

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



November 29, 2005

CSS LETTER: 05-35

ALL IV-D DIRECTORS
 ALL COUNTY ADMINISTRATIVE OFFICERS
 ALL BOARDS OF SUPERVISORS

SUBJECT: CHILD SUPPORT ORDERS

<u>Reason for this Transmittal</u>	
<input type="checkbox"/>	State Law or Regulation Change
<input type="checkbox"/>	Federal Law or Regulation Change
<input type="checkbox"/>	Court Order or Settlement Change
<input type="checkbox"/>	Clarification requested by One or More Counties
<input checked="" type="checkbox"/>	Initiated by DCSS

The purpose of this letter is to reaffirm the Department policy regarding guideline child support orders. To ensure statewide consistency, this letter addresses the circumstances under which specific child support orders are warranted and statutorily required.

State Statute authorizes support orders calculated using the guideline support formula as detailed in Article 2 Sections 4051-4076 of the Family Code (FC) based upon actual income in income history or the presumed income authority found in FC Section 17400(d)(2). This will result in an order for child support which contains a monetary amount of zero or more dollars.

GUIDELINE SUPPORT ORDERS BASED ON INCOME OF PARTIES:

When an obligor's actual income or income history information is available, the local child support agency (LCSA) must calculate the child support obligation using the actual income or income history information. FC Section 4053(c) and (d) indicate that the statewide guideline takes into account actual income and that the child support obligation is based on an obligor's ability to pay. Consequently, having actual income or income history information reflects an ability to pay. If there is some or minimal income history available, the court may use the documentation provided by the LCSA to impute earnings. The lack of income or income history information of the obligor shall not be viewed as the inability of the obligor to earn income.

In some instances it can be established that there is not an ability to pay, and the use of the guideline will result in a calculation of \$0.00, thus resulting in a zero dollar order.

Such instances are, but not limited to:

- If the only source of an obligor's income is derived from a needs based program such as Supplemental Security Income (SSI) or Temporary Assistance for Needy Families (TANF) **and the obligor does not have other sources of income**

- If an obligor is incarcerated [for more than 90 days] and **does not have other sources of income**
- If an obligor is institutionalized in a psychiatric facility and **does not have other sources of income**
- If an obligor has a medically verified total and permanent disability and **does not have other sources of income**

According to FC Section 4053(k), *“The guideline is intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula.”*

When calculating a child support obligation using available actual income or income history information, the guideline automatically reflects a low income adjustment (LIA) in all cases where the actual net disposable income is less than one thousand dollars per month. FC Section 4055(b)(5) states, “In all cases in which the net disposable income per month of the obligor is less than one thousand dollars (\$1,000), there shall be a rebuttable presumption that the obligor is entitled to a low-income adjustment.” Likewise, the LIA range is also intended to be presumptively correct in all cases. Therefore, the Department directs the LCSAs to request an order for guideline child support at the lowest range of the LIA.

CHILD SUPPORT ORDERS BASED ON PRESUMED INCOME:

Presumed income must be used in instances when the obligor’s income or income history information is unknown to the LCSA. FC Section 17400(d)(2) currently provides the statutory authority to calculate the child support obligation based on presumed income and states, *“If the support obligor’s income or income history [information] is unknown to the local child support agency, the complaint shall inform the support obligor that income shall be presumed to be the amount of the minimum wage, at 40 hours per week...unless information concerning the support obligor’s income is provided to the court.”* Subsection (d)(2) goes on to say, *“The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the support obligor that the proposed judgment will become effective if he or she fails to file an answer with the court within 30 days of service.”*

If after the use of all available and appropriate locate sources, the LCSA is unable to obtain any information as to the obligor’s income or income history, the LCSA shall use presumed income to calculate the support obligation. Again, the lack of income or income history information of the obligor shall not be viewed as establishing that the obligor’s income is zero or that the obligor has an inability to earn income.

Should an obligor file an answer thereby resulting in a subsequent hearing, the LCSA has the opportunity to obtain income information from the obligor. Consequently, upon receipt of the obligor's income information, the LCSA can no longer use the presumed income authority since the actual income information, now available to the LCSA, must be used to calculate the child support obligation.

It is only in those cases where presumed income was requested in the proposed judgment and an obligor fails to file an answer with the court within 30 days of service, that an LCSA may move forward [by means of a default judgment] using presumed income.

If you have any questions or concerns regarding this matter, please contact Dottie Wallace, Manager, Support Order Development Unit, at (916) 464-5480.

Sincerely,

s/SANDRA O. POOLE

SANDRA O. POOLE
Deputy Director
Child Support Services Division