



**Michigan Supreme Court
State Court Administrative Office**

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TO: Chief Circuit Judges
cc: Family Division Judges
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FROM: John D. Ferry, Jr., State Court Administrator

SUBJ: SCAO Administrative Memorandum 2004-04
Lump Sum Arrearage Interpretation

Section 19 of the Friend of the Court Act (MCL 552.519) requires the State Court Administrative Office's Friend of the Court Bureau to develop and recommend guidelines for friend of the court office conduct, operations, and procedures. The Act also requires that each friend of the court adopt office procedures that implement the Act, Supreme Court rules, and the policy and procedures recommended by the Friend of the Court Bureau. MCL 552.503(6).

This administrative memorandum, including a model local administrative order, explains how a fixed obligation will be enforced under the Michigan Child Support Enforcement System when the order is silent concerning whether only installment payments on the obligation are due or the entire amount is owed immediately but may be paid in installments.

Courts and friends of the court should direct questions concerning this policy to Steve Capps at 517-373-4835 or cappss@courts.mi.gov.

Orders for the Installment Payment of Lump Sum Support Obligations

A. Background

Circuit courts frequently enter orders requiring the payment of already accrued¹ support.² Typically, these orders specify payment in installments³ that total the accrued obligation. When an order providing for installment payments specifies only the repayment rate for a fixed obligation, the order can be interpreted as 1) *allowing* repayment over time or 2) *requiring* the friend of the court to accept only installment payments, even if the payer could pay the entire balance immediately. A third possibility is that only installment payments are required, but upon default the entire unpaid amount will be considered due. Often, the order will treat discrete support obligations within the same order differently.⁴

When an order does not specify whether the lump sum may be paid only in installments, it has been the practice to determine the meaning of the order based on the custom in the circuit court that entered the order. This has led to inconsistent treatment of the same language. Even within a circuit, different judges may have intended different results. Over time, the manner in which an order is treated may change with changes in court personnel. Moreover, some courts may intend installment payments only until a payer has sufficient assets to pay the entire remaining balance.

With the advent of a statewide child support enforcement computer system (MiCSES) and central payment processing (MiSDU), the administrative interpretation of an order can no longer reflect local informal customs. Rather, orders will be interpreted according to logic designed into MiCSES based on an order's plain language.

¹ The most common scenarios involve child support retroactive to an earlier date, medical bill repayment, and confinement expenses. OCS will provide specific instructions for recording in MiCSES some of these obligations using the appropriate debt types.

² Support is defined by MCL 552.502a(h) as follows: (h) "Support" means all of the following:

(i) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses.

(ii) The payment of money ordered by the circuit court under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, for the necessary expenses incurred by or for the mother in connection with her confinement, for other expenses in connection with the pregnancy of the mother, or for the repayment of genetic testing expenses.

(iii) A surcharge accumulated under section 3a of the support and parenting time enforcement act, MCL 552.603a.

³ The Michigan Child Support Formula Manual contains recommended installment repayment amounts for confinement expenses and arrearage installment repayment amounts.

⁴ Some unpaid obligations such as confinement expenses are usually treated as having only an installment due, while others such as medical support are treated as due in full and submitted for tax offset and other enforcement, even if payments are being made.

B. MiCSES Logic

MiCSES has been programmed to treat all orders with lump sum balances and installment language as orders to pay the entire obligation immediately but allowing installments. This interpretation is consistent with the traditional tax-offset treatment of lump sum child support arrearages.⁵

That plain language interpretation may be contrary to the intent of the judge who entered the order. However, of the possible interpretations this is the only one that can readily be corrected with only minor consequences. When enforcement action is initiated and it turns out that the court intended that no action occur while installment payments are being made, the payer can request an administrative review to determine whether enforcement action should continue. The reviewer can then re-determine how the order should be read.⁶

But if the initial MiCSES logic had erroneously assumed only installment payments, MiCSES would not begin enforcement when the payer has the ability to pay more.⁷ In that event, the FOC would miss opportunities to enforce payment and the payee would lose the opportunity to collect the entire amount.

C. Local Administrative Orders for Circuits Disagreeing with Standard Interpretation

Although most circuits simply will not have foreseen the interpretation problem, some may actually intend a result different from the MiCSES standard interpretation. Those circuits should issue a local administrative order (LAO) that explains how such orders should be interpreted.

Any programming for alternative interpretations will occur after June 1, 2004. Until programming can be completed, courts should bear in mind that alternatives to the interpretation in this memorandum must be processed manually, requiring the FOC to use MiCSES in ways that can result in unanticipated problems.⁸ In the interim, circuits considering an alternative approach for installment payment orders should consider allowing the FOC to enforce the entire lump sum when a payer defaults. That will reduce the number of cases that the FOC must track manually.

⁵ The entire lump sum balance has traditionally been submitted for offset. Confinement expense repayment has been treated differently, with only the past-due installments submitted for offset.

⁶ A benefit of this interpretation is that the review will provide the court and its employees with information to modify orders that might otherwise trap payers into obligations that cannot be retired in a reasonable amount of time because they were entered based on old information concerning the payer's ability to pay.

⁷ When, for instance, the payer has substantial resources in a bank account or receives a large inheritance or winnings from gaming.

⁸ For example, reports may reflect an arrearage payment inaccurately as current support, or the FOC may have to keep separate off-system, manual accounting records for those cases.

A workaround is also available if courts interpret the installment payments on the lump sum as additional *current* support, instead of repayment of an *arrearage* amount.⁹ These orders would provide for additional current support payments in installments for a specific length of time. Under those orders, only the unpaid periodic payments will be enforced as arrearages.¹⁰

A model LAO is attached to this policy as Appendix A. Unless a court adopts an LAO, its orders will be enforced pursuant to the MiCSES logic. A court desiring a different result should choose only one of the options under the first section of the order to determine how orders will be interpreted in that circuit.

⁹ Even though the lump sum may be awarded to cover a time before the court entered its order, the court can elect whether to treat the amount as arrears because it was not paid earlier or additional current support to remedy the ongoing consequences of support that the payer did not pay earlier. Courts should be careful to eliminate any uncertainty by specifying whether the installments for this type of remedial support remain payable when other support obligations terminate.

¹⁰ Courts that want their FOCs to avoid manual account adjustments should not order acceleration of this type of order upon a payer's default.

APPENDIX A
[Model Local Administrative Order 21:](#)
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