



8. *Child Support*

This section is about current Pennsylvania law and general procedures governing child support actions.

Laws are modified and changed from time to time. Please note that there have been important changes to the child support rules. Please read this section carefully to find out changes that may affect your case.

NOTE: For more specific information about how your county's rule may differ, please refer to the child support insert provided in this handbook.

What is child support and when do I have to pay?

Child support is money that a parent pays to help provide food, clothing, housing, and other essential things for his or her child. Child support may also include the cost to provide health care coverage and payment of medical bills and child care costs.

Under Pennsylvania law, parents are liable for the financial support of their children 18 years of age or younger, and are required to support their children to the best of their ability.

Parents may also be liable for the support of their children after the age of 18, for example, if the 18 year old has not yet graduated from high school. Parents are not liable for support of emancipated children 18 years of age or younger. See the section of this book about emancipation.

NOTE: A Defendant's duty to pay support typically begins the date the complaint for child support is filed, NOT on the date of the order for support, unless the court directs otherwise.

Do I need an attorney?

If you and the other parent have similar incomes, you may not need an attorney to represent you. If the other parent has significant income or income that he is not reporting, you may wish to consult with an attorney prior to your initial conference to decide on whether hiring an attorney would benefit your case.

North Penn Legal Services may be able to provide you with some advice to assist you with your case. If you reside in Northeastern or North Central Pennsylvania, please call North Penn Legal Services at 1-877-953-4250 to see what services may be available in your county.

NOTE: This handbook is written from the Plaintiff's or custodial parent's point of view, HOWEVER, this information is also useful for Defendants or non-custodial parents who are obligated to pay child support.

What county should I file in?

When you file for support, you are the Plaintiff or obligee and the other party is the Defendant or obligor. An initial child support petition can be filed in the county where:

- the Defendant lives;
- the Defendant regularly works;
- you and the child live.

If there is a divorce or custody action pending between the parties in another county, the court may transfer the support action to that county to handle everything together.

Who can file for child support?

Child support cases usually involve two parents. But, child support cases may also be filed by an agency or third party caring for the child.

Any party, including an agency or third party, can file for child support if that party has custody of the child, regardless of whether a court order has been issued granting that person or agency custody of the child.

One example might be a grandparent who houses, feeds and cares for their grandchild. Another example would be a child that has been placed in foster care.

Do I have to file for child support?

The primary custodian of a child **is not required** to file for child support unless they receive cash assistance from the state. If so, then the Pa. Department of Public Welfare will require them to file for support against the legally responsible party. **However**, if you are a victim of domestic violence, and filing for support would jeopardize your safety, **OR** if you do not know who the father of your child is, and cannot name a person who is likely to be the father, you will not be required to file for support.

If you are receiving food stamps or medical assistance from the state, you are **NOT** required by DPW to file for support.

Sometimes parties are able to work out their differences and make private agreements concerning support for a child. This may work for you, and there may be mediation services available at little or no cost to help you and the other party settle your support case. Call your local domestic relations office to ask about available mediation services.

Can I receive public benefits and child support at the same time?

If you receive public benefits, the child support collected will be paid to the Department of Public Welfare and you will receive what is called a “**support pass through.**” A support pass through will be paid to you in the month following the month that support was paid.

The support pass through is **ONLY** paid if support is collected from the Defendant **in the month it is due**. Depending on your monthly support amount, you could receive up to \$100 if you have one child and \$200 if there is more than one child.

If you refuse to cooperate with the Department of Public Welfare to collect support from a legally obligated person, you could lose your public welfare benefits.

In some very limited situations, when the obligor has a lot of money, it may be to your benefit to receive your full child support amount rather than receive cash assistance.

You will need to decide whether or not you believe the obligor will pay their child support obligation each month. If you do not believe they will pay every month, then you may want to continue receiving cash assistance.

You may want to consult with an attorney if this situation is similar to yours. If you reside in Northeastern or North Central Pennsylvania, please call North Penn Legal Services at 1-877-953-4250 to see what services may be available in your county.

Where do I file for support?

Support cases are started by filing a complaint with the domestic relations office.

