroll in the IV-D Program

- (a) If the CP is receiving Temporary Assistance for Needy Families ("TANF") or medical assistance from Illinois Department of Human Services ("DHS") ("Medicaid"), he or she is automatically enrolled in the IV-D program.
 - (i) Persons who only receiving benefits from the Supplemental Nutrition Assistance Program (SNAP) are not automatically enrolled in the IV-D program.
 - (ii) The CP will continue to receive child support services even after he or she is no longer eligible for TANF.
- (b) If the CP does not receive TANF or Medicaid, he or she must complete the Illinois Department of Healthcare and Family Services Application for Child Support Services (HFS 1283).
 - (i) This form asks for information about the NCP and should be completed as fully as possible. The form is available online at www.childsupportillinois.com/customers/application and is also available at child support regional offices. The form can be mailed or brought in person to the nearest child support regional office.
 - (ii) Attach any existing Paternity Order, Child Support Order, or Divorce Order, even if it was issued in a court or in another state.
 - (iii) If the CP is not the biological or legal parent, she or he must complete a slightly different form (HFS 1283A). This form is also

available online at

www.childsupportillinois.com/customers/application

- (c) The program is free, regardless of income and remains limited to the services listed above in 1(c).

3. The CP Meets with a Child Support Specialist

- (a) Once the CP's application is received or if the CP is automatically enrolled in the program, he or she will receive a response in the mail.
 - (i) The response might schedule an interview (notice of the time, date, and location). The CP should be prepared to answer the questions contained in the Child Support Questionnaire (HFS 2589).
 - (ii) The response might instead include additional forms, such as the Child Support Questionnaire (HFS 2589).
- (b) If the CP is under the age of 18 and is not emancipated, a parent or guardian must also attend the meeting.
- (c) **The CP should bring the following to the meeting:**
 - (i) Identification (driver's license or other photo ID);
 - (ii) Birth certificates for all children;
 - (iii) All information about the NCP; and
 - (iv) Information about employment and income.
- (d) **It is very important that during this meeting the parents inform HFS of all previous Child Support Orders between them, as well as support orders for other children, whether they were entered in the Judicial System or the Administrative System.**
- (e) At this meeting, the Child Support Specialist will determine if the case should proceed in the Judicial System or the Administrative System. See *HFS Decision Tree, Appendix A*.

- (i) In general, a case is referred to the **Judicial System** if it raises complex questions or issues of family violence. Examples of reasons for referral include:
 - (1) Difficult questions regarding income (such as when income is not reflected solely on an IRS Form W-2 or in the amount of state benefits the parents are receiving);
 - (2) Facts calling for an upward or downward deviation from the standard amount of child support (such as for a child with special needs);
 - (3) Cases in which the parents already have court-ordered child support for one child;
 - (4) Applicant has checked the family violence indicator box on the application or questionnaire;
 - (5) The NCP resides outside Illinois.
- (f) **If the CP is concerned about violence, notify the caseworker or regional office. HFS can make sure that his or her address is not released to the other parent.**
- (g) If either parent misses an appointment, contact the caseworker or child support regional office immediately. A CP can lose TANF benefits for not cooperating. If this happens, the CP may appeal and ask to keep benefits while awaiting a decision.

4. Notification of the NCP

- (a) Once an application is received or a case is referred to the Administrative System, HFS notifies the NCP (if the NCP did not participate in the application process).
- (b) HFS schedules an interview with the NCP. The interview may be a joint one, with both the NCP and the CP present; sometimes the parents are interviewed separately.
- (c) **The NCP should bring the following to the interview:**
 - (i) Photo identification;

- (ii) Any documents or forms requested in the Notice of the meeting;
 - (iii) Information about employment and income; and
 - (iv) Information about property the NCP owns and its location.
- (d) At this time, like the CP, the NCP may request that the case be placed in the **Judicial System**. HFS also may decide to refer the case to the judicial system after the interview.

