



Michigan Supreme Court

State Court Administrative Office

Family Services

Friend of the Court Bureau

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-5975

Daniel J. Wright
Director

MEMORANDUM

DATE: March 1, 2007

TO: Friends of the Court
cc: Chief Circuit Judges
Circuit Court Administrators
Family Division Administrators

FROM: Angel Sorrells, Management Analyst

RE: SCAO Administrative Memorandum 2007-02
Adjustments of Child Support for Payers Called to Active Duty Military Service

The State Court Administrative Office (SCAO) Family Services Division/Friend of the Court Bureau develops and recommends guidelines for the conduct, operations, and procedures of all friend of the court (FOC) offices. The Friend of the Court Act requires county FOCs to take all necessary steps to adopt the recommendations made by the Friend of the Court Bureau. See [MCL 552.503\(7\)](#).

2006 PA 485, effective on December 28, 2006, amended the Support and Parenting Time Enforcement Act by adding a new section, [MCL 552.615a](#). This new law allows a child support payer who is in the National Guard or the military reserve to request an administrative adjustment of a child support order if the payer is called to full-time active duty for a period of more than 30 days. This administrative adjustment is temporary and does not alter or change the underlying support order.

This law empowers the FOC itself to temporarily modify the support obligation upon the payer's request. Action by a court is not required unless a party objects to the FOC's action.

This memorandum explains the process for implementing the new law.

A. Statutory authority and guidelines for requesting the military service child support adjustment

1. Authority

[MCL 552.615a](#), effective on December 28, 2006, allows a military service adjustment of a child support order for a payer called to “emergency military service,” which is defined as “active military duty for a period of more than 30 days.” This adjustment is not meant to reflect a thorough review of the payer’s support obligation. Instead, it is designed to provide relief to service members whose income changes because they are called to active duty, and who may not have time to request a support modification through the usual process.¹

A service member who qualifies for an adjustment should request it by submitting a written request to the FOC and by providing documentation showing both the civilian and military pay levels.

A separate request should be submitted for each child support case for which the payer seeks an adjustment. Each request should also include the date the emergency military service began or is to begin. That date will be stated in the payer’s written military orders.

Currently, there is no special form on which to make the adjustment request. Therefore, as long as the request is written and is accompanied by military and civilian pay information, the request should be considered adequate. The pay information may include W-2s with the income data that was used to establish the currently effective child support order, court documents that contain the payer’s salary information, any written military orders that contain rank and/or salary information, quarterly wage and new hire data, leave and earnings statement (LES) or a pay report signed by the payer’s commanding officer.

The statute does not require the payer to make the request before reporting for emergency military service. If the payer makes the request before or within 56 days after reporting, the adjustment must be made effective as of the date the service begins. If the payer makes the request at any time beyond the 56 day threshold, the effective date of any adjustment will be the date the FOC receives the written request and salary documentation. See Section C for more information on the effective date of the adjustment.

¹ The new law is primarily designed to provide relief to service members whose income is decreased when they are called to active duty, but sometimes the active duty wage is more than the service member’s civilian wage. In those rare cases, an upward adjustment may be appropriate.

2. *Documentation of military pay*

Military pay charts specify base salaries according to rank and number of years of service. These charts also specify certain salary supplements. Common examples of those supplements include a housing allowance, a food allowance, bonuses, special-duty pay, and combat zone pay. A soldier's base pay is rarely a full and complete representation of the soldier's income.

One of the best ways to determine a soldier's active duty pay is the Leave and Earnings Statement (LES). However, the payer's first active-duty LES may not have been issued when the payer makes the request for an adjustment.

If the payer has enough time to gather salary information before deployment, SCAO recommends that:

- The payer seek a pay report from the commanding officer. This could be a memo or letter that is signed by the payer's commanding officer and outlines all of the pay and benefits the payer will receive once the emergency military service begins.
- The payer should submit the pay report along with the written adjustment request.

The written request for an adjustment is not considered complete and submitted until all salary documentation has been received by the FOC. This includes all relevant W-2s, pay reports, LES's, court records, and similar documents.

For more information on military pay and other issues relating to working with the military for child support enforcement, see [Servicemembers: What to Know about Active Duty and Child Support](#).

B. Calculating the emergency military service adjustment and giving notice to the parties

Once the FOC receives the written request and the accompanying salary documentation, the FOC should calculate the adjustment using the formula in [MCL 552.615a](#), and then provide notice to the parties.

The adjustment is calculated by multiplying the payer's current monthly child support obligation by a fraction whose numerator is the payer's income during emergency military service and whose denominator is the payer's income upon which the current support was ordered. SCAO recommends that the base support amount be used to calculate the adjustment and that the medical support provision remain unchanged.

Example:

Payer's current base support obligation: \$350 per month.

Payer's income while on emergency military service: \$25,000 per year.

Payer's income upon which the current support obligation is based: \$38,000 per year.

The military service adjustment would then be calculated as follows:

$[\$25,000 \text{ (numerator)} / \$38,000 \text{ (denominator)}] \times \$350 = \mathbf{\$230.27 \text{ per month adjusted support}}$

SCAO recommends for consistency purposes that, when calculating the adjustment, the multiplier fraction $[\$25,000 \text{ (numerator)} / \$38,000 \text{ (denominator)}]$ should be calculated by going out four decimal places, as highlighted below, before multiplying it by the current support obligation. In other words, when the $\$25,000/\$38,000$ calculation is made, it yields an answer of **.6578947368**. The last number should be rounded up or down. Here, this yields a multiplier of **.6579**. This is the number that will be multiplied by the monthly support amount to yield the adjusted monthly support amount.

