

# CHILD SUPPORT: Questions and Answers



A PUBLICATION OF THE ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK FUND, INC.

JUNE 2002

## Introduction

Are you a parent living in New York City and raising children without financial help from their other parent? Are you a New York City parent whose children do not live with you? If you fall into either of these groups, you may have questions about child support. This brochure will try to answer some of your questions.

If you are a parent who lives with your child, you are called a "**custodial parent.**" If you live apart from your child, you are called a "**non-custodial parent.**" In New York State, non-custodial parents must provide financial assistance for the children to custodial parents.

What happens when there is joint custody? Even when children split their time equally between both parents, for example, spend one week with their mother and the next with their father, the court will still order one parent, usually the parent who earns more money, to pay child support to the other parent. Adjustments may be made to the amount of support to account for the joint custody situation.

## Where are child support cases handled?

Unless the child is on public assistance (PA or welfare), child support cases are typically handled in the Family Court in the borough where the child lives. If the child is on PA, the case is handled in Family Court in Manhattan. If the case is heard in Family Court, you will appear before someone called a "**Hearing Examiner**", who has the same power as a judge to enter an order of support. If the child support matters are part of a divorce case, then they might be handled in Supreme Court.

## Who can be ordered to pay child support?

Any **non-custodial parent** can be ordered to pay child support.

This is true even if the non-custodial parent has no contact with the child, is not working, is on disability or PA, is in jail, is in another state or even, in some cases, in another country.

A **non-custodial step-parent** can only be ordered to pay child support if that support would prevent the step-child from needing PA or other assistance from the State. The obligation of a step-parent only lasts as long as his or her marriage to the child's biological parent.

## How does paternity fit in?

Either parent can apply for an Order of Filiation, which establishes who is the legal father of a child. If you are a mother suing a father for child support, you may need an Order of Filiation. You can petition for one at the same time that you petition for child support. When you are filing for the Order of Filiation, tell the clerk if you want the child's last name to be changed to that of the father's.

An Order of Filiation is not necessary if the father signed an Acknowledgment of Paternity at the hospital. An Order of Filiation is also not necessary if the mother and father were married at any time, whether before or after the birth of the child.

The fact that a man is listed on a child's birth certificate does not make him the child's legal father. Unless he is or was married to the child's mother, or he signed an Acknowledgment of Paternity, an Order of Filiation is necessary for him to be the legal father.

Once you get to Family Court, the father can either consent to the entry of the Order of Filiation or he can contest it. If he contests paternity, the Hearing Examiner can order blood and DNA tests. If the alleged father still contests paternity after the court receives the results of the tests, the case will be transferred from the Child Support Hearing Examiner to a Family Court Judge. If the tests indicate that the man is the father, they create a "**rebuttable presumption of paternity.**" This means that the court will find that the man is the father based on the test results, unless he can produce evidence showing that he is not the father.

After the Hearing Examiner or judge enters an Order of Filiation, it will be filed at the Putative Fathers Registry, which is a database in Albany maintained by the New York State Office of Children and Family Services, and the father will be legally recognized. He will be able to seek custody of, or visitation with, the children, the children will be entitled to inherit from him when he dies, and the children will be entitled to Social Security benefits if he becomes disabled or dies.

## **I am the custodial parent. How do I file for child support?**

If you can afford to pay a lawyer to assist you, the lawyer will handle this for you. If your child is receiving public assistance, see the answer to the next question.

If you are going to be representing yourself, you should go to the Family Court in the borough where your child lives. The Support Collection Unit (SCU) will probably interview you first. Then you will meet with a petition clerk who will prepare a petition for you.

## **What happens at the Support Collection Unit?**

You will be asked to decide if you want to have your child support paid through the Support Collection Unit (SCU), which is an agency that will collect the child support payments from the non-custodial parent and then forward them to you. The SCU can also help you to enforce the child support order if the non-custodial parent does not pay. Even if you decide against using the SCU at the time that you petition for child support, you can always seek its services later.

## **What if my child is on public assistance?**

If you are a custodial parent whose children are on PA, you were probably required to sign over your rights to collect child support to the Human Resources Administration (HRA), – the agency in New York City that administers PA. HRA may sue the non-custodial parent for child support. If they succeed, and the non-custodial parent begins making payments, a certain amount, currently up to \$50 per month, will come to you, in addition to the cash assistance you already receive.

You do not have to wait for HRA to file for child support on your behalf. You can file yourself at the Manhattan Family Court. Tell the clerk that your children are on PA and tell your PA caseworker that you have filed. In a case where the children are on PA, the child support court order will be captioned like this: Commissioner of Social Services o/b/o Jane Doe v. John Doe."