5. Establishing Paternity

- (a) If the mother of a child was married when a child was conceived or born, her husband at the time is presumed to be the child's father. If she was not married when the child was conceived or born, the man she names to be the biological father is only the "alleged father" and is not the legal father until paternity is established.
- (b) Under the Illinois Parentage Act of 2015, §§ 607-609, the statute of limitations for paternity establishment is generally two years after the age of majority. However, the time during which any party is not subject to service of process or otherwise not subject to the jurisdiction of the courts shall toll the running of the statute.
- (b) The alleged father's paternity can be established in three ways:
- (i) After the child is born and before he or she turns 20, the mother and father complete and sign a **Voluntary Acknowledgement of Paternity** ("VAP") in front of a witness who also signs the VAP. The witness must be 18 or older and cannot be the child. Parents who sign this form give up their right to a genetic paternity test.
 - (1) The VAP gives the father the right to ask a court for custody and/or visitation.
 - (2) Either parent can withdraw the VAP within 60 days of signing by signing a Rescission of VAP.
 - (ii) **Administrative Paternity Order** entered by a state child support agency.

- (iii) **Order of Paternity** entered by a judge.
- (c) HFS will establish an Administrative Order for Genetic Testing if paternity has not been established after the initial meeting with the Child Support Specialist, which the alleged father will receive either in person or by certified mail.
 - (i) HFS will ask alleged fathers who are NCPs to sign an "Agreement to be Bound" prior to genetic testing, which binds the alleged father to the results of the genetic test.
 - (ii) If the alleged father asks to *contest* paternity in court, a court also will order genetic testing.
 - (iii) The genetic test is simply a swab of the inside of the mouth.
 - (iv) At the testing appointment, the alleged father may ask for the case to be placed in the **Judicial System**.
 - (v) If an alleged father fails to appear, HFS can declare him to be the legal father by Default.

6. Child Support Program establishes a Child Support Order

- (a) The amount of child support is determined based on the "Income Shares" calculation under the Illinois Marriage and Dissolution of Marriage Act. In order to determine the basic child support obligation, the Order will calculate the appropriate amount of support by determining each parent's monthly net income and adding them together, then select the appropriate amount from the schedule of child support obligations based on the combined income and number of children. The Order will then arrive at the NCP's child support obligation by calculating each parent's percentage share of the total obligation.
 - (i) Additional factors that may influence the amount of child support the NCP must pay include the number of overnights with the CP and any extraordinary school or extracurricular activity expenses.
- (b) The Order will also provide health insurance coverage for the children, either through the NCP's employer's health insurance plan or through an additional payment from the NCP.

- (c) The Order is signed by both parents. *At any time before an administrative order is signed by both parents, either parent can opt out and proceed to the court system.*
 - (d) **If the CP is not on TANF**, payment will be issued to the CP if a collection is made, usually via a form of electronic payment (either to an account owned by the CP or by an e-card). **If the CP is on TANF** and has one child, the first \$100 of current support is paid to the CP before any amount of TANF benefits is reimbursed. If the CP has two or more children, the first \$200 of current support is paid to the CP before any amount of TANF benefits is reimbursed.
- 7. If either parent needs a certified copy of a past administrative order, contact the child support regional office that established the order by phone, email, or fax.**
- 8. The Child Support Program can often locate a missing NCP using state and federal resources. This is true even if the NCP lives out of state or out of the country.**