PLEASE REVIEW THE INSERT FOR THE ADDRESS OF YOUR LOCAL DOMESTIC RELATIONS OFFICE.

Is there a fee for filing a child support complaint?

There should not be any filing fees charged by Domestic Relations for filing an initial child support complaint. If your local domestic relations office is trying to make you pay a filing fee, you may file an In Forma Pauperis (IFP) petition to request that the filing fee be waived.

What information do I need to file my complaint for child support?

An intake worker may help you fill out the necessary paperwork to start your child support case. In some counties, you may have to fill out the paperwork on your own. You will need to gather as much of the following information as possible:

1. Your name and address;
2. The name and address of the Defendant;
3. The Defendant's date of birth;
4. The Defendant's social security number;
5. The Defendant's place of employment, if applicable;
6. The name and address of Defendant's closest relatives, if Defendant's current address is unknown;
7. The name and birth date of the child;
8. The birth certificate of the child;
9. The social security number of the child.

I am the mother and I want to file for support. I do not know who the father is. What can I do?

If you don't know who the father of the child is, you will have a difficult time filing for child support. If you think you know who the father is, but are not sure, you can discuss with the father about taking a paternity test or name him as a Defendant in a child support action. If he wants to contest paternity (claim that he is not the father), he must do so at the initial support conference.

I filed for support and the father is contesting paternity, what happens next?

Please see the Paternity section of this handbook to understand the father's rights concerning issues of paternity.

For every case where you and the Defendant/father are not married, the Domestic Relations Section will want to know if the Defendant has signed an acknowledgement of paternity. If an acknowledgment of paternity has not been signed, paternity will need to be proven. If the Defendant knows and admits he is the father, he can sign an acknowledgement of paternity. The Defendant **IS** liable for support of the minor child after signing an acknowledgment of paternity.

If the Defendant has not acknowledged he is the father, and refuses to sign a written acknowledgement, the conference officer will, in the majority of cases, order genetic testing.

If there is a 99% or higher probability of paternity, the court shall issue what is called a "rule," which is another term for an order, that directs the defendant to show the court why an order should not be entered finding him to be the father.

In order to have a hearing before the court, the Defendant must file an answer within twenty (20) days after service of the rule. The answer is limited to why the Defendant believes or can prove that the tests results are not reliable. If such answer is filed by the Defendant, the case will be listed for hearing.

If no answer is filed, the court will enter an order establishing Defendant's paternity of the child.

An order establishing paternity is NOT appealable. Once paternity is determined, the court will determine how much support must be paid. The Defendant can then file an appeal, and the issue of paternity must be included in an appeal from a final child support order or the Defendant will lose the right to challenge it.

Are there any exceptions where the parties will not be ordered to have genetic testing after father's objection?

There may be times when genetic testing will not be ordered if there is a presumption of paternity. These issues are also briefly addressed in the Paternity section of this handbook. The issues are complicated and **YOU SHOULD** seek legal advice to discuss your rights.

What if I do not know where the father lives?

If you do not know where the child's non-custodial parent lives, your Domestic Relations section should refer you to the Parent Locator Service. This service uses federal, state and local resources to search for the non-custodial parent. You must give Domestic Relations as much identifying information about the Defendant as you can to assist with the search.

How is the Defendant notified that I filed for child support?

After your child support paperwork is filed, the Domestic Relations section will mail out a copy of the paperwork and notice of the proceedings at least twenty (20) days prior to the initial conference.

Do I need to bring any paperwork to my conference?

You **must** bring your completed income and expense statement.

You should try to fill out your income and expense statement as completely as possible.

You will also need to bring:

- 1) Your most recent federal income tax return (if you are required to file);
- 2) Your pay stubs for the preceding six months, if applicable;
- 3) Verification of child care expenses;
- 4) Proof of medical coverage which you have or which is available to you for the child.

What happens if the Defendant does not show up at the conference?

If the Defendant fails to appear, after being properly served, the court will enter a temporary, or interim order in accordance with the support guidelines. The Defendant can appeal the order by following the procedures described in detail in later sections of this handbook.

