

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 100—Child Support Program, General Administration

PROPOSED AMENDMENT

13 CSR 40-100.020 Administrative Hearings. The Department of Social Services is amending sections (1), (2),(3), (4), and (5) and adding section (6).

PURPOSE: This proposed amendment implements Senate Bill 35 (2023) which amended Section 454.1005, RSMo by adding additional factors for consideration in an administrative hearing determining whether suspension of an obligor's license is appropriate when an obligor fails to pay a child support obligation and an arrearage exists. This proposed amendment adds terminology and standardizes processes and procedures not otherwise addressed by Section 454.1005, RSMo, for administrative hearings conducted by the Family Support Division by designated hearing officers. Additional proposed changes outline processes and procedures, not otherwise addressed by statute, for all administrative hearings the Family Support Division conducts hearings before its designated hearing officers to resolve disputes between the division and persons from whom the division is seeking to establish or modify an obligation for support or collect an established obligation. This posed amendment includes changes for standardized procedures on starting times for hearings, admissions of hearing exhibits, conducting hearings by telephone or other electronic means, individuals following directions of the hearing officers, and requests for a continuance.

(1) Definitions.

(A) "Obligor" means any person who owes or is alleged to owe a duty of support.

(B) "Administrative hearing" means a hearing to dispute an action taken by the division on a child support matter that is heard by the Administrative Hearings Section of the Division of Legal Services, Department of Social Services.

(C) "Case" means a matter before the Administrative Hearings Section.

(D) "Child Support Case" means an official record comprised of an obligee or payee and dependent child(ren), associated with a particular obligor, receiving services pursuant to section 454.400, RSMo.

(E) "Obligee or Payee" means a person to whom payments are or will be required to be made pursuant to a support order.

~~[(D)]~~**(F)** "Division" means the Family Support Division and its employees.

~~[(E)]~~**(G)** "Hearing request" means a request made by a party to the action, who personally or through a representative, requests a hearing according to the procedures set forth under this rule and applicable federal or Missouri statutes and regulations.

~~[(F)]~~**(H)** "Administrative Hearing Officer" means a person designated by the Missouri Department of Social Services to resolve child support issues in compliance with all federal and state laws and regulations. The Administrative Hearing Officers have the authority to conduct child support hearings on behalf of the Family Support Division on child support matters.

(2) Administrative Hearing Procedures.

(A) All administrative hearings on child support cases will be conducted by an administrative hearing officer designated by the Director of the Department of Social Services pursuant to section 454.475.1, RSMo. Any hearing officer employed by the Department of Social Services, and appointed to the Administrative Hearings Section as a hearing officer to handle child support matters

is deemed to have been designated by the Director of the Department of Social Services. The designation by the Director of the Department of Social Services shall expire when employment with the Department of Social Services, Division of Legal Services, ceases or at such time as *[their]***the hearing officer's** duties no longer include responsibility for conducting child support hearings.

(B) *Ex-parte* communication with the administrative hearing officer from the parties, the division or its employees, or any attorney representing any party to the case is prohibited. *Ex-parte* communication includes any written or verbal communication with the administrative hearing officer, before or after the hearing, without the presence of all parties about a pending case. *Ex-parte* communication also includes any written communication that has not been provided to all parties prior to any decision being rendered by the hearing officer on the document. This shall not prevent the parties from *[sending in]***submitting** hearing exhibits so long as all exhibits are provided to all parties to the case.

(C) Hearings held by the Administrative Hearings Section will be held by telephone **or other electronic means**. Any party may *[choose]* **request** to attend the *[telephone]* hearing in-person at the Administrative Hearings Section's office in Jefferson City. **Any request to attend a hearing in-person with the hearing officer shall be made at least seven (7) days before the scheduled hearing. Any request to attend a hearing in-person made to the Administrative Hearing Section less than seven (7) days before the scheduled hearing shall be granted at the discretion of the Administrative Hearings Section or the administrative hearing officer.** The Administrative Hearings Section will not provide transportation to any party to attend a *[telephone]* hearing *[in-person]* **held by telephone, in-person, or other electronic means. All parties participating in the hearing will pay the party's own costs.**

1. If a party intends to participate by telephone, the party will need to provide the Administrative Hearings Section with a valid telephone number **where the party can be reached on the day and at the time of the hearing.**

2. If a party is incarcerated at the time of the hearing, **it shall be the party's obligation to make arrangements with the correctional institution to attend the hearing by telephone and to provide evidence or exhibits for the hearing. The***[the]* **incarcerated party may either provide a telephone number where the party can be reached on the day and time of the hearing or the party may call***[in directly to]* **the Administrative Hearings Section on the day and at the time of the hearing at the telephone number provided for the hearing on the notification letter sent by the Administrative Hearings Section. *[The Administrative Hearings Section will send a letter to all incarcerated parties prior to the hearing providing them with a contact number for the hearing.] [All parties participating in the hearing will pay their own costs.] [of the call in order to participate. Incarcerated parties will need to make their own arrangements with the correctional institution to participate in the telephone hearing and to provide any exhibits or evidence for the hearing.]***