ENFORCEMENT REMEDIES FOR ADMINISTRATIVE & JUDICIAL ORDERS

1. Overview of the Enforcement Process

- (a) The HFS Division of Child Support Services (the "Division") has the authority to enforce *all* child support orders in Illinois, regardless of whether the order originated in the Judicial System or in the Administrative System.
 - (i) For the Division to use its administrative enforcement remedies, a CP must be enrolled in IV-D.
 - (ii) **Receiving payments from the State Disbursement Unit does not mean that a CP has enrolled in IV-D.** A CP is enrolled only if (1) the CP was in the IV-D program through current or former participation in TANF or Medicaid and has not cancelled the IV-D case, or (2) the CP submitted an application for IV-D services.
- (b) After an Administrative Order is established, the NCP has 30 days from Notice of the Order to file an Administrative Appeal. See "*Appealing an Administrative Order,*" below.
- (c) If no Administrative Appeal is filed, HFS issues an Order/Notice to Withhold Income for Support if there is a servable employer. Income withholding is automatic for employed NCPs, and the NCP does not have a say in the matter (by, for example, volunteering to pay the monthly amount without having it withheld from paychecks or unemployment benefits).
 - (i) The Division uses the income withholding process in all child support cases when an employer is located for the NCP.
 - (ii) The Division uses the federal New Hire Reporting program (the process by which an employer reports information on newly hired employees to a designated state agency shortly after the date of hire) to identify employers of the NCP.
 - (iii) Employer has responsibility to deduct payment and deliver to the State Disbursement Unit (SDU).
 - (iv) If the NCP receives Unemployment Insurance Benefits, HFS can seek to offset an amount equal to the lesser of the

amount of the income withholding order or 50% of the unemployment benefit. This is served for and applies to current support.

- (d) The Division can enforce the Order by the Remedies listed below in 2.
- (e) HFS may decide to refer a case to the Judicial System for search or issue discovery (including subpoenas). HFS follows the Supreme Court's decision in *Turner v. Rogers* (2011) in making this decision.

2. Enforcement Remedies

- (a) The Division uses a number of enforcement remedies to enforce an Administrative or Court Order if the NCP is delinquent on his or her child support.
 - (i) The delinquency threshold is remedy-specific. Each remedy also has a unique set of procedures. For any TANF cases, the minimum threshold for enforcement remedies is over \$150 and more than 30 days past due. For non-TANF cases, the minimum threshold is over \$500 and more than 30 days past due.
- (b) Before any action can be taken, the Division provides the delinquent NCP with a Notice of Intent to Pursue Collection Remedies (HFS 2766). NCP has 15 days from date of Notice to request a redetermination review of the account. The Notice:
 - (i) Details the balance owed by the NCP;
 - (ii) Provides information for requesting in writing a redetermination review of the account; and
 - (iii) Is usually sent in September because the Division performs an annual system check for past-due accounts.
- (c) **Types of Remedies**
 - (i) **Tax Intercept** (and other government offset). NCP has 15 days to request redetermination. The tax offset is not released until account reviews or redeterminations are completed.

(1) Federal Tax Refund

- (A) A tax refund may be intercepted and applied to the NCP's past due child support (or spousal support balance). The Division submits the delinquent NCP's name to the U.S. Department of Treasury for participation in the debt check program and the administrative offset process through the Internal Revenue Service. Under the offset process, certain federal payments may also be intercepted and applied to past due support.¹
- (B) Remedy available after \$150 delinquency for TANF cases and \$500 delinquency for Non-TANF. Payments must also be delinquent for three months or longer. TANF gets paid before the CP.

(2) Illinois Tax Refund

- (A) The Division automatically submits the NCP's name to the Illinois Comptroller and/or the Illinois Department of Revenue for interception of state payments.²
- (B) Remedy available in active IV-D after \$25 past due. Available for any past due amount in inactive IV-D TANF, AFDC, and IV-D foster care.³

(ii) **Passport Denial**

- (1) NCP's name is automatically referred to the State Department for denial of passports. The State Department can refuse to issue a passport and may

¹ Sections 454 and 464 of the Social Security Act; Section 6402(c) of the Internal Revenue Code. 45 C.F.R. 302.60, 303.72; 26 C.F.R. 301.6402-5; 89 Ill. Adm. Code 160.70(b).

² This action is authorized pursuant to Section 10.05a of the Comptroller Act; Section 466(a)(3) of the Social Security Act; federal regulations at 45 C.F.R. 303.102; 89 Ill. Adm. Code 160.70 and 35 ILCS 5/901, 35 ILCS 5/911.3.

