

Child Support—an Important but Often Overlooked Issue for Low-Income Clients

By Paula Roberts

Child support can be an important income source for single parent families. It is particularly crucial for families with income at or below poverty and those no longer receiving public assistance. According to recent research:

- When poor families receive child support, that money constitutes more than a quarter of the family's income (about \$2,000 per year).¹
- Child support is even more significant to families who leave welfare. About 42 percent of poor children with a nonresident parent whose families have left welfare receive child support. Child support makes up 30 percent of their families' income. These eligible families receive, on average, \$2,562 per year in child support.²
- Fathers who pay child support are more involved with their children; they provide them with emotional as well as financial support.³

Child support can also be an issue in the lives of poor noncustodial parents.

Research results show that these parents are being asked to pay larger amounts of support than is reasonable to expect them to pay. Some of these parents accumulate substantial child support arrears during periods of unemployment or incarceration. This debt makes it difficult for them to work in the aboveground economy and may serve as a barrier to maintaining contact with their children.⁴

Family law practitioners need to understand how child support works as the system deeply affects the lives of their clients. Many legal services programs assist neither custodial nor noncustodial parents in basic child support matters. Since the many local child support enforcement agencies that are left with this work struggle to provide adequate and timely service, a good argument can be made for more legal services program involvement in this area. On the other hand, many programs do address two public-benefit-related issues: child support assignment and cooperation requirements for families receiving public assistance and distribu-

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¹ Elaine Sorensen & Chava Zibman, *To What Extent Do Children Benefit from Child Support? Discussion paper 99-11*, in *ASSESSING THE NEW FEDERALISM: AN URBAN INSTITUTE PROGRAM TO ASSESS CHANGING SOCIAL POLICIES* 6 (2000), available at www.urban.org.

² *Id.* at 7.

³ Judith Seltzer et al., *Will Child Support Enforcement Increase Father-Child Contact and Parental Conflict After Separation?*, in *FATHERS UNDER FIRE* 157-190 (Irwin Garfinkel et al. eds., 1998).

⁴ See, e.g., FRANK FURSTENBERG ET AL., *CARING AND PAYING: WHAT FATHERS AND MOTHERS SAY ABOUT CHILD SUPPORT* (Manpower Demonstration Research Corp. 1992).

tion of collected support. In addition to describing the child support enforcement system, this article highlights these two public-benefit-related topics.

The Child Support Enforcement Program

In 1975 Congress added Title IV-D to the Social Security Act.⁵ Under this law, states receive substantial federal funding to operate child support programs that meet detailed federal requirements.

All state programs must do these tasks:

- *Assist custodial parents in locating noncustodial parents as well as their income and assets.* Every state has a State Parent Locator Service (SPLS), which can look through a variety of automated databases such as state employment service and motor vehicle records.⁶ The state also has access to the Federal Parent Locator Service (FPLS), which allows the state to obtain information from federal databases such as the Social Security Administration.⁷ Moreover, all employers must report their new hires to the State New Hire Registry.⁸ This information is then passed on to the FPLS for inclusion in the Federal New Hire Registry. Through these mechanisms, a state can obtain informa-

tion about a noncustodial parent's current address, employment status, and income. As described below, this information is used in setting a support order.

- *Establish paternity.* When children are born to unmarried parents, paternity must be established before a support obligation is set. To establish paternity, parents may simply sign an acknowledgment in the hospital at their child's birth or go to the appropriate birth record agency and file the acknowledgment form there. After sixty days, the acknowledgment is the equivalent of a court decree.⁹ If the parents do not agree, paternity is contested and the child support agency orders (and pays for) genetic testing.¹⁰ If the test reveals a high probability of paternity, the parents usually sign a voluntary acknowledgment. However, if either one wants one, a court hearing is held. The court then issues, if appropriate, a paternity order.¹¹

- *Obtain and periodically modify child support orders.* Child support orders are set pursuant to the state's guidelines.¹² These numeric formulas take into account parental income and assets as well as the number of children to be supported.¹³ The resulting order must establish periodic cash support and address the children's health care needs.¹⁴ The provision

⁵ 42 U.S.C.A. §§ 651 *et seq.* (West Supp. 2001). For a more detailed history of the program, see Naomi Cahn & Jane Murphy, *Collecting Child Support: A History of Federal and State Initiatives*, 34 CLEARINGHOUSE REV. 165 (July–Aug. 2000).