(D) **All exhibits to be submitted as hearing exhibits in an administrative hearing shall be submitted to the Administrative Hearings Section, the division, and all parties within five (5) days prior to the hearing. If hearing exhibits are not received five (5) days prior to the hearing, admission of exhibits as evidence any time thereafter shall be at the discretion of the hearing officer. The hearing officer shall have the discretion to leave the hearing record open for the submission of exhibits as evidence as long as copies of all exhibits are provided to the division and all parties with the opportunity for the division or any party to submit rebutting evidence.**

(3) Request for Continuance.

(A) In any administrative hearing under this rule, continuances may be granted only by the Administrative Hearings Section. The Administrative Hearings Section, at *[their]* its discretion, may grant a continuance freely upon the first request for a continuance from any party.

(B) If a party requesting a continuance *[previously has been]* was granted a **prior** continuance, the Administrative Hearings Section shall grant *[a]* **an additional** continuance only upon a clear and present showing that substantive rights of a party in interest will be severely prejudiced by the denial of the request for continuance or for good cause shown as determined by the Administrative Hearings Section.

(C) All requests for continuances filed prior to the hearing date must be in writing, must contain a clear explanation as to why the continuance is needed, and all parties must be notified of the request. If notification to one (1) of the parties is not possible, the request for continuance filed with the Administrative Hearings Section must explain why notification to the parties is not possible. Any request for continuance must provide available dates for the resetting of the hearing date. If necessary, a party may request a continuance at the time of the hearing for good cause as determined by the Administrative Hearings Section.

(4) Default Administrative Decision.

(A) In any proceeding under this rule, the administrative hearing officer may enter a decision in default against any party who has failed to appear *[, by telephone or in-person,]* at the *[proceeding]* hearing. **All parties shall appear for the hearing and be ready to proceed no later than the starting time listed on the notice. A hearing officer may find a party in default if the party or the party's attorney does not appear within ten (10) minutes after the starting time. However, the hearing officer shall retain the authority to commence the hearing at a time appropriate to the circumstances.** It shall be the parties' responsibility to provide the division and the Administrative Hearings Section with a current mailing address for notices issued by the Administrative Hearings Section including, but not limited to, hearing notices, continuance notices, and hearing decisions and/or orders, or proposed modification decisions and orders.

(B) All individuals shall comply with all directions given by a hearing officer during a hearing. If any individual fails to follow these directions, the hearing officer may exclude the individual from the hearing or may adjourn the hearing.

[(B)](C) The valid entry of a decision in default by the administrative hearing officer may be made in all cases, subject to the defaulting party's right to move that the decision in default be set aside for good cause, but only if the defaulting party gives notice of the good cause to the administrative hearing officer in writing within ten (10) calendar days after the default decision is mailed to all parties. Nothing in this subsection abrogates the rights of the parties under section 454.475, RSMo, to file a motion for correction or motion to vacate with the Administrative Hearings Section.

[(C)](D) Any notice mailed to the last-known address of any party in interest will be deemed valid delivery of that notice.

(5) Hearing Requests.

(A) If the parties are entitled to a hearing under federal or state law or regulation or the division has notified the party of the right to a hearing due to an action taken by the division in the administration of the child support program, the division will provide, upon request, a hearing as set forth in section 454.475, RSMo. Any request for hearing must comply with any request procedure as set out in the law or *[statute]*regulation authorizing the hearing. For Missouri tax refund offset hearings for the obligor or nonobligated spouse, the notice to contest the tax offset is deemed received ten (10) calendar days after the date on the notice, unless refuted by competent evidence to the contrary. If

the parties are entitled to a hearing, but federal or state law or regulation does not provide specific procedures or timelines for when the hearing requests must be made, then the parties to the child support case have thirty (30) calendar days from the date of the notice of the division's action to request a hearing. The hearing request, unless it is for a federal tax refund offset, must be in writing and provided to the division, unless the authorizing law or regulation requires otherwise. Hearing requests on federal tax refund offsets may be verbal or in writing. The division will review the hearing request and may contact the party requesting the hearing in an effort to resolve the issues raised by the hearing request. The parties will be notified in writing if the hearing request is granted, resolved, or denied and the reason for the denial. The division may deny a request for an administrative hearing for any one (1) of the following reasons:

1. The party's hearing request is based solely on issues that have previously been litigated and decided by a court of law;

2. The hearing request was untimely as set forth in either federal or state law or regulation; or

3. The party's request for administrative hearing is based solely on issues which cannot be decided in an administrative hearing including, but not limited to, visitation, legal custody, and nonpaternity.

(B) An administrative hearing need not be held if all disputed matters are resolved before the hearing.