³ 89 Ill. Adm. Code 160.70(b).

revoke, restrict, or limit a passport currently held by the NCP.⁴

- (2) \$2500 delinquency. Referral is automatic. Balance must drop to zero to be released.

(iii) **Professional Occupational License or Recreation License**

- (1) The Division may submit NCP's name to the Department of Financial & Professional Regulation as well as other state licensing agencies to suspend or revoke NCP's professional licenses. The Division automatically submits NCP's name to the Department of Natural Resources to suspend or revoke NCP's recreational licenses.⁵

- (2) \$1000 in arrears and more than 30 days past due with no voluntary payments within 90 days.⁶

(iv) **Driver's License Suspension**

- (1) The Secretary of State cross references a list of names submitted by HFS against a list of active Illinois drivers' licenses. A name match trigger a notice process, first by HFS and then by the Secretary of State. The referral is not automatic.⁷

- (2) NCP has 15 days from date of notice to pay past-due support in full, enter into a payment plan, or request a hearing in writing.⁸

- (3) \$2500 delinquent and no voluntary payments within 90 days. Suspension continues until compliance with Order or certification from HFS.⁹

⁴ 89 Ill. Adm. Code 160.70(k)

⁵ These actions are authorized pursuant to 5 ILCS 100/10-65, 305 ILCS 5/10-17.6 and Ill. Adm. Code 160.70.

⁶ 89 Ill. Adm. Code 160.70(n).

⁷ 750 ILCS 5/505 and 625 ILCS 5/7-702 et seq.

⁸ 89 Ill. Adm. Code 160.70(m)(2)(D).

⁹ 89 Ill. Adm. Code 160.70(m).

(v) **Real Property Liens**

- (1) The Division receives information from the Child Support Lien Network, CP referrals, and from IDOR on filers paying Illinois State Property Tax.
- (2) The Department may seek judgment liens against real estate and enforce judgments upon the real estate and personal property of NCP in IV-D cases if:
 - (A) Past-due amount is at least \$3,500; and
 - (B) NCP has an interest in real estate or personal property against which the judgement may be enforced.¹⁰
- (3) NCP has 15 days to contest the lien or levy from the date NCP received the notice of lien or levy.

(vi) **Personal Property Liens**

- (1) Property identified through information received through Multi-State Financial Institutional Data Match (MSFIDM) and In-State Financial Institution Data Match (FIDM) as well as other state sources.
- (2) The Department may impose liens against personal property of NCP in IV-D cases if:
 - (A) Past-due support is at least \$1,000;
 - (B) NCP has an interest in personal property against which a lien may be claimed;
 - (C) If the personal property to be levied is a bank account, NCP must have at least \$300 in the account.¹¹

¹⁰ 89 Ill. Adm. Code 160.70(e)-(f).

¹¹ 89 Ill. Adm. Code 160.70(f)(2).

- (3) NCP has 15 days to contest the lien or levy from the date NCP received the notice of lien or levy.

(vii) **Lawsuits/Claims**

- (1) The Division investigates whether NCP is involved in any lawsuit or worker's comp claim. The Division receives information regarding pending settlements through participation in the Child Support Lien Network.
- (2) \$1000 past due.

(viii) Delinquent Parent Website - www.deadbeatsillinois.com

- (1) The Division displays the pictures and information of delinquent NCPs on the website.
- (2) No voluntary payment in past 90 days. Must be in arrears \$5000.¹²
- (3) Must be an Illinois Order. **Cannot be used if family violence is coded in system.** The CP must sign release.
- (4) NCP may avoid publication on the website by paying the balance owed within 60 days of date of the Notice or by entering into an acceptable written agreement with the Division for payment of the balance due.

(ix) **Felony Prosecutions**

- (1) At both the state and federal level, criminal prosecution for failure to pay child support is highly unusual.
- (2) Illinois
 - (A) Illinois law provides for criminal punishment for willfully failing to support one's children. HFS may refer a case, but the decision to prosecute lies within the State's Attorney's discretion.¹³

¹² 305 ILCS 5/12-12.1.

