

Office of Child Support **POLICY SHEET**

SUBJECT

Overpayment Recoupment

PS# 09-07

POLICY

Because OCS must issue child support within 48 hours, there are times when OCS sends too much money to the payee (whether it is a custodial parent, Economic Services Division (ESD), Medicaid, or Family Services Division (FSD)). This can happen based on a variety of reasons, including but not limited to the following: a system error, payor has insufficient funds, misallocated payment(s), case accounting, reduced order or overpayment judgment, payment recall, or other reasons. Depending on the cause of the overpayment to the payee, this money could be owed to either OCS or the noncustodial parent. When the overpayment is based upon insufficient funds or payment recall by the sender, this means that OCS has sent out funds that we didn't receive and must initiate recoupment procedures as quickly as possible. OCS policy is to take the money back when the payee is ESD, Medicaid, or FSD. When the payee is the custodial parent, OCS sends a notice to the custodial parent requesting they send the overpayment back to us. If the custodial parent does not return the money, OCS will recoup the overpayment from future incoming payments.

After notification is sent to the custodial parent, recoupment is done by keeping (a) 10% of the current support paid to the custodial parent and (b) 100% of any arrears repayment. This recouped amount is repaid to whomever it is owed (OCS or the noncustodial parent).

Exception: If the overpayment was based on insufficient funds at the time that the bank retrieves the funds from the payor's bank account, OCS will recoup this overpayment at 100%. That means OCS will keep the next payment(s) until the amount of the insufficient funds balance is satisfied. This balance must be paid in full before anything else is paid to the payee.

Exception: Federal directive states that OCS may recoup funds issued as a result of a fraudulent tax return at 100%, regardless of whether case is in a current support or arrears only status. Payments received after the recoupment is set up will not be paid to the CP until the fraudulent funds are returned by the CP or paid back through the recoupment process.

OCS policy is to pay current child support to the custodial parent first (excluding the 10%) and the recoupment amount will be satisfied before any other payments (including tax offsets, lottery, etc.) are applied to arrears or surcharge.

At court events, OCS must address any overpaid funds.

- For overpayments owed to the noncustodial parent, court representatives will request either the arrears be reduced by the overpaid amount, or the current support be reduced for a specific number of months in order to satisfy the overpayment.
- For overpayments owed to OCS, court representatives must try to recover these funds or ensure continuing payment through OCS to recover the overpayment(s). OCS will also object to the court issuing an order that allows direct payment to the custodial parent when there is an outstanding balance being recouped and owed to OCS. The money needs to come through OCS to recoup the overpayment(s). Naturally, a lump sum payment can be ordered and paid to OCS.

RATIONALE

The obligee (payee) is responsible for repaying overpayments per 15 V.S.A. § 786(b) which reads: “Any amounts received by the obligee in excess of the amounts required to be withheld under any wage withholding order shall be paid by the obligee to the registry within seven days of receipt.”

If the payee does not repay the amount, the support overpayment statute (33 V.S.A. § 4104) goes into effect; which is quoted below:

- “If the office of child support determines that it has received an overpayment from an employer within 30 days of the overpayment, the office shall return the overpayment to the obligor within one working day.
- In cases where the office of child support determines that it has received an overpayment after 30 days, it shall permit the obligor to reduce future support payments to offset the overpayment.
- The office of child support may recover an overpayment from the obligee by deducting from future support payments if the obligee has failed to return the excess to the registry as required under section 786 of Title 15.
- In no case shall application of this section reduce the amount of current support paid to the obligee by more than 10 percent.”

Since the statute says the current support will not be reduced by more than 10%, the interpretation is that OCS can recoup 100% from arrears repayments. The custodial parent still received 90% of their current support obligation. The decision to take the money back from ESD, Medicaid, or FSD at 100% is based on the fact they received money to which they were not entitled at that time and can repay the overpayment in full.

Date	Action	Description
06/19/2009	Created	
11/20/2023	Revised	Added clarification to overpayments based upon insufficient funds and pending recoupment; applied standardized formatting
12/11/2023	Revised	Added exception regarding Federal directive that OCS can recoup funds issued as a result of a fraudulent tax return at 100%