Be aware that HRA can collect money from the non-custodial parent going back to the date that the custodial parent started collecting PA, as well as any costs for the child's birth that were paid by Medicaid.

After a child support order is entered, a custodial parent might decide that it would be to their advantage to collect child support rather than PA. You can remove your child(ren) from PA and stay on PA yourself, but if you remove one child whose needs are being met through child support, you have to

remove all other blood related or adoptive siblings in the house on PA. Even if you take your child off of PA, your child may still be eligible for food stamps and Medicaid.

Alternatively, HRA might decide to terminate the custodial parent's PA benefits if the order of child support reaches a certain threshold amount.

When a court order is entered while the children are on PA, and they are then taken off, the child support payments should start coming to the custodial parent, instead of the Commissioner of Social Services, automatically. The custodial parent should not have to go back to Family Court, but they may need to follow up with the SCU.

### **What do I have to do to prepare for court?**

When you start a child support action, the petition clerk will give you a date to come back to court for a hearing. In the meantime, you must serve the other parent. (Service is explained in the section below.) When you come back for your hearing, you should bring the Affidavit of Service, the Financial Disclosure Affidavit and the other documentation listed below.

### **How do I serve the other parent?**

The clerk will give you a packet that must be served on the other parent, as well as an Affidavit of Service that must be signed by the person who serves the packet, in front of a Notary Public. Don't forget to bring the Affidavit of Service with you when you come to court.

- Anyone who is over 18 can serve the papers, except you. This could be a friend or relative or a police officer. You can also pay the sheriff or a private process server to do it for you.
- You must arrange to have the other parent served at least eight (8) days prior to your court date.
- The other parent can be served on any day except Sunday.

Service can be:

- by handing the service packet to the other parent,
- by handing the service packet to a "person of suitable age and discretion" who lives at the same address as the other parent and then mailing it to the other parent in an envelope marked personal and confidential, or
- by certified mail.

If you choose to serve a "person of suitable age and discretion" be sure to identify that person on the Affidavit of Service. If you choose to serve by certified mail, be aware that unless the other parent signs for it, the Hearing Examiner will not issue an Order of Support if that parent fails to come to court.

If you have problems serving the other parent, the Hearing Examiner may permit you to serve them in another way. Be sure to keep careful track of each time that the server tries to serve. You might find it useful to keep a log like the one below. Before you go to court, have the server list all of the attempts, giving the dates and times of day and places, on the Affidavit of Service, before signing it in front of a Notary Public. (See page 15 for Attempts at Service Log.)

### **Financial Disclosure Affidavit**

The clerk will probably give you a Financial Disclosure Affidavit. You should fill this out as best you can and sign it in front of a Notary Public. Be sure to pay close attention to the questions asked and list all of your expenses, not just those related to raising your child. You will want to include all housing, food, and other household expenses.

### **Other Documentation**

You should also bring to court as many of the following as possible:

- Birth certificates of any and all children for whom you are seeking support.
- Acknowledgement of Paternity or Order of Filiation.
- Any divorce decrees.
- Any child support orders you already have.
- Proof of your financial situation such as: a tax return, Form W2, or proof of any benefits.

- ❑ Proof of the other parent's financial situation, and his or her Social Security number, address, and telephone number, and his or her employer's name and address.
- ❑ Proof of childcare expenses, for example, a notarized letter from your childcare provider or a written contract for childcare, along with proof of payment.
- ❑ Proof of health care costs not covered by insurance.
- ❑ Proof of private school tuition, and proof that tuition has been paid.
- ❑ Proof of any extraordinary or unusual costs of caring for your child. For example, you could provide proof of any extra medical or other costs incurred because of a child's disability and proof of that disability (such as medical or psychological reports on the child or a disability certification from SSI).

Make copies of everything, because the Hearing Examiner who decides your case will keep what you give him or her.

### **What if the non-custodial parent lives in another state?**

A custodial parent who lives in New York City can file for child support here even if the non-custodial parent lives in another state. The custodial parent should inform court personnel at the time of filing that the other parent lives in another state. A lawyer for the City of New York called a Special Assistant Corporation Counsel may be available to assist the custodial parent.

### **What if the non-custodial parent doesn't come to court?**

As long as the non-custodial parent has been served, the court can enter a child support order. If you have the non-custodial parent's financial information, the order can be entered based on that. If you do not have their information, the order will be based on the needs of the child or children, so be prepared to prove how much you spend on them. Remember, this is more than just what you pay to buy things like clothes and toys for your child, it also includes a portion of what you spend on housing, as well as on food and other household expenses. The proof can be just your testimony, although any documentation you have would be helpful.

## How much will the non-custodial parent be ordered to pay?

The amount owed is calculated according to a law called the Child Support Standards Act (CSSA).