¹³ 750 ILCS 16/15.

(B) \$5000 delinquent and balance unpaid for more than 6 months. NCP must have knowledge of obligation and ability to pay.

(3) Federal

(A) DOJ works with HFS and the U.S. Attorney's Office to prosecute delinquent NCPs under the Child Support Recovery Act of 1992. Only available when all reasonably available civil and state criminal remedies have been exhausted, and prosecution lies within the discretion of the prosecutor.

(B) \$5000 delinquent and balance unpaid for more than one year. CP and child must live in Illinois. NCP must live in another state and have knowledge of obligation, and ability to pay. One child must be under age 18.

(x) **Consumer Reporting Agency**

(1) The Division automatically reports past due amounts of NCPs in IV-D cases to consumer reporting agencies.¹⁴

(2) \$2500 delinquent and automatically reported if social security number is known.

(xi) **Private Collection Agency**

(1) The Division contracts with six private collection agencies to pursue collection of past due child support for out of state cases.

(2) \$500 delinquent, no voluntary payment in past 90 days. NCP is not incarcerated.

(3) *As of 1/1/2018, DCSS no longer performs out-of-state collections.*

¹⁴ 89 Ill. Adm. Code 160.70(h).

3. If NCP fails to comply with the terms of the Administrative Order, CP can ask the Division to refer the Administrative Order to a court for enforcement.

- (a) HFS files a suit against NCP (in the name of the State) to secure compliance with the Administrative Order.
- (b) Court enters a Judicial Order that NCP must comply with the Administrative Order.
- (c) If NCP does not comply, then NCP may be found in contempt of the Judicial Order.

4. Parties can register a final administrative support order with the courts for enforcement.¹⁵

- (a) Registering an Administrative Order with the court gives the court jurisdiction to modify and enforce the Administrative Order.
 - (i) In order to judicially register an Administrative Support Order, the registering party must file the Department's certified support records with the court.
 - (ii) The registering party must serve notice on the other party to the Administrative Order, HFS, and the Assistant State's Attorney.
- (b) The non-registering party may contest enforcement by requesting a hearing within 30 days after the date of Service of Notice of the registration. The party may raise defenses to enforcement including:
 - (i) That full or partial payment has been made;
 - (ii) That the Administrative Support Order was obtained by fraud;
 - (iii) That the Administrative Support Order has been vacated, suspended, or modified by a later order; or
 - (iv) Any other defense listed in 305 ILCS 5/10-15.1.

¹⁵ 305 ILCS 5/10-15.1.

- (c) A registered Administrative Order is enforceable in the same manner as an Order for Support issued by the Circuit Court. This means a court may entertain petitions to modify the Administrative Support Order or Oetitions for Visitation or Vustody of the children covered by the Administrative Support Order.

MODIFYING AN ADMINISTRATIVE ORDER

1. Once an administratively established Child Support Order is in place, it may be modified in two ways:

- (a) By request, if there has been a significant change in circumstances.
- (b) Automatically every 36 months, HFS initiates a review process of support Orders in TANF cases.

2. Voluntary Request for Modification

- (a) Many circumstances may lead to a modification of an administratively established support Order, including the following:
 - (i) NCP's unemployment or other increase or decrease in NCP's income;
 - (ii) NCP's incarceration;
 - (iii) NCP's disability;
 - (iv) Change in health insurance;
 - (v) Change in custody;
 - (vi) Increase in the needs of the child;
 - (vii) Child turned 18 and is no longer in high school; or
 - (viii) Child no longer lives with the CP.
- (b) If there has been a substantial change in circumstances, submit a request for modification in writing with the Division of Child Support Services regional office and state the change in circumstances justifying the modification.
 - (i) The request must convince the officer of the reasons a modification is needed and that it is in the best interests of the child.

- (ii) An administratively established support Order will be modified if the current financial ability of the NCP is at least 20 percent above or below the existing order for support and the change is equal to at least \$10 per month.