In some limited situations, a bench warrant may be issued for a party's failure to appear for a child support conference or hearing.

You, as Plaintiff, are also required to appear at the conference. If you are physically unable to go to the conference at your scheduled date and time, you should call the Domestic Relations office immediately to let them know your problems so they can make other arrangements or reschedule the conference. If you fail to appear, your case may be dismissed unless you receive public welfare benefits. In that instance, the case can proceed without you.

What source of income does the Court consider when issuing an Order for support?

Generally, the amount of support is based on both parties' **monthly net income**. Net income is the income you receive after certain taxes and other deductions are taken from your wages. The conference officer looks at a six-month average of all of the party's income. "Income" under support law includes income from any source, including, but not limited to the following:

- wages, salaries, bonuses, fees and commissions
- net income from business or dealings in property
- interest, rents, royalties, and dividends
- pensions and all forms of retirement income
- Social security disability benefits, social security retirement benefits, temporary and permanent disability benefits, workers' compensation and unemployment benefits
- alimony, if the conference officer finds it appropriate.

Domestic Relations may deduct only the following items to arrive at a net income: federal, state, and local income taxes, F.I.C.A. payments (Social Security, Medicare and Self-Employment taxes) and non-voluntary retirement payments, union dues, and alimony paid to the other party.

A conference officer should **NOT** consider the following sources as income:

- income tax refunds;
- public assistance benefits;
- Supplemental Security Income (SSI) benefits
- foster care payments; or
- Social Security payments to a child due to a parent's death, disability or retirement*.

***Note: The amount a child receives from Social Security due to a parent's death, disability or retirement is added to the combined monthly net income of the parties to calculate the income available to support the child. After the support officer looks at the support guidelines, the child's social security money is subtracted from the Defendant's monthly support obligation because it is paid to the custodial parent.**

REMEMBER – Social Security benefits ARE considered income. Supplemental Security Income (SSI) benefits are NOT income under the support rules.

What happens if the Defendant does not work or quits his or her job?

Both parties are liable to support the child to the BEST of their ability. The conference officer will ask each party about their work history and educational background. Here are some common situations:

- 1) **Voluntary Reduction of Income:** When either party chooses to take a lower paying job, quits a job, leaves employment, changes jobs, changes employment status to go to school, or is fired for cause, there will generally be no effect on that person's support obligation.

In these types of situations, the trier-of-fact will determine what is called a party's earning capacity. Earning capacity is the amount a person should earn, taking into consideration such facts as the party's age, health, training, work history and education.

- 2) **Involuntary Reduction of Income:** No change in support payments is made for normal increases or decreases in income. Support payments will be adjusted for substantial continuing involuntary decreases in income. Some examples would be: inability to work due to illness, lay-offs, or job eliminations.
- 3) **Seasonal employees:** Support orders for seasonal employees, such as construction workers, generally will be based on a yearly average.

The Defendant is in prison. Does the Defendant still have to pay support?

The court may terminate or suspend a person's child support obligation if they are in jail. If the person is in jail because they failed or refused to pay support, their duty to pay support continues while they are in jail. If the person is in jail for another reason, they may ask the Court to stop the support order until they get out of jail.

The Defendant is low income. How does that affect my case?

If the Defendant's income is very low, (the amount now is \$867 or less) their support is calculated in a different way. This will mean a much lower child support order. You can contact North Penn Legal Services at 1-877-953-4250 or the Lawyer Referral Service in your county for information and advice when dealing with these cases.

The Defendant has a very high income. How does that affect my case?

The court has a formula for cases where the parties' combined monthly net income is very high. There are very few cases where these rules will apply and YOU SHOULD consult with a private attorney or Lawyer Referral Service in your county to protect your interests in these cases.

How does Domestic Relations come up with the support amounts?

Pennsylvania has support guidelines. Domestic Relations uses the support guidelines to calculate your child support payments. The guidelines have been updated as of May 2010.

The conference officer will use the support guidelines to complete a form that will show you how the monthly support amount is calculated.