⁶ See 42 U.S.C.A. §§ 654(8), 654a(e), 654a(f) and 45 C.F.R. § 302.35 (2001) for more details on how this system works.

⁷ 42 U.S.C.A. § 653 (West Supp. 2001).

⁸ *Id.* § 653a. See also *id.* § 653(i).

⁹ Pursuant to federal law, every state has now adopted this system for the voluntary establishment of paternity. *Id.* § 666(a)(5)(C)–(D).

¹⁰ *Id.* § 666(a)(5)(B)(ii)(I). The federal government reimburses the state for 90 percent of this expense. *Id.*

¹¹ Numerous federal requirements apply to the conduct of these proceedings. See *id.* § 666(a)(5).

¹² *Id.* § 667. Unless the court finds that use of the guidelines would yield an amount of support that is unjust or inappropriate, the guidelines must be used to set the support order. If a deviation is allowed, the court must explain on the record why a deviation was granted and how this serves the best interests of the child. *Id.*; 45 C.F.R. § 302.56(f)–(g) (2001).

¹³ States vary substantially in the type of guidelines they use and how they treat expenses such as health care and child care. For a recent description of state guidelines, see 34 FAM. L.Q. chart 3 (Winter 2001).

¹⁴ 45 C.F.R. § 302.56(c)(3)(2001) requires that health care coverage be addressed in the state's guidelines.

on health care may require the noncustodial parent to enroll the children in available private health care coverage: if such coverage is not available or has significant copayments or deductibles, the decree also may describe how the parents are to share such costs. Once set, orders can be periodically reviewed and adjusted. Modifications are obtained most commonly when there is a substantial change in the noncustodial parent's financial circumstances. An increase in income can result in a higher order, while a decrease in income may yield a reduction in support. If health insurance is no longer available or becomes available, a modification can be sought to adjust the order in light of this change.

■ *Enforce support orders.* The state's child support program has tools available for this purpose.¹⁵ The most frequently used are income withholding and federal tax intercept. If a noncustodial parent is employed, at the time the support order is set, the court also issues an income withholding order. This order tells the noncustodial parent's employer to withhold from the employee's paycheck the amount of support that has been ordered and to send it to the state's child support distribution unit. This unit records payment and distributes the money.¹⁶ If the noncustodial parent gets behind in payment, arrears accumulate. The state certifies these arrears for collection by the Internal Revenue Service, which intercepts any tax refund owed to the noncustodial parent.¹⁷

Program services are available to all parents by simple application. However,

families receiving cash assistance from the Temporary Assistance for Needy Families (TANF) program or Medicaid do not have to file an application: they automatically receive free services.¹⁸

Issues for Low-Income Parents. A number of issues arising out of this system are of particular concern to low-income parents.¹⁹ They include the application of child support guidelines to noncustodial, low-income parents and health insurance coverage.

One cluster of issues centers on the use of guidelines when the noncustodial parent is low-income. Obviously the children need support, and maximizing the amount they get is important. At the same time a support award that the noncustodial parent cannot afford to pay is not helpful. It puts that parent in deep debt (arrears), creates tension with the custodial parent who is expecting payment, or drives the noncustodial parent away from the children and into the underground economy. Finding the appropriate balance among these competing considerations is not always easy.²⁰ However, there is growing awareness of the problem and how it affects the accumulation of substantial, unpaid child support arrears. Many states are experimenting with new approaches to guidelines and policies to adjust arrears that have accumulated under inappropriate orders.²¹ Since every state must review its guidelines at least once every four years, legal services clients and client organizations, as well as legal advocates, can use this occasion to raise guideline issues of particular concern to low-income families.²²

¹⁵ See 42 U.S.C.A. § 666 (West Supp. 2001).

¹⁶ *Id.* § 666(b) describes in detail what this process looks like. States use a standardized form to inform employers. Failure to honor an income withholding order issued on this form makes the employer responsible for the payment and possibly subject to a fine. *Id.* § 666(b)(6)(B).

¹⁷ *Id.* § 664 describes this process in detail.

¹⁸ *Id.* § 654(6)(B). See also 45 C.F.R. § 302.33(a)(2001).

¹⁹ For a fuller discussion of many of these issues, see Paula Roberts, *Child Support Issues for Parents Who Receive Means-Tested Public Assistance*, 34 CLEARINGHOUSE REV. 182 (July–Aug. 2000).