3. Automatic Review for Modification – TANF Cases Only

- (a) Every three years, HFS will send each parent subject to an order a notice informing them of the right to request a review of the administratively established Order and how to proceed with the request.
 - (i) Each parent will receive 30 days' Notice prior to the start of the review, and the notice will require completion of a financial form describing the parent's finances, which must be returned to HFS within 15 days after it is received.
 - (ii) The review is conducted to verify balances, the NCP's employment status, and other pertinent information.
 - (iii) A support Order will be modified if the current financial ability of the NCP is at least 20 percent above or below the existing order for support and the change is equal to at least \$10/month.
- (b) Results of the Review:
 - (i) HFS will inform the parties of the results of the review and provide a copy of the calculation within 14 days after the review results are determined.
 - (ii) **If there is no change found by HFS, no modification will be made.**
 - (1) Either parent may request a redetermination within 30 days of the notice by signing and returning the request for a redetermination to HFS and providing financial documentation or information.
 - (iii) **If a change is found, HFS will modify the existing Order.**
 - (1) If the child support Order needs to be changed to require health insurance, the parents have 30 days to

ask HFS for a release from or modification of the Order and receive a hearing.

- (2) If both parents request a hearing, the requests are combined and there is one hearing.

TERMINATING AN ADMINISTRATIVE ORDER

1. Means to Terminate an Administrative Order

- (a) An Administrative Order is **automatically terminated**:
- (i) At the time stated in the Administrative Order. The parents do not need to take any steps; the child support obligation simply ends at this time.
 - (ii) When the youngest (or only) child turns 18 or is otherwise emancipated.
 - (1) A child becomes emancipated when child is legally recognized as an adult. This usually happens when the child turns 18.
 - (2) A child might be emancipated before age 18 if:
 - (A) Child gets married;
 - (B) Child joins the military;
 - (C) Child gets a job and becomes self-sufficient; or
 - (D) Child moves out on his/her own and expresses a desire to be independent of parents.
 - (E) But NOT if child drops out of school or child has a baby.
 - (3) An NCP should have the Order formally terminated once the child turns 18 or is emancipated, if the Order does not state that support will end at this time.
 - (4) Even after age 18, HFS can extend current child support until the child graduates from high school or attains the age of 19, whichever comes first.
 - (5) If past-due support is owed when the child turns 18, current child support may be extended until the amount past-due is paid off.

(iii) If the child dies.

(b) **CP can terminate an Administrative Order**

(i) A CP signs documents terminating the Order and waiving all amounts due. Once an Administrative Support Order is terminated, it is very difficult to re-start the process. **The CP should understand that termination means NO support and no quick or easy restart of the process.**

NOTE: A CP who receives TANF benefits cannot choose to terminate an Administrative Order. A CP who receives TANF can waive the CP's own arrears, but not those owed to TANF.

(c) NCP can seek to terminate an Administrative Order if the NCP has custody of the child. NCP should bring a court Order that shows that the NCP has custody of the child to HFS.

2. Termination of Administrative Order and Entry of Judicial Order

(a) Cancelling HFS services does not terminate an Administrative Order.

(b) The easiest way to terminate an Administrative Order and move the case to the **Judicial System** is for both parents to be present at HFS and sign an affidavit that they do not wish to receive HFS services.

(c) Entry of a Judicial Order after the termination of an Administrative Order does not negate or invalidate past due support accrued under the Administrative Order.