Pennsylvania law does allow Domestic Relations to use a different amount other than the guideline amount. This is called a deviation from the amount of the support contained in the guidelines. If Domestic Relations deviates from the guidelines, they must give the reasons justifying the deviation.

Does child custody affect a child support calculation?

A child support calculation is only affected by child custody if the Defendant has the child **40% or more** during the year. The 40% is determined by the number of **overnights** the child spends with the Defendant.

The Defendant receives up to a 30% reduction in the monthly support obligation if the child is with them 40% or more of the overnights in a year.

Even if custody is shared equally, one party may still be liable for support if their income is also greater than the other party's.

Are child care expenses, health insurance premiums and unreimbursed medical expenses considered when making a child support order?

You should keep track of these expenses and request that they be considered in the final child support calculation. (For specific information or advice, you can contact North Penn Legal Services or your local Lawyer Referral Service.) Unreimbursed medical expenses over and above \$250.00 per child per year should be submitted by Plaintiff to Domestic Relations for reimbursement by Defendant. The amount to be paid is based on the ratio of the parties' income.

Can I get help paying private school tuition, summer camp or for extracurricular activities?

Private school, summer camp and extracurricular activities **are not** expenses considered by the support guidelines. The court may or may not determine that these expenses are reasonable. If the initial support order does not take into account these expenses, you have the right to file exceptions to the order and make a specific request for these types of expenses as a deviation from the usual amount of support.

The Defendant has another family. How does that affect me?

If the total of the Defendant's basic child support obligation equals 50% or less of his or her monthly net income, there may be no effect to your monthly support amount. The court will not consider additional expenses that the Defendant pays for his or her other family in terms of private school or extracurricular expenses. But, the court cannot make a support order resulting in the Defendant having less than \$867 per month for his or her self support reserve.

What happens at the child support conference?

The conference officer assigned to your case reviews your income and expense statements. The conference office may ask you to provide further information about your income and expenses. The conference officer will also ask the Defendant the same questions about their income and expenses.

The conference officer may recommend a support amount based on the support guidelines. The conference officer will make a recommendation to the court if the parties agree on this amount.

What happens if no one objects to the interim order?

Each party is given twenty (20) days to object to the entry of the temporary court order after they receive it. If no one files an objection within the twenty (20) day period, the temporary order will become a final order.

I don't agree with my support order. What do I do?

You will need to put in writing that you disagree and ask that a hearing be scheduled. You will need to sign and date your request and mail or hand deliver it to your local domestic relations office as soon as possible (within 20 days of receiving the temporary order.)

This is generally called filing **exceptions** to the support order. You are filing exceptions when you request another hearing. You **must** write and mail or drop off a letter to the Domestic Relations Office within twenty (20) days.

A hearing, called a **De Novo Hearing** will be scheduled before the court. A **Hearing De Novo** means that the parties start over "from scratch."

I am late with my appeal. Can I file an appeal after twenty (20) days?

It is possible, but you must have a good reason. It is BEST to seek legal advice or assistance by calling North Penn Legal Services at 1-877-953-4250 or your local Lawyer Referral Service.

What do I need to say when I file exceptions?

In some counties, you will need to write a letter saying that you disagree with the child support order. Some counties may want you to be specific concerning the legal basis for the appeal.

Please refer to the insert for information concerning procedures in your county. You should consult with an attorney if you are unsure how to write your exceptions. **IT IS BETTER TO FILE**

EXCEPTIONS ON YOUR OWN WITH A SIMPLE REASON WITHIN TWENTY (20) DAYS THAN TO WAIT TO GET IN TOUCH WITH AN ATTORNEY.

What happens at a De Novo Hearing?

Your De Novo Hearing may be before a hearing officer. A hearing officer may be an attorney or a judge depending on your county. A Hearing De Novo is one where both parties “start from scratch.” Both parties act like a temporary order was never entered.

If you are a Defendant filing the appeal, you may wish to consult or retain an attorney for a De Novo Hearing. The De Novo Hearing may deal with complicated legal issues.

If you are disputing the earning capacity that the conference officer set for you, you will need some evidence to prove it was wrong. If you are saying that you can only earn less because of some mental or physical limitation or disability, you will need to have a doctor testify on your behalf.

