
From: Chris Shulman [mailto:chris@svfarm.com]
Sent: Monday, March 12, 2007 6:37 PM
To: EBSA, E-ORI - EBSA
Subject: QDRO Final Rules Regarding Timing of QDRO Submissions

My name is Gary Shulman. I am an ERISA attorney, co-owner of QDRO Consultants Co., in Medina, Ohio and author of several text books on QDROs including the *Qualified Domestic Relations Order Handbook, 3rd Edition*, Aspen Publications, 2006. I would like you to consider another very important scenario for the timing of QDROs which would make a perfect and very important addition to your final rules. As you know, QDROs can be prepared for "child support" purposes in addition to the usual QDROs that are for property division purposes. Our company has drafted and reviewed over 75,000 QDROs for attorneys and plan administrators across the U.S., and we run into many problems with QDROs that are utilized to collect child support arrearages. One major loophole that can easily be closed in your final rules is to include additional timing language which states that "**a domestic relation order will not fail to be a QDRO solely because it is issued after the child reaches the age of majority.**" Thousands of child support QDROs are being rejected everyday by plan administrators simply because the child has already reached the age of 18 (or whatever the particular state's age of majority is)--even though the noncustodial parent/employee still owes tens of thousands of dollars in past-due child support. A child support QDRO is the perfect solution in such cases where the delinquent parent maintains coverage under a retirement plan. However, the administrator relies on language in Section 414(p) to reject the QDRO, which defines the term "alternate payee" to include spouse, former spouse, children or other dependents of the participant. Their rejection letter will say, "*Your QDRO is rejected because the child no longer satisfies the definition of "alternate payee" as found in ERISA and the IRC.*" When Congress created the QDRO exception to ERISA's antialienation provisions, they expressly included language to help families and children of divorce by permitting QDROs for the purpose of collecting past-due child support. Remember, the idea of child support is to help the custodial parent (ie: "*former spouse*") take care of her children. Therefore, it doesn't make any sense for a plan administrator to honor a child support arrearage QDRO if the child is 17 years old now, but then be allowed to reject it in another case, simply because the child is now 18 or 20 or even 35. The child's age at

the time the QDRO is drafted should not matter--what matters is the participant's responsibility to pay his child support arrearage.

This very important caveat should be included in your final rules--it's a perfect fit to the other timing issues that you included. Just to bore you a little more, I recently had a company reject one of my child support QDROs in a case where the child was just 8 years old now. The plan administrator said the following in their rejection letter: *"Your QDRO is rejected because when the participant becomes entitled to his distribution, the alternate payee will then be over the age of 18."* Are you kidding me?

And then there was another case that was rejected by the plan administrator for two reasons. Because the mother and father were never married, it was impossible to name the mother as the alternate payee in the QDRO because she was neither a "spouse or former spouse" of the participant. Therefore, we couldn't do a child support QDRO naming the mother as the alternate payee. And then, because the child was currently 19 years old, we couldn't name the child as the alternate payee either. What a terrible Catch-22 this was, and what a wonderful loophole it provided for dear-old-dad who owed in excess of \$100,000 in past-due child support.

Clearly, it was not the intent of Congress to allow delinquent dads to avoid their child support obligations simply because of the literal reading of the definition of alternate payee in ERISA and the Code. If you guys make this simple additional ruling in your final rules, it will help countless thousands of families and children across the U.S. get out of financial ruin and receive the necessary support that is rightfully due them.

Thanks for your consideration, and if you have any questions, you can contact me at:

QDRO Consultants Co.
110 S. Huntington St.
Medina, Ohio 44256
Phone: (800) 527-8481
email: shulman@qdros.com