



# Frequently Asked Questions

(and answers from the  
State Court Administrative Office  
Friend of the Court Bureau)

**FAQ 2020-01**

**May 12, 2020**

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## **Friend of the Court (FOC) Support Reviews and Support Modification**

This FAQ answers questions and clarifies policy related to [SCAO Administrative Memorandum, 2014-03](#), Uniform Support Orders, particularly concerning prioritizing reviews for changes in income because of the COVID-19 virus. If FOC staff have any questions or would like additional information on Administrative Memorandum 2014-03, please contact Paul Gehm or Bill Bartels at [gehmp@courts.mi.gov](mailto:gehmp@courts.mi.gov), [bartelsb@courts.mi.gov](mailto:bartelsb@courts.mi.gov), or 517-373-5975.

### **1. While doing a support modification, should the parent’s federal stimulus payment be included as income?**

Yes, the parent’s share of the stimulus payment<sup>1</sup> should be included as income because it is “money ... due or owed by . . . [the] government.” [2017 MCSF 2.01\(C\)\(8\)](#). The court could consider this amount spread over several years; however, it is recommended that the amount only be considered as income during this temporary period because of COVID-19. However, the court has several choices regarding the amount:

- The entire stimulus check received (or that person’s share) may be included as income. [2017 MCSF 2.01\(C\)\(8\)](#).
- It may be reasonable to count as income only the net amount received by the parent for their share of the stimulus payment. This would be consistent with underlying principles of the Michigan Child Support Formula in determining income by looking at “how much money a parent should have available for support.” [2017 MCSF 2.01\(C\)\(8\)](#) and [2017 MCSF 2.01\(B\)](#).

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<sup>1</sup> A parent’s share of the stimulus payment includes the \$1200 for himself or herself, and any amounts paid for dependents claimed by that parent who are children-in-common on the current case. However, do not count any amount (\$1200) for a jointly-filing spouse. You should also not include any amounts of the dependent benefits for children not on this case.

## 2. Can the FOC review a case if it has been reviewed within the last three years?

Yes, a case can qualify for a review more frequently than once every three years under MCL 552.517 and MCL 552.517b. The following are several common circumstances:

- Party-requested reviews. Although MiCSES automates three-year public assistance reviews, a party may request a review in writing and the office must conduct one under [MCL 552.517\(1\)\(b\)](#) if that party has not requested a review within the last three years for a requested review.<sup>2</sup>
- FOC-initiated reviews based on reasonable grounds, like unordered custody changes, changes of a parent’s financial conditions, incarceration, or as otherwise described in [MCL 552.517\(1\)\(f\)](#).
- When a party experiences a substantial change, as authorized in [MCL 552.517b](#) and defined in the [2017 MCSF Supplement 3.01](#).

A party, or the FOC, may file a motion any time there are changed circumstances that may warrant modification.

## 3. Can support be retroactively modified due to impact from the COVID-19 outbreak?

No, a court may not retroactively modify support except under special circumstances (such as where the parties agree). Support may be modified effective from the date notice is provided to the parties that a proceeding to modify support is pending.<sup>3</sup> However, the bar to retroactive modification does not apply to temporary orders or when parties agree to modify support retroactively. [MCL 552.603](#).<sup>4</sup>

## 4. What are the earliest effective dates for different support review procedures?

MCL 552.603 requires that there be a pending petition for modification and that the date the parties have notice of the petition is the earliest effective date for a change in support.

Statutory reviews (i.e., party-requested reviews through the FOC, three-year reviews, or other system-initiated assistance reviews) may have an effective date as early as the date the FOC gives notice of the recommended change to the parties and files it with the court. The recommendation is considered to be the petition required under [MCL 552.603](#).

By contrast, a motion requesting modification permits relief as early as the date the motion is served on the parties. Either party or the FOC can file a motion.<sup>5</sup>

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<sup>2</sup> Offices must not rely on the NxtRvwDt field in MiCSES to determine a case’s or party’s eligibility for a review. That field only shows when a system-generated notice of a right to request a review will send next.

<sup>3</sup> A “proceeding” is more than a review; there must be a motion (petition) to modify support before the court.

<sup>4</sup> “Retroactive modification of a support payment due under a support order is permissible with respect to a period during which there is pending a petition for modification, but only from the date that notice of the petition was given to the payer or recipient of support.”

<sup>5</sup> In order to avoid hearings in the future when the parties do not disagree with the new proposed support amount, a party or the FOC can ask the court to enter an order referring the case to the FOC for

A court is not required to use the earliest effective date possible.

**5. Is one support modification process more efficient?**

Motions requesting support modification are more efficient when the amount and duration of a change of income is uncertain and when it is important to preserve the earliest retroactive date to allow the court maximum flexibility to grant fair relief.

If immediate relief is necessary, a modification request conducted under a statutory review may be ineffective because of the time required to complete most of those reviews. Within 14 days of receiving a request from a party, the FOC must determine whether to start a statutory review, and, once started, must complete a review within 180 days. Additionally, the earliest possible effective date is at the back end of the process when the calculated recommendation is delivered to the parties and filed with the court.