If you are a Plaintiff filing for support, you may be assigned an attorney by the Domestic Relations Office to represent you in a De Novo Hearing. You should speak to your attorney **BEFORE** your hearing to help them prepare for it.

The hearing officer or judge will take testimony, and then will make a decision. That decision must be in writing and supported by reasons. If you disagree with the decision, you should consult with an attorney to discuss whether or not to appeal to a higher court. Appeals are very time consuming and expensive.

The Defendant isn't paying his support obligation. What can I do?

If the Defendant is not paying his support, you should contact your local child support enforcement officer. You should ask the enforcement officer to file a contempt petition. You will need to contact the enforcement officer in the county where the **Defendant lives**.

Sometimes the court will file a contempt petition on its own if the Defendant is really behind or “in arrears.” The Defendant will be directed to appear before the court. If the Defendant fails to appear, a bench warrant may be issued for his or her arrest.

If the Defendant is found in contempt, there are many possible remedies the court may use to make the Defendant pay, some of which are:

- 1) Incarceration – Jail sentence up to six (6) months;
- 2) Wage attachment – forcing the Defendant’s employer to take money out of the Defendant’s paycheck;
- 3) Seizure of Defendant’s bank account;
- 4) Suspension of a driver’s license;
- 5) Suspension of a professional license;
- 6) Suspension of hunting or gaming license.

Can I check on my child support case online?

PACSES is the statewide child support computer system. PACSES stands for the Pennsylvania Child Support Enforcement Program. PACSES has all of the information about your child support case. The Domestic Relations Office uses PACSES to monitor support payments and enforce support orders.

You can learn more about PACSES by going to www.childsupport.state.pa.us. You can use PACSES if you are either the Plaintiff or the Defendant. You will need to establish a password to view the details of your case on this web site.

Can the child support order be changed?

Either party can file papers to modify child support. Child support may be modified when there has been a **material and substantial change** in circumstances.

The party filing, whether it is the Plaintiff or Defendant, must show a change in circumstances to justify an increase or decrease in the support amount. All of the same considerations and procedures apply as in the initial request for child support.

If you disagree with the order concerning your modification petition, the same rules apply with regard to filing exceptions.

What happens when the child turns 18?

A child is entitled to child support until he or she turns 18, or graduates from high school, whichever is **LATER**. If you receive a notice from Domestic Relations that you don't understand, or that you disagree with, you should contact NPLS at 1-877-953-4250, your local bar association, Lawyer Referral Service or Domestic Relations office to ask questions and/or apply for legal assistance when one or more of your children turns 18.

My child turned 18 but the Defendant still owes me back support. Does he have to pay it?

Even if the minor child has turned eighteen (18) years of age, you are still entitled to the back support. In some circumstances, Domestic Relations may send a notice that the Defendant's child support obligation is terminated **AND** they are doing away with the Defendant's arrears. This means they are not making the Defendant pay back his arrears. This may occur if the Defendant is unable to pay, has no known income or assets and there is no reasonable belief that the Defendant will be able to pay in the foreseeable future.

If you receive this notice, you have sixty (60) days to object. If you do not object within sixty (60) days, you will lose the right to collect the arrears. If you object, Domestic Relations will schedule a conference.

For more specific and useful information concerning child support issues, you can go to: www.childsupport.state.pa.us.

FAQs

Due to limited resources, your legal aid office may not be able to represent you at your hearing. You can contact **NPLS at 1-877-9534250** to see what services may be available in your county.

If you still would like an attorney to represent you, you should contact your local bar association's lawyer referral service or consult the yellow pages. Some private child support lawyers may ask you to pay a retainer. A retainer is when you pay money up front for a lawyer's services. Some child support lawyers may not ask you to pay a retainer and may be willing to take reduced payments or determine how much you will need to pay based on your income.

If you feel you will be hiring a private lawyer, you should talk to a few different lawyers before choosing one. Many lawyers will do the first interview for free or for a reduced fee of \$25 - \$50, so you should ask whether or not there will be a charge for the initial visit when you call.