(C) If the Administrative Hearings Section receives multiple hearing requests from the division on same parties **on the same child support case**, the Administrative Hearings Section may combine the hearing requests into one (1) hearing **if the hearing requests are for similar administrative actions**.

(6) Administrative Hearings Procedures for License Suspension.

(A) The Administrative Hearings Section shall use procedures contained in this section to conduct hearings to determine whether suspension of a license is appropriate when the director has issued a notice of intent to suspend a license pursuant to section 454.1003, RSMo on a child support case when an obligor is not making child support payments in accordance with a support order. The obligor may request an administrative hearing on the notice of intent to suspend a license the division issued on the obligor's child support case. The suspension of the license shall be stayed until the Administrative Hearings Section issues a decision containing written findings of facts and conclusions of law on the factors enumerated within section 454.1005, RSMo, determining whether the license suspension is appropriate.

(B) The hearing officer shall have thirty (30) days to issue written findings of facts and conclusions of law after the hearing has ended and the hearing record has closed.

(C) In determining whether license suspension is appropriate the hearing officer shall consider relevant factors presented by the obligor. The obligor shall bear the burden of proof to show cause why suspension of a license is not appropriate under the totality of the obligor's circumstances. In providing evidence regarding license suspension, the obligor will submit such documentation or supporting evidence as requested by the hearing officer if the documentation or supporting evidence has not been submitted by the obligor prior to the hearing.

1. When considering the relevant factors regarding payments, "payments" mean any amount or amounts ordered to be paid pursuant to a "support order" as defined by section 454.1000(13), RSMo.

2. When considering the relevant factors regarding payments, "arrearage" means arrearage as defined by section 454.1000(1), RSMo.

3. When considering the relevant factor of payments that are in arrearage the hearing officer at the hearing officer's discretion and the circumstances of the child support case may limit the hearing officer's consideration to a timeframe less than the entire lifetime of the child support obligation.

4. When considering the relevant factor of transportation "extracurricular activities" means an activity related to a school, job or profession, but outside of the regular curriculum of the school, or outside of the usual duties of the job or profession.

(D) If the hearing officer finds that the obligor failed with good cause to comply with the child support payment obligation and an arrearage exists in excess of two thousand five hundred dollars (\$2,500) or the obligor owes an arrearage greater than or equal to three (3) months support payments, the hearing officer shall not issue an order suspending the obligor's license on the child support case.

(E) After the issuance of a decision not to suspend a license, the director may issue a new notice of intent to suspend a license pursuant to section 454.1003, RSMo, if the obligor fails to make payments on the child support case and accumulates an additional arrearage in an amount greater than or equal to three (3) months support payments or two thousand five hundred dollars (\$2,500), whichever is less, as of the date of service of the new notice of intent to suspend the license.

(F) Pursuant to section 454.1005.6, the director shall issue an order suspending the obligor's license on the child support case when the hearing officer finds that the obligor has failed without good cause to comply with any of the requirements in section 454.1005.4 In section 454.1005.6 "to comply with any of the requirements in subsection 4 of this section" means that the obligor failed to comply with the child support payment obligation and an arrearage exists in excess of two thousand five hundred dollars (\$2,500) or the obligor owes an arrearage greater than or equal to three (3) months support payments. In section 454.1005.6 "without good cause" means that the obligor did not present sufficient evidence on any of the relevant factors enumerated in section 454.1005.4 or the relevant good cause considerations in section 454.1005.5 for the hearing officer to find that the suspension of the license is inappropriate.

AUTHORITY: sections 454.400 and 660.017, RSMo 2016. This rule originally filed as 13 CSR 30-7.010. Original rule filed May 2, 1989, effective Aug. 25, 1989. Amended: Filed Dec. 13, 1989, effective April 26, 1990. Emergency amendment filed Sept. 15, 1992, effective Sept. 25, 1992, expired Jan. 22, 1993. Emergency amendment filed Jan. 7, 1993, effective Jan. 23, 1993, expired May 22, 1993. Amended: Filed Sept. 15, 1992, effective April 8, 1993. Emergency amendment filed June 2, 1995, effective July 15, 1995, expired Nov. 11, 1995. Amended: Filed June 2, 1995, effective Sept. 30, 1995. Moved to 13 CSR 40-100.020 and amended: Filed Sept. 27, 2018, effective May 30, 2019. Amended: Filed June 12, 2024. *Original authority: 454.400, RSMo 1982, amended 1985, 1986, 1990, 1993 and 660.017, RSMo 1993, amended 1995.*

PUBLIC COST: This proposed rule is estimated to cost state agencies or political subdivisions between eight hundred two thousand and two hundred twelve dollars (\$802,212) and two million, one hundred seventeen thousand and five hundred forty-six dollars (\$2,117,546) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, Legal Services Division-Rulemaking, P.O. Box 1527, Jefferson City, MO 65102-1527, or by email to rules.comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*