**6. Can the court authorize submission and entry of a proposed order similar to a statutory review when a party or the FOC files a motion instead of having a statutory review?**

Yes, the court may, on its own or at the FOC's or a party's request, order the FOC to conduct a support investigation and recommendation under [MCL 552.505\(1\)\(h\)](#) and apply the notice procedures from [MCL 552.517b](#) to allow the parties to have the order entered, or object and have a hearing.

**7. How should support recommendations handle the multiple uncertainties with orders during this time?**

Temporary orders provide the most effective way of dealing with times of uncertainty.<sup>6</sup> In any support modification process in which the FOC makes a recommendation, the FOC can recommend a temporary order. Temporary orders may be retroactively modified if the order meets all the requirements from [MCR 3.207](#) and [Fisher v Fisher, 276 Mich App 424 \(2007\)](#). Because temporary orders may be modified retroactively, they provide the most effective method for dealing with times of uncertainty as the court can wait until the uncertainty is resolved to grant the appropriate relief.

When the court knows an income-changing event will last for a finite time, the court can enter an order that has more than one support amount (grids) that become effective when an event happens or on a date certain in the future. The court may want to provide notice of an administrative adjustment when the second grid takes effect on a condition rather than a date certain. For a more complete discussion of conditions and when to use a second grid, see [this Pundit article](#) and the suggestions in Question 9.

**8. Other than learning about a change in income from the parties, are there any reports available?**

SCAO requested that OCS create a new report to assist FOC staff in identifying and prioritizing cases that may be eligible for review given recent enrollment on unemployment

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investigation and recommendation under [MCL 552.505\(1\)\(h\)](#), and that the notice and objection provisions from [MCL 552.517b](#) be followed (see Q-6).

<sup>6</sup> The uncertainty can be anything that affects a person's ability to earn income or the duration of a change in income, among other things.

insurance assistance (MI-UIA). This new report will be available on business objects for each county to run and work as desired. The new report will also provide benefit information from MI-UIA (claim date, benefit begin date, benefit end date, Michigan's approved state claim amount, and other information among others) as well as include information from the current order to help identify whether there has been an income change for the person.

This report is optional and further training and instructions will be provided separately.

**9. Are there any tools to help understand the support review processes to ensure the earliest possible effective date is preserved and allow for the use of temporary orders to handle uncertain situations?**

Yes. The [Support Modification Order Checklist](#) guides a support worker through the steps of preserving the earliest effective date for a change in support and provides guidance on how to record temporary orders so that they follow statute and case law to allow retroactive modification.

**10. My office is receiving calls from payers whose orders include childcare expenses and the state of emergency has made childcare unnecessary. Is there an administrative way to address childcare without modifying the order?**

First, the FOC should work with the parties to try to resolve the changes amicably. Whether the FOC can address the issue administratively is a matter of interpreting the order.

The Uniform Support Order includes the payer's share of childcare on the tiered grid. The order requires one party to notify the other party when childcare expenses change, and to notify the other party and the FOC when expenses end. The order's standard language does not specify what happens when expenses change or end. However, that does not prevent a court from finding that the childcare charges should be stopped.

Ultimately, the court that issued the order will need to interpret the order and determine what should happen. If the court finds its orders permit stopping charges for childcare, the court may want to direct the FOC to stop childcare in all cases meeting certain criteria. It is most appropriate to allow the FOC to administratively stop childcare charges when childcare ends and no other factors on the case change. If the court chooses this approach, the FOC should provide notice to the parties of the administrative change and allow the parties an opportunity to object and bring issues to the court's attention that they believe would allow childcare provisions to continue.<sup>7</sup>

If the court decides to allow administratively stopping childcare charges, there are a number of factors the court may consider in determining the criteria it sets. In some cases, the facts would require the FOC to initiate a review or at least advise the parties that they can request a review. In some circumstances when it initiates a review, the FOC should also consider filing a motion to preserve the earliest date the court can grant relief (see Qs 4 and 5). Some important considerations and recommendations on how to handle them include:

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<sup>7</sup> A copy of the notice of the administrative action should be filed with the court. This documents the change in the court record for future reference why the amounts charged were different from those stated on the order. This will be especially helpful if the order needed to be registered in another state, because the amounts charged are different from those stated on the face of the order.

- Example 1: Childcare and income end.
  - Because childcare is not the only change to the case, the FOC should consider initiating a review.
- Example 2: Childcare ends but some level of income continues.
  - If income is less, the FOC should ask the parties if they want a review or should consider initiating a review.
  - If income is the same or more, the situation is most appropriate for an administrative abatement if the court determines the order permits it. If the court does not allow administrative abatement, the FOC should consider initiating a review.
- Example 3: Childcare and income end, but a fee is required to hold the childcare spot.
  - Because the payment of a fee to hold the spot for the child remains, the FOC should review the case.
- Example 4: Childcare ends, but some level of income continues, and a fee is required to hold the childcare spot.
  - If income is less, the FOC should ask the parties if they want a review or should consider initiating a review.
  - If income is the same or more, but the fee to hold the child's spot is less, the FOC should consider starting a review.
  - If income is the same or more, but the fee to hold the child's spot is the about the same as the ordered childcare costs, the court should rely on the parties to address the change.