Under the CSSA, non-custodial parents will be ordered to pay a percentage of their gross income, minus certain deductions, until the child reaches the age of 21. The most common deductions are for Social Security and Medicare taxes that they pay, and for New York City or Yonkers income tax that they pay. Also deductible is any child and spousal support that the non-custodial parent is already paying, under a prior court order or written agreement.

The percentages are 17% for one child, 25% for two children, 29% for three children, 31% for four children, and at least 35% for five or more children.

The non-custodial parents will also be ordered to cover the children on their health insurance plans, if one is available to them through their employment.

The non-custodial parent must also pay a "pro rata" share of reasonable childcare expenses if the custodial parent needs childcare because she or he is working or attending school or a job-training program. ("Pro rata" means based on the non-custodial parent's income, relative to the custodial parent's combined parental income. For example, if the non-custodial parent makes \$75,000 a year, and the custodial parent makes \$25,000 a year, the non-custodial parent would have to pay 75% of the cost of the childcare.) The non-custodial parent must also pay a pro rata share of the child's unreimbursed health care expenses. Unreimbursed means not covered by insurance. For example, under many insurance plans, you have to make a co-payment when your child visits the doctor; the non-custodial parent can be ordered to pay for a share of that expense.

The non-custodial parent may be ordered to pay a share of childcare expenses if the custodial parent needs childcare because they are looking for work. The non-custodial parent may also be ordered to pay a share of the child's educational costs such as private school or college tuition. See breakdown on page 13.

## When does the obligation to pay begin?

Usually, the obligation to pay child support starts when the custodial parent files for child support. The non-custodial parent might be ordered to pay reasonable expenses associated with pregnancy, and to pay a reasonable amount to cover the period from birth to when paternity is established. Also, HRA can collect child support from the time that the custodial parent begins receiving PA and for the costs of childbirth that were paid by Medicaid.



## Is there any possibility that the non-custodial parent would pay more or less than the CSSA amount?

It is possible. The Hearing Examiner does have the power to "deviate" (which means vary) from the CSSA.

For example, if the non-custodial parent has expenses associated with his or her own education they can be ordered to pay less in child support. Or, if the non-custodial parent incurs expenses associated with visitation and these expenses reduce the expenses incurred by the custodial parent, the amount of child support ordered might be lowered. These are just a few of the reasons.

Non-custodial parents do not have to pay a straight percentage of their gross income if doing so would put them below the Self-Support Reserve, which is 135% of the federal poverty guidelines for one --\$11,961 in 2002. In these cases, the non-custodial parent will be ordered to pay a lesser amount no matter how many children they have. The minimum award is \$25.00 a month, but even this is occasionally waived.

## I am the non-custodial parent. I have been sued for child support. What should I do?

If you are served with a summons seeking child support, you need to prepare for court and **attend the court date**. If you believe that you were not properly served (an explanation of the rules regarding serving child support papers is given under the question: **What do I have to do to prepare for court?**) you should still go to court on the date given in the papers. You can tell the Hearing Examiner that you were not properly served and a hearing, called a "**Traverse Hearing**," will be held on that issue. If you win, the case will be dismissed and the custodial parent will be required to re-serve you properly.

If you are not sure whether you are the child's father, you can contest paternity. Otherwise, unless you are on public assistance or have no income, you will have to pay at least the minimum amount of child support, which is \$25.00 a month.

You may have received a Financial Disclosure Affidavit in the materials with which you were served. You should fill it out as best you can and sign it in front of a Notary Public. Be sure to pay close attention to the questions asked and list all of your expenses. In addition to the Financial Disclosure Affidavit, you should also bring copies of as much of the following as you can to court.

- Your most recent tax return, Form W2, Form 1099, and/or schedules.
- Your most recent pay stubs and any other pay stubs you believe will help

the Hearing Examiner make a fair determination as to what your income is. If you have been at your job for less than one year, bring a letter of employment, indicating your start date, title and benefits, including your salary.

- ❑ Proof of unemployment, disability, SSI, PA, Worker's Compensation, pension or any other benefit you receive. You may also want to bring proof, such as a letter from your doctor, of any disability that you have that is preventing you from working.
- ❑ Documentation of any health insurance coverage that you have.
- ❑ Proof of any child support payments you have made to the custodial parent in the past.
- ❑ Any divorce decrees.
- ❑ Any child support orders for the children involved in this case.
- ❑ Any orders of support for other children or spouses, other than those involved in this case, as well as any written agreements regarding support of other children, with proof of payment of such support.
- ❑ Proof of children in your home. Proof first, that you are their parent (for example, a birth certificate or Acknowledgement of Paternity), and proof second, of the financial resources available to them from you and from their other parent.