²⁰ See VICKI TURETSKY, REALISTIC CHILD SUPPORT POLICIES FOR LOW-INCOME FATHERS (Ctr. for Law & Soc. Policy 2000), available at www.clasp.org.

²¹ See PAULA ROBERTS, AN OUNCE OF PREVENTION AND A POUND OF CURE (Ctr. for Law & Soc. Policy 2001), available at www.clasp.org.

²² On states' review of their guidelines every four years see 42 U.S.C.A. § 667(a) (West 1991).

Another difficult issue is when to order private health insurance coverage. If the children have no coverage and private insurance is available to the non-custodial parent through the parent's employment, requiring that parent to provide coverage often makes sense.

However, if the cost of coverage is high, serious trade-offs must be assessed. This requires a look at the state's approach to adjusting cash support to account for the cost of health insurance. States use one of three models: (1) order the non-custodial parent to pay the premium and deduct the premium amount from that parent's income; (2) add the premium amount to the cash award and prorate the cost between the parents; and (3) treat the issue as a reason to deviate from the child support guidelines. Whichever method is used, a downward adjustment in the non-custodial parent's cash obligation is likely. While helpful to that parent, a downward adjustment can harm the children. However, if such an adjustment is not made, the combined cash and medical support ordered may exceed the amount that may be withheld from the noncustodial parent's wages.²³ Then the children receive neither cash support nor health insurance until the matter is sorted out.

If the children are eligible for Medicaid or the State Children's Health Insurance Program, the better approach is to enroll them in one of those programs. This maximizes the cash available to meet the children's other needs and ensures their

health care coverage at the same time.²⁴ Advocacy around this issue can also be very helpful to children and their parents.

The Child Support Assignment and Cooperation Requirements

Since 1975, custodial parents whose families receive federally funded cash assistance have been required to assign their rights to alimony and child support to the state. In the absence of good cause, these custodial parents are also required to cooperate in good faith with the state in establishing paternity and pursuing support.²⁵ Under the federal statute, cooperation includes (1) disclosing the names and other identifying information about the noncustodial parents of their children; (2) appearing at interviews, hearings, and legal proceedings; and (3) submitting themselves and their children to genetic testing when a court or administrative agency so orders. Custodial parents also may be asked to sign a voluntary paternity acknowledgment although they may not be required to do so. States may add to these cooperation requirements and set the standards for determining when a parent is not cooperating.²⁶ The state child support agency determines whether a parent is cooperative.²⁷ If a parent is not deemed cooperative, then the child support agency notifies the TANF agency.²⁸ Failure to cooperate leads to a sanction. At a minimum, there must be a 25 percent reduction in benefits: the state may impose an even more severe sanction, up

²³ Federal law limits the amount that may be withheld for support to the maximum allowed by the Consumer Credit Protection Act, 15 U.S.C. § 1637b. 42 U.S.C.A. § 666(b)(1). Some states set lower limits.

²⁴ For a discussion of this issue, see MED. CHILD SUPPORT WORKING GROUP, REPORT TO THE HON. DONNA SHALALA, SECRETARY OF DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE HON. ALEXIS HERMAN, SECRETARY OF LABOR: 21 MILLION CHILDREN'S HEALTH: OUR SHARED RESPONSIBILITY (2000), available at www.acf.dhhs.gov/programs/cse.

²⁵ The current requirements are found at 42 U.S.C.A. §§ 608(a)(2) and 608(a)(3) (West Supp. 2001). The prior requirements were found at 42 U.S.C.A. § 602(a)(26) (West Supp. 1991), repealed in 1996, when Congress abolished the Aid to Families with Dependent Children (AFDC) program and replaced it with Temporary Assistance for Needy Families (TANF).

²⁶ 42 U.S.C.A. § 654(29)(A)–(D) (West Supp. 2001). For more on this issue, see PAULA ROBERTS, CHILD SUPPORT COOPERATION ISSUES (Ctr. for Law & Soc. Policy 1996), available at www.clasp.org.

²⁷ 42 U.S.C.A. § 654(29)(A).

²⁸ *Id.* § 654(29)(E). The TANF agency must impose a sanction when it receives a notice of noncooperation. If it does not do so, it faces federal fiscal penalties. *Id.* § 609(a)(5).



