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cc: Friends of the Court
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FROM: Steven D. Capps

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SUBJ: SCAO Administrative Memorandum 2010-02
Allocation and Distribution of Support Accounts

Pursuant to MCL 400.231 et seq., the Department of Human Services (DHS) Office of Child Support (OCS) has implemented a statewide system for the receipt and disbursement of support payments. While the Michigan Child Support Enforcement System (MiCSES) distributes support payments, the responsibility for establishing the policies for allocation and distribution of support is assigned to the State Court Administrative Office (SCAO) under MCR 3.208(C)(1). This SCAO policy governs how support is allocated and distributed in Michigan.

Administrative Memorandum 2000-08 established allocation and distribution guidelines pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). In 2005, the federal government passed the Deficit Reduction Act (DRA). As a result of changes in that act, SCAO is replacing Administrative Memorandum 2000-08 with this Administrative Memorandum.

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Allocation and Distribution of Support Accounts Guidelines

Except for payments directed to nonsupport accounts pursuant to Section C, all monies paid on FOC accounts shall be allocated to cases according to the policy identified in Section B and distributed according to the policy identified in Section D.

A. Background

1. Allocation

A court case¹ is any action filed with the clerk's office receiving an individual docket number that contains an order requiring the payment of support, and payments² are sent through the FOC or MiSDU.³ When a payer has more than one case, the process of dividing money among cases and debt types is called allocation.

2. Accounts

Title IV, Part D, of the Social Security Act [42 USC 651 et seq.], states that certain types of accounts have priority for payment in cases that qualify as Title IV-D cases. Thus, the priority of the account will determine how money is allocated to that payer's Title IV-D cases. Federal requirements also specify how certain types of payments must be allocated without regard to whether a court case qualifies under Title IV-D.

Federal law requires income withholding and Federal Tax Return Offsets (FTRO) payments to be treated as child support and presumes that all other payments are intended as child support unless

¹ This definition is different than the Office of Child Support's IV-D case designation. The federal Office of Child Support Enforcement (OCSE) defines a IV-D case as a group of people associated with a particular child support order, court hearing, and/or request for IV-D services. This typically includes a custodial party, dependent(s), noncustodial parent, or putative father. One way a new IV-D case can be created is changing the identity of a payer (e.g., a change in custody from one parent to another), even if all parties remain the same. In the closest analogy to the SCAO definition above, OCS refers to a case as a "docket."

² MiSDU does not have the ability to process all receipt types. Until MiSDU is capable of receiving all receipt types, the FOC must have the ability to receive payments. Please see the OCS document, *Receipting Codes for MiCSES*, at http://mi-support.cses.state.mi.us/training/Manuals/MiCSES/FOC/appendix/handouts/10_Receipting_Handout.pdf for a list of what MiSDU can and cannot receipt.

³ Within a case, a payer will often owe money for different types of obligations. These are called "accounts." An account is an amount of money owed for a particular type of obligation. Examples of accounts are: child support owed to an individual or to the state, spousal support, or medical expense reimbursement. Accounts also include things that are technically not support, such as costs and statutory fees.

otherwise specified. [42 USC 657, 45 CFR 302.51] Federal law requires that all payments on IV-D cases received as child support, regardless of the source of the payment, must be distributed first to current support accounts, then to support arrearages, and finally to nonsupport accounts (such as fees, costs, etc.). [42 USC 657] Even though income withholding notices are sent out with designations to be collected for each type of account, the application of the resulting payments in accordance with the notice amounts could violate federal requirements. MCR 3.208(C)(4) provides that income withholding notices may not direct allocation, distribution, or disbursement of payments.

Support paid by income withholding or FTRO on IV-D cases (and accounts within those cases) is to be allocated and distributed as required by federal law (see 42 USC 657). The law also anticipates, but does not require, similar allocation treatment on multiple cases when support is not paid by those means. When IV-D payments are made on cases other than by income withholding or FTRO, the federal Office of Child Support Enforcement (OCSE) has stated that allocation is a matter governed by the state.⁴ According to the OCSE, whether a payer can specify allocation (i.e., pay support on one case and not another, or pay only non-IV-D debts within a case) is also a matter for the state to determine.⁵