APPEALING AN ADMINISTRATIVE ORDER

1. Appealing Paternity

- (a) Both the CP or NCP can appeal paternity.
- (b) **Process for Appealing Paternity:**
 - (i) If a default paternity Order is made, the NCP may have the Order vacated if within 30 days of the mailing of the default paternity Order, the NCP appears in person at the office to which the Order directed the NCP to appear. The default paternity Order will be terminated, and a DNA test will be conducted.
 - (ii) To undo the presumption of paternity created by signing a Voluntary Acknowledgement of Paternity ("VAP"), the alleged father must sign a rescission of paternity by the earlier of the following:
 - (1) 60 days after signing the acknowledgment of paternity; or
 - (2) The date of an administrative or judicial proceeding relating to the child, in which the mother or alleged father is a party.
 - (iii) The alleged father may contest a paternity Order by petition. The petition must:
 - (1) Cite a defense;
 - (2) Cite that the alleged father exercised due diligence in presenting his defense to HFS;
 - (3) Be filed within two years of the Order, with some exceptions; and
 - (4) Be supported by an affidavit for all facts that are not supported by the administrative record.

NOTE: The person appealing paternity must notify the other parent of this petition and

provide the other parent a copy of this petition.

2. Appealing an Initial Order or an Enforcement Action (i.e., income withholding, license suspension).

(a) The NCP usually appeals Administrative Orders.

(b) Timing

(i) For an initial order, NCP must appeal within 30 days of the Order's **mailing** date.

(ii) For an enforcement action (i.e., income withholding, license suspension), NCP must appeal within the time period indicated in the notice of the enforcement action. This time period ranges from 10 to 45 days.

(iii) If NCP is affected by an administrative Order, and NCP did not petition within the appeal period, NCP may petition for relief within two years under the same grounds as relief from judgments under Section 2-1401 of the Code of Civil procedure.

(c) Submissions

(i) NCP must submit a written request for a hearing to HFS as stated in the Order or Notice. The Order includes information, including the address, for filing an administrative appeal.

(ii) Indicate in the written request a wish to appeal HFS's findings and include the reason for appeal. The written request must:

(1) Cite a defense;

(2) Cite that the NCP exercised due diligence in presenting his or her defense to HFS;

(3) Be filed within two years of the Order, with some exceptions; and

(4) Be supported by an affidavit for all facts that are not supported by the administrative record.

NOTE: The NCP must notify the CP of this petition and provide the CP a copy of this petition.

(iii) **On each of the supporting documents in the written request, include:**

- (1) The names of both parents;
- (2) The order docket number; and
- (3) Child support case number, which begins with the letter "C".

(iv) If the NCP is appealing more than one administrative case, the information for each case must appear correctly on the supporting documents. If the NCP does not provide any documentation prior to the hearing, HFS will present the case to the hearing officer with the information in its records. Without the documentation to support the administrative appeal, the hearing could be delayed.

(v) Mail the administrative appeal request to:

**Appeals/Offset Unit - Attn: Administrative Hearing Request
Division of Child Support Services
Illinois Department of Healthcare and Family Services
P. O. Box 19152
Springfield, IL 62794-9152**

(d) After submission of a request for a hearing:

- (i) Division of Child Support Services field staff review the administrative file or Order any additional information provided.
 - (1) If the review results in a change, or correction, of the administrative order, the Order is corrected by Division staff and provided to the NCP along with HFS Form 2788, Request to Withdraw Appeal.
 - (2) Upon receipt of the new corrected administrative Order, or the notification that the review has not

resulted in a change or correction, the NCP has two options:

- (A) NCP agrees with Order changes, or decision not to change, and withdraws administrative appeal request. NCP must fill out HFS Form 2788, Request to Withdraw Appeal. The Division forwards the withdrawal form to Bureau of Administrative Hearings ("BAH"); or
 - (B) NCP disagrees with the changes or corrections to the order or with the Division review result and the matter proceeds to hearing.
- (3) If the review results in no change or correction to the order, NCP is notified of that result.
- (ii) **Pre-Appeal Hearing (or Settlement Conference):** To expedite a resolution, the Division conducts a pre-appeal conference with the NCP prior to the BAH hearing.
- (1) The Pre-Appeal Hearing is attended by both parents and an HFS representative.
 - (2) This Pre-Appeal Hearing can end with the following results:
 - (A) NCP agrees with the review results/administrative Order and withdraws the administrative appeal in writing or verbally in the presence of the hearing officer. The administrative appeal is closed with the Division, and the Division notifies BAH of the withdrawal of the administrative appeal.
 - (B) NCP disagrees and the matter proceeds to an appeal hearing conducted by an impartial hearing officer.
- (iii) **The Administrative Appeal Hearing**
- (1) This administrative appeal is heard by the Bureau of Administrative Hearings (BAH).