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includes a parallel set of requirements. Custodial parents seeking Medicaid coverage for themselves and their children are required to assign their medical support rights to the state and cooperate with the state in establishing paternity and pursuing medical support.³¹ Here cooperation is defined by federal regulation.³² If a parent does not cooperate, the child support agency notifies the Medicaid agency.³³ The parent will be denied Medicaid coverage or have that coverage terminated.³⁴ However, the children are entitled to receive benefits, and those benefits may not be denied or terminated simply because their parent refuses to cooperate with the child support program.³⁵

As in TANF, the cooperation requirement may be waived if a custodial parent can establish good cause for doing so. Again, this is usually sought and granted in cases of domestic violence.³⁶ The Medicaid program also has an exemption for poverty-level pregnant women. These mothers need not cooperate in establishing paternity or pursuing medical support from their children's fathers. This exemption is available during the pregnancy and for sixty days postpartum. After that, the mother must assign her medical support rights to the state and cooperate in establishing paternity and pursuing support if she wants to continue her Medicaid coverage.³⁷

Protecting Domestic Violence Victims. There are a number of concerns about the child support assignment and cooperation requirements, especially in the TANF program. Some states have developed very strict standards for establishing good-cause exceptions to the cooperation requirement. As a result, many custodial parents with serious

to and including denial of benefits to the entire family.²⁹

Good-Cause Exception. Parents who believe that pursuing child support will put themselves or their children at risk may seek a good-cause exception to the cooperation requirements. States define good cause and set the criteria for proving a good-cause case. Good cause typically is claimed and granted when there is evidence of domestic violence. The TANF agency makes the good-cause determination.³⁰ If the agency finds good cause, paternity and support will not be pursued. If the agency does not find good cause, then the parent must cooperate. Otherwise the agency will impose a sanction (see above).

Medicaid. The Medicaid program

²⁹ *Id.* § 608(a)(2).

³⁰ *Id.* § 654(29)(A)(i).

³¹ *Id.* § 1396k(a)(1). See also 42 C.F.R. § 435.610 (2002).

³² See 42 C.F.R. § 433.147(b).

³³ 42 U.S.C.A. § 654(29)(E) (West Supp. 2001).

³⁴ 42 C.F.R. § 433.148(a)(1) (2002).

³⁵ *Id.* § 433.148(b)(2). See also Letter from Timothy Westmoreland, Director, Health Care Financing Administration, to State Medicaid Directors, DCL 00-122a (Dec. 19, 2000).

³⁶ 42 C.F.R. § 433.147(c).

³⁷ 42 U.S.C.A. § 1396k(a)(1)(B) (West Supp. 2001); 42 C.F.R. §§ 433.145(a)(2), 433.147(a)(1), 435.610(2002).

domestic violence concerns are unable to prove their cases.³⁸ Then they must forgo benefits or take their chances that pursuit of support will not engender more violence. Until recently, most state child support enforcement programs had developed few protocols for protecting domestic violence victims in this situation. In the last five years, much progress has been made. However, much more needs to be done.³⁹

Food Stamp Program. States now also have the option to impose child support cooperation requirements on noncustodial parents who participate in the Food Stamp program.⁴⁰ These parents also may be sanctioned for falling into arrears on their support obligation.⁴¹ These provisions are relatively new and are most likely to have an impact on noncustodial parents who have a second family they are living with and supporting.⁴² While only the noncooperating or nonpaying individual may be sanctioned, the loss of benefits can have a negative impact on the entire household. A reduction in benefits

means fewer available resources to purchase food. In states that have opted to implement these requirements, advocates should monitor that only appropriate sanctions are imposed.

Distribution of Support Collected

Whether the support collected by the child support program benefits the children depends on the family's public assistance status. If the family currently receives TANF *cash* assistance, support payments are first divided between the state and federal government.⁴³ The federal government keeps its share as reimbursement for the family's TANF benefits.⁴⁴ The state may keep its share or give some or all of the money to the family.⁴⁵ If it gives the money to the family, the state may count it as income and reduce the amount of the family's TANF grant. In the alternative, it can disregard this amount in calculating the family's TANF eligibility or grant amount or both. In the latter case, the child support collected actually benefits the children.⁴⁶

³⁸ See, e.g., Jessica Pearson & Ester Ann Griswold, *Child Support Policies and Domestic Violence*, 55 PUB. WELFARE 26–32 (1997). Looking at practice in Denver, Colorado, this article indicates that many of those seeking a good-cause claim were unable to obtain one even when they had documentation of violence.

