



## NEW OCSE POLICY ON RECOUPMENT OF CHILD SUPPORT OVERPAYMENTS

BY  
PAULA ROBERTS

In the process of distributing child support payments, mistakes can be made. Sometimes the result is that a custodial parent receives an "overpayment." Typically, this happens when:

- 1) the state sends a payment to the wrong family so that family receives support when none has actually been paid;
- 2) the state does not properly distribute a payment in a case involving multiple custodial parent families so that one family receives more than it should and the others receive less; or
- 3) the noncustodial parent's check bounces so that there are, in fact, no support funds available.

If overpayment occurs, the state may not recoup the money from the custodial parent by deducting the full amount from the next support check or by deducting a smaller amount from several subsequent support checks until the full "overpayment" has been recouped. To do so violates 42 USC Section 657, which specifically requires that collected funds be attributed to current support, arrears owed to the family, and arrears owed to the state. There is no provision for recouping overpayments in the law.

The federal Office of Child Support Enforcement (OCSE) has informed states that they can only recoup overpayments from support collections *if the custodial parent agrees*. In the absence of such an agreement, recoupment is not allowed.<sup>1</sup> This has caused the states some distress, as few custodial parents will agree to recoupment from their much-needed support payments. As a result, the state is liable for the overpayment as it is not a reimbursable IV-D expense.

In response to state concerns, OCSE has issued a new Policy Information Question, PIQ-02-01 (August 5, 2002). This PIQ is posted on the OCSE website, [www.acf.dhhs.gov/programs/cse](http://www.acf.dhhs.gov/programs/cse) in the policy documents section. This PIQ restates previous instructions that "distribution rules for child support collections

---

<sup>1</sup> OCSE Action Transmittal 97-13, Question 13 (September 15, 1997).

do not allow a state to recoup an overpayment of support through the intercept of subsequent child support payments unless the custodial parent agrees." The PIQ goes on to require that there must be *written* documentation of parental permission to recoup.

OCSE then acknowledges how hard it is to get parents to agree to recoupment and provides guidance on easing the agreement process. The first thing a state must do is *minimize the number of instances in which recoupment is necessary*. It must adopt processes such as refusing personal checks from obligors who have written bad checks in the past and instead require certified checks. If the state distribution unit is run by a vendor, the state also needs to have processes under which the vendor has to absorb losses due to its errors.

If a state does these things, according to the PIQ, then it can obtain client permission to recoup overpayments in one of two different ways:

1. In the IV-D application process, the state can include a permission document. The client would sign the document and check a "yes" or "no" box indicating whether she/he gave permission to the state to withhold an incremental amount, at a reasonable rate, from future child support if this became necessary to recoup and overpayment. This document would be on file and could be used any time the situation arose. (Note: Since IV-D application is a one-time process, this method would not be available in any existing case.)
2. If an overpayment occurred, the state can send a letter to the client requesting permission to recoup. The letter would give the client a specific date by which to respond in writing. If there were no response, a second letter would have to be sent. If there were no response to this letter, then a third letter with a response date would have to be sent. That third letter would have to tell the client that failure to respond will be taken as permission to recoup. If there were no response to this third letter, recoupment could begin. If this process is used, it is only valid for the particular overpayment. If there were subsequent overpayments, a new series of letters would have to be sent.

Based on this PIQ, state child support advocates should probably anticipate some state action in this area. On the positive side, the PIQ does put some constraints on state recoupment. If a state has not taken steps to minimize the possibility of overpayments, this PIQ suggests it cannot ask the client to agree to recoupment. The three-step permission process does provide ample opportunity for clients to decline recoupment, assuming they actually receive the letters. This is certainly preferable to the one-letter approach currently being used by some states.

On the negative side, allowing states to use a blanket permission form at the time of application for IV-D services seems highly problematic. Whether a client can waive her/his statutory right to proper distribution seems legally questionable. Even if it were possible, it is doubtful that the waiver would be “knowing” if it is contained in a whole set of forms the client is given to sign at the time of application. Finally, since many cases come into the IV-D system through referral from the TANF or Medicaid agency—not by application for IV-D services—it is not clear how this method would work in public assistance cases.