- (2) NCP presents evidence to support NCP's position and reasons for appealing the administrative Order.
- (3) BAH makes a recommendation to the Director of HFS, who makes the final decision.
- (4) After the hearing, NCP receives by mail a copy of the Director's Final Administrative Decision. This may take 60-90 days.

3. Appealing an Administrative Order in a Judicial Court

- (a) **To appeal the Director's Final Administrative Decision in the Judicial System, NCP must first have exhausted the appeals process within the Administrative System.**
- (b) NCP must file a Complaint for Judicial Review before the Circuit Court within 35 days the Director's Final Administrative Decision was served on NCP (i.e., 35 days from the time the decision was deposited in the U.S. mail).
- (c) A complaint is filed under the Administrative Review Act (735 ILCS 5/3-103).

DEFINED TERMS

- **Administrative Order/Order for Support:** A court or administrative order establishing the level of support due to a child from an NCP.
- **Bureau of Administrative Hearings (“BAH”):** A section of the Illinois Department of Healthcare and Family Services. Requests for appeals of administrative orders are submitted to BAH and the appeals themselves can be heard by BAH.
- **Child Support Specialists:** HFS employees who calculate financial obligations related to child support and manage the establishment, modification, and enforcement of both judicial and administrative orders.
- **Custodial Parent (“CP”):** The parent who has primary or sole custody of the child.
- **Department of Healthcare and Family Services (“HFS”):** The state agency that administers child support services. Formerly called the Illinois Department of Public Aid (IDPA).
- **Division of Child Support Services (“Division”):** The Division of the Department of Healthcare and Family Services that establishes administrative child support orders. The Division enforces all child support orders in Illinois, regardless of whether the orders originate in the court system or in the administrative system. The Division also hears appeals of administratively established child support orders.
- **Emancipated:** The time at which a person is legally recognized as an adult. Although emancipation typically occurs at the age of 18, a child might become emancipated before the age of 18 if the child gets married, joins the military, or becomes self-sufficient and expresses a desire to be independent of his or her parents.
- **Illinois Department of Human Services (“DHS”):** Provides access to public benefits including TANF, SNAP, and Medicaid.
- **IV-D:** A section of the Social Security Act, under which the federal government gives money to states to run child support programs that meet certain federal standards.
- **IV-D Program/Child Support Program:** Partnership between the federal government and the state of Illinois set up to establish and enforce child

support orders. Those receiving certain types of federal assistance are automatically enrolled. Any CP may enroll in the program, regardless of income, by submitting an application. The program is administered by HFS.

- **Non-Custodial Parent (“NCP”)**: The parent who does not have primary or sole custody of the child.
- **Paternity**: The state of fathering a child.
- **State Disbursement Unit (“SDU”)**: The payments processing center for all Illinois child support payments. This unit processes the payments and issues checks or direct deposits to the receiving families.
- **Temporary Aid for Needy Families (“TANF”)**: Federal public assistance to low-income families with dependent children.
- **Voluntary Acknowledgment of Paternity (“VAP”)**: Establishes legal paternity of a child if signed by both parents in front of a witness who also signs. The witness cannot be the child.

This Guide was drafted by Chicago Appleseed and the Chicago Council of Lawyers with pro bono support from attorneys at Skadden, Arps, Slate, Meagher & Flom LLP, led by Nicole Lerescu and Chris Bobby.

For more information, please visit:

www.ChicagoAppleseed.org & www.ChicagoCouncil.org



Collaboration for Justice

Special thanks to the Illinois Department of Healthcare and Family Services' Division of Child Support Services for the support and assistance