³⁹ See Vicki Turetsky & Susan Notar, *Models for Safe Child Support Enforcement*, 8 AM. U.J. GENDER, SOC. POL'Y & L. 657 (1999).

⁴⁰ 7 U.S.C.A. § 2015(m) (West 1999). States also have the option to impose a cooperation requirement similar to the ones described above on custodial parents participating in the Food Stamp Program. *Id.* § 2015(l). Only a handful of states have chosen to do this, however.

⁴¹ *Id.* § 2015(n). Regulations implementing these cooperation provisions are found at 7 C.F.R. § 273.11(o)–(q). These regulations were issued on January 17, 2001, and can be found at 66 Fed. Reg. 4466–68.

⁴² Most single individuals and childless couples who are not elderly or disabled have limited access to food stamp benefits at this time. Therefore, families with children are most likely to be affected by this provision in states that opt to use it.

⁴³ If the family is receiving noncash assistance, it will receive the support as long as no arrearages are owed to the state. Office of Child Support Enforcement, Action Transmittal 98-24, at 10 (Aug. 19, 1998).

⁴⁴ 42 U.S.C.A. § 657(a)(1) (West Supp. 2001). The federal share is generally determined by multiplying the amount collected by the state's Medicaid match rate. *Id.* §§ 657(c)(2)–(3). E.g., if a state collects \$200 and its Medicaid match rate is 50 percent, then the federal government gets \$100. The only limitation is that the government may not retain more child support than it pays out in public assistance to the family. *Id.* § 657(a)(1).

⁴⁵ *Id.* § 657(a)(1)(B).

⁴⁶ A majority of states use the state share to reimburse themselves. Some do pass through and disregard a portion of the payment. See Paula Roberts, *Child Support as an Income Source for Low-Income Families*, 31 CLEARINGHOUSE REV. 565–83 (Mar.-Apr. 1998).

Food stamp-only families receive the current support collected on their behalf.⁴⁷ This money is income and will somewhat reduce the family's allotment.⁴⁸ Medicaid-only families are also entitled to receive the cash support paid on their behalf.⁴⁹ Benefits are not affected unless the amount is so large that the family becomes ineligible for Medicaid coverage. If medical support is collected, however, the state retains that money.

When a family no longer receives TANF cash assistance, the children should receive all current support paid on their behalf. They should also receive any arrears owed for the period after the family leaves assistance. If there are arrears owed for the period before the family goes on assistance, the family may receive those arrears also.⁵⁰ This is a complicated area, however, since the family's right to preassistance arrears depends on when the assignment was executed and how the collection was made.⁵¹

Implementation of the distribution rules has raised a number of concerns.

Of particular note are problems that former TANF families experience. Many of these families experience lengthy delays in receiving their support payments. In many states communication between the TANF system and the child support program is poor, and it can take months before the child support program is told to redirect payments to the family. Problems also occur with regard to the proper distribution of arrears for families that cycle on and off assistance and those in which more than one noncustodial parent is paying support.⁵²

LEGAL SERVICES PROGRAMS SHOULD HELP IMPROVE the functioning of the child support program so that it better serves low-income custodial and noncustodial parents and their children. Child support can be an important income source for single-parent families, but much remains to be accomplished.

⁴⁷ 42 U.S.C.A. § 657(a)(3) (West Supp. 1999). These families are considered to be families who "never received assistance" because the statute limits the definition of "assistance" to programs funded under Title IVA of the Social Security Act (TANF and its predecessor AFDC) and foster care maintenance payments. *Id.* § 657(c)(1).

⁴⁸ 7 U.S.C.A. § 2014(d) (West 2001).

⁴⁹ This is because Medicaid-only families (like food stamp-only families) are not receiving "assistance" as defined in the distribution statute. *See* note 44, *supra*.

⁵⁰ 42 U.S.C.A. § 657(a)(2) (West Supp. 2001).

⁵¹ For a detailed explanation of distribution issues, see VICKI TURETSKY, REAUTHORIZATION ISSUES: CHILD SUPPORT DISTRIBUTION (2002). This monograph also describes recent proposals by the Bush administration and Congress to change the rules and provide more money to families.

⁵² Attorneys who would like to discuss litigation in this area should contact Paula Roberts for a list of recent cases.