After the calculation is made, the adjustment takes effect immediately – and usually with some retroactivity as explained earlier -- subject to further action as detailed in the next section.

C. Post-adjustment actions

After calculating the adjustment amount, the FOC must send the parties a notice that contains:

- The adjustment amount,
- A statement that either party may object to the adjustment within 21 days, and
- The place and manner for filing objections.

The statute is not specific as to where an objection to the adjustment should be filed. Therefore, objections may be filed with the FOC or with the circuit court clerk with a copy sent to the FOC. Each FOC office can establish its own objection procedures.

SCAO recommends that the notice sent by the FOC include a reminder to the payer to report to the FOC as soon as the active duty military service has ended.

The notice that the FOC sends to the parties must be served in accordance with [MCR 3.203](#), which states that “service by mail shall be to a party’s last known mailing address.” It is incumbent upon the payer to notify the FOC of a change of address. [\[MCL 552.603\(7\)\]](#) If the payer chooses to use a military address, then that change of address must be given to the FOC within 21 days of the change.

The parties have 21 days to object to an adjustment calculated by the FOC. If there is no objection to the adjustment, it remains in effect until 35 days after the payer returns from

emergency military service. If there is an objection, the adjustment remains in effect until the objection is resolved, or for 35 days after the payer returns, whichever is earlier.

If an objection is filed, the FOC must schedule a hearing before a judge or referee to determine if the adjustment should be continued, modified, or set aside. Meanwhile, the adjustment will continue until the objection is resolved.

The hearing should be held as soon as possible. It is possible that the payer may be deployed for emergency military service before the hearing can be held. If so, the court may allow the payer to appear at the hearing by telephone or other electronically reliable means, when appropriate. [\[MCR 3.210 and 3.215\]](#) Circumstances may make scheduling a hearing impossible. If so, the court has the following options:

1. Hold the hearing no later than 35 days after the payer's emergency military service ends.
2. Conduct a comprehensive support review when the payer returns from service. If a review is conducted, the notice of adjustment will be treated as a petition for modification of support for purposes of determining the effective date of any modification.
3. Schedule an FOC meeting between the parties (to be held when the payer returns) to attempt to resolve the dispute over whether the adjustment should be set aside or modified.

D. Other issues to consider

1. Health care coverage

The child support order should require one or both parents to obtain and carry health care coverage for the child. The support order reflects what each parent is paying for health care coverage because the Michigan Child Support Formula accounts for their respective contributions toward that expense.

When the payer is called to active duty, the payer may lose benefits that once covered the child, or gain access to health care benefits provided by the military. This normally should not be considered when making this special military adjustment to the support obligation. As stated earlier, this special adjustment is not meant to be a full review. Instead, it temporarily alters the amount of child support to reflect the payer's changes in military status and income. However, any accompanying changes in the availability or cost of health insurance may be a reason to consider conducting a comprehensive support review.²

² Michigan law requires the FOC to initiate a support review if a parent gains access to health care coverage and no previous coverage existed for the child. See [MCL 552.517](#).

2. *Income withholding*

Military active duty pay plus certain bonuses are subject to income withholding to satisfy support obligations.

The Income Withholding Notice (IWN or Form FEN058) should be sent to the appropriate military payroll processing center. The Defense Finance and Accounting Services (DFAS) process payrolls for the Army, Navy, Air Force, and Marines. The Coast Guard processes its own payroll. It is important to include the payer's name and Social Security number when submitting an IWN to the DFAS or Coast Guard. FOC staff can send the FEN058 form to the DFAS payroll or Coast Guard at these addresses:

Most Military and all Civilian Personnel

DFAS Cleveland Center
DFAS-DGG/CL
P.O. Box 998002
Cleveland, ON 44199-8002
Phone: (888) 332-7411

Coast Guard Only

U.S. Coast Guard Pay and
Personnel Center
Federal Building
444 SE Quincy Street
Phone: (785) 339-3596

Due to DFAS's processing requirements, the cutoff date for implementing income withholding against an active duty member is the 7th day of each month. It can take up to 60 days before the first payment is sent.

3. *The Service Members Civil Relief Act*

The Service Members Civil Relief Act (SCRA) is a federal statute designed to protect members of the military during the period of their military service. Members of the military may receive a "stay" of a court proceeding under certain circumstances. For that and other reasons, *MCL 552.615a* states: "If the court cannot hold the hearing during the payer's emergency military service, the court shall do one of the following: (a) Hold the hearing no later than 35 days after the payer's emergency military service ends" This language takes into account the potential for a SCRA stay, which ensures that Michigan law complies with the SCRA.

4. *Notice when adjustment ends*

Even if the payer notifies the FOC upon returning from active duty, the payer may not inform the payee. Therefore, SCAO recommends that the FOC send both parties a written notice stating when the special adjustment will end. This notice should include the following information:

- The date the payer's active duty service ended;
- The original amount of monthly child support;

- That the original support amount will be reinstated 35 days after the last day of the payer's active duty service; and
- How the parties can change the support amount or correct the ending date of the adjustment, if necessary.

The notice should also inform the payer that, if a comprehensive support review by the FOC will be necessary for any reason upon the payer's return from active duty, then the payer needs to make that request.

If court or FOC staff have questions or would like additional information, please contact Angel Sorrells at SorrellsA@courts.mi.gov or Kelly Howard at HowardK@courts.mi.gov (517) 373-5975.