### **What if one of the parents has re-married?**

Re-marriage almost never affects the amount of child support owed. The Hearing Examiner will not consider the income of the non-custodial parent's spouse when calculating the amount of child support the non-custodial parent has to pay according to the CSSA.

### **What if one of the parents has other children?**

If the non-custodial parent is already paying child support pursuant to a court order or written agreement, the amount of support paid will be subtracted from his or her gross income before it is multiplied by the appropriate percentage.

Non-custodial parents might also argue that they should pay less than the CSSA amount because of the needs of the other children with whom they are living. For example, if the non-custodial parent is a father who lives with his new girlfriend and their new baby, he could argue that after he finishes making his child support payments for his older children he has no money left for

the baby. The Hearing Examiner would then compare how much money was available to the new baby, that is, how much the father had left over after he made his child support payments, plus the father's girlfriend's income, with what was available to the older children (which would be the child support payments plus the mother's income). If there was less available to the baby than to the older children, the Hearing Examiner might reduce the amount of child support the father had to pay.

### **What will happen at court?**

A Child Support Hearing Examiner will decide your case. Hearing Examiners are like judges. They have the power to decide your case. They are different from a Judge in that they only decide child support cases. If you are not satisfied with the Hearing Examiner's decision, you can ask a judge to review it.

You should be on time for court and you should sign in with the court officer as soon as possible. Then you will have to wait until your case is called. Do not leave and then come back. It may take a long time for your case to be called so you should come prepared with reading materials and with lunch. All of the Family Courts in New York City offer childcare.

The Hearing Examiner will likely review some of the documentation you have brought and will ask questions of both sides. If there is something you want to say you should politely say it because you may not get another chance.

### **Will I get a lawyer to help me?**

Even if you are without financial resources, you are not entitled to the services of a free lawyer to help you with a child support case.

However, if you are contesting or trying to establish paternity and you are financially eligible, you are entitled to the services of a free, court-appointed attorney (sometimes referred to as an 18-b attorney) solely to help with the paternity aspect of the case. You are also entitled to a court-appointed attorney if you are a non-custodial parent at risk of being incarcerated for not paying child support.

If the child is on public assistance and you are the custodial parent, you will have an attorney assigned to your case, but the attorney represents HRA, not you.

Finally, if you are a custodial parent, the Support Collection Unit may be able to provide legal representation (as well as investigative services beyond the basic computer search)) for a minimal charge that can be deducted from future child support payments.

## **What should I do if I believe that the Hearing Examiner made a mistake?**

If you believe that the Hearing Examiner made a mistake in deciding the child support award in your case, you may have the decision reviewed by a judge. You have thirty (30) days to file written objections if you received the order in court or if it was personally handed to you. You have thirty-five (35) days from the date the order was signed if you received it by mail. The Clerk at Family Court can assist you in preparing your objections. In the meantime, you must obey the Hearing Examiner's order.

The other parent can file a written rebuttal to your objections. They have thirteen (13) days from the date they receive the objections to do so.

The judge will review what the Hearing Examiner did and issue a written opinion. If you believe that the judge made a mistake, you can appeal to the Appellate Division.

## **I am the non-custodial parent.**

**The custodial parent is preventing me from visiting with my children. Do I still have to pay court-ordered child support?**

## **I am the custodial parent.**

**The non-custodial parent has stopped paying child support. Do I have to let him/her visit with our children?**

Visitation and child support are treated separately by the Family Court. Regardless of the situation with visitation, the non-custodial parent must continue to pay court-ordered child support. Likewise, regardless of the situation with child support, the custodial parent must continue to comply with a court-ordered visitation schedule.

## **Can I get the child support order changed?**

A child support order can be changed if there is a **significant change** in circumstances. Such a change is called an "**upward (or downward) modification.**"

If you are a custodial parent and you think that the non-custodial parent is making significantly more money than they were when you got the order, or if caring for your children has become significantly more expensive, or if you are a non-custodial parent and you are making significantly less money, you can go back to the Family Court that issued the original order and file for an upward or downward modification of the order.

If you are the custodial parent and your children are not receiving PA and you have moved, you can file in the Family Court in the borough where you live now. If you are the non-custodial parent and you have moved, you have to either go to the Family Court that issued the order or the Family Court where the children live now, but you can ask to appear in court by phone if you cannot make the trip.

**If you are a non-custodial parent and you lose your job or start making less money the order will stay the same until you file a petition for a downward modification. You must continue to pay under the old order until you get a new order of support.**

### **What if the non-custodial parent does not make payments?**

If you are having trouble collecting child support, you can contact the Support Collection Unit (SCU). The telephone number for SCU Customer Services and Helpline is: (212) 226-7125 or, TTY, for the hearing impaired, (212) 226-7652.

The SCU can (a) help you find the non-custodial parent, (b) arrange for the child