B. Allocation Among Cases

1. Allocation rules

All court-ordered payments on accounts shall be allocated among cases as follows:

a. FTRO payments

All FTRO's shall be allocated to support accounts on cases certified for tax refund offset with qualified arrears amounts, as prescribed by OCS. Qualified arrears are defined as an arrearage exceeding a certain threshold amount. If the amount of the payment is less than the total amount of qualified arrears due, the payment shall be split between the cases on a pro-rata basis on the amount of qualified arrears due per case.

b. One case - all non-FTRO payments

If the payer only has one support case, all monies paid shall be allocated first to that court case.

c. Multiple cases - income withholding payments

When a payer has more than one case and a source of income makes a payment in connection with an income withholding notice (IWN), the payment shall be allocated as follows:

⁴ OCSE Action Transmittal 98-24, questions A13 and A15.

⁵ OCSE Action Transmittal 98-24, question A22.

- 1) When the amount meets or exceeds the amount due on a payer's account, to all of the payer's cases with support accounts that have an active IWN regardless of whether:
 - a) The amount paid is the amount set forth in the IWN;
 - b) The remittance is designated for all of the payer's cases, or
 - c) The remittance is designated for less than all of the payer's cases.
- 2) When the amount remitted is less than the amount due on the cases for which an active IWN is in effect, the amount remitted should be allocated among the cases on a pro-rata basis.

The amount allocated to each case is that case's pro-rata share of the remittance based on the amounts due in the highest account allocation priority level. When satisfied, the remaining money is allocated among the cases based on the payment amounts left for the next highest account allocation priority level, continuing this pattern until no money remains.

- d. Multiple cases – third-party enforcement action payments
If the payer has more than one case and a payment is received from a third party under an enforcement action (e.g., levy on lien, bond, bench warrant, etc.) and the payment is specifically intended for a particular case, monies shall first be allocated to support accounts on that listed case, and then to nonsupport accounts on that case.
- e. Multiple Cases - payments, general
If the payer has more than one child support court case, and a payment is received that does not specify any particular case or specifies payment on all of that payer's cases, monies shall be allocated first to the support accounts with current support due, then to the support accounts with arrears, then to nonsupport accounts.

If the payer has more than one case and makes a payment directly to a friend of the court office, and the payment does not specify all of the information required by MCR 3.208(C)(3) (see section D below), the payment shall be allocated first to support accounts on all cases and then to nonsupport accounts on all cases.

To calculate the amount to be allocated to a specific case and account, amounts owing at the same account allocation level on multiple cases must be split on a pro-rata basis between amounts at that level on all of the cases. The ratio to divide the payment is based on all the periodic payment amounts ordered at that level for each case. If periodic arrearage payment amounts are

not ordered on a case, the amount shall be calculated as a percentage of the total amount due at that allocation priority level.

2. Account Allocation Priority Levels

The following types of accounts are listed in priority order for purposes of allocation of payments among cases and within a case:

- a. Current support due.
- b. Amounts specifically ordered by the court to be paid in the current month on the support arrearage (periodic payment amounts or “ordered on arrears”), including reimbursement for confinement expenses, extraordinary health care expenses, and genetic testing expenses.
- c. Support arrears for all cases.
- d. Current nonsupport due.
- e. Nonsupport arrears amounts.
- f. All payments on cases where the only support account with money due is a spousal support account.
- g. Any other amounts due.

C. Allocation Special Instruction Payments: Payments Directed to Nonsupport Accounts⁶

Not all of a payer’s payments are intended to be support payments. For example, divorce case support payers are required to pay a \$3.50 monthly statutory fee [MCL 600.2538]. Some nonsupport payments, including these statutory fees, are appropriately paid through the FOC office or MiSDU. A payer has a right to specify that a payment is not a IV-D payment, and instead is intended to pay these nonsupport accounts⁷ To allocate a payment to a nonsupport account, the payer must specify each account for which payment is intended, specify the names of the payer and payee, the case number(s), and amount(s) designated for each nonsupport account [see MCR 3.208(C)(3)]. These payments are known as special-instruction payments.⁸

⁶ For review of debt types, please see OCS Action Transmittal 2004-29, *Michigan Child Support Enforcement System Debt Types*, at <http://mi-support.cses.state.mi.us/policy/stateat/pdf/2004/AT2004-029.pdf>

⁷ This is “allocation” as defined by OCSE AT 98-24, A22.

⁸ MCR 3.208(C)(3) was originally intended to allow a payer to pay a bill and have it credited to a specific support account (e.g. orthodontist bill).

D. Distribution Priority

Distribution determines how the amount received is split between accounts within a particular case. Federal law governs distribution based in large part on whether the custodian has received or is receiving public assistance⁹ for the child or children for whom the child support is ordered. States determine the distribution for nonsupport debt.¹⁰

The priority level of an account is determined by the account distribution level. Payments allocated to a case shall be distributed on a pro-rata basis between all amounts owing at the highest priority level where any balance is owed until all amounts at that level are satisfied. This pro-rata split ensures that no nonsupport debt is paid before a support debt is paid.

Once amounts owing on all accounts at the highest account distribution level with an existing balance owed are satisfied, the amounts remaining shall be distributed to all accounts where a balance is owed at the next highest account distribution level.

1. Account Distribution Levels, non-FTRO payments¹
 - a. Never-assistance case¹¹
 - 1) Current month's support accounts, regardless of recipient.
 - 2) Ordered on arrears for support accounts, regardless of recipient.
 - 3) Support account arrears payable to the custodian.
 - 4) Support account arrears payable to the state.
 - 5) Recovery accounts.
 - 6) Current nonsupport obligations payable to the custodian.
 - 7) Current nonsupport obligations payable to someone other than the custodian.
 - 8) Ordered on arrears for nonsupport accounts.
 - 9) Nonsupport arrears payable to the custodian.
 - 10) Nonsupport arrears payable to someone other than the custodian.
 - b. Current-assistance cases
 - 1) Current month's support accounts.¹²

⁹ "Public assistance" is defined for purposes of this document as Temporary Assistance for Needy Families (TANF) or Medicaid. This service is administered by the Department of Human Services (DHS).

¹⁰ The Office of Child Support (OCS) has identified Michigan's assignment rules in its Child Support Manual Section 5.35 Allocation/Distribution, available online. SCAO policy is directed to court rule allocation and distribution by court rule only.

¹¹ This includes Medicaid only cases in which medical support is assigned.

- 2) Ordered on arrears for support accounts.
- 3) Support account arrears payable to the state.
- 4) Support account arrears payable to the custodian.
- 5) Current nonsupport account payable to the custodian.
- 6) Current nonsupport account payable to a party other than the custodian.
- 7) Ordered on arrears for nonsupport accounts.
- 8) Nonsupport account arrears payable to the custodian.
- 9) Nonsupport account arrears payable to a party other than the custodian.

c. Former-assistance cases¹³

- 1) Current month's support accounts payable to the custodian.
- 2) Ordered on arrears for support accounts.
- 3) Support account arrears payable to the custodian.
- 4) Support account arrears payable to the state.
- 5) Recovery accounts.
- 6) Current nonsupport accounts payable to the custodian.
- 7) Current nonsupport accounts payable to a party other than the custodian.
- 8) Ordered on arrears for nonsupport accounts.
- 9) Nonsupport account arrears payable to the custodian.
- 10) Nonsupport account arrears payable to a party other than the custodian.

2. Account Distribution Levels, FTRO payments:

- a. Never-assistance case: Support account arrears payable to the custodian and included in the pre-offset notice.
- b. Never-assistance case: Current Medicaid
 - 1) Medical support account arrears payable to the state that originally accrued **before** the custodian was receiving Medicaid assistance, not to exceed the amount the custodian received in assistance.
 - 2) Support account arrears payable to the custodian.
 - 3) Support account arrears payable to the state that originally accrued **while** the custodian was receiving Medicaid assistance, not to exceed the amount the custodian received in assistance.

¹² This includes any "pass through" amounts established by the executive branch that are sent to the custodian.

¹³ This includes current Medicaid cases.

- c. Current- and former-assistance case
- 1) Support account arrears payable to the state that originally accrued **before** the payee was receiving assistance, not to exceed the amount the payee received in assistance.
 - 2) Support account arrears payable to the state that originally accrued **while** the payee was receiving assistance, not to exceed the amount the family received in assistance.
 - 3) Support account arrears payable to the payee that originally accrued **before** the custodian was receiving assistance (if any).
 - 4) Support account arrears payable to the payee that originally accrued **after** the payee was receiving assistance.
 - 5) Support account arrears payable to the payee that originally accrued **while** the payee was receiving assistance (if any).
 - 6) Medicaid arrears.
 - 7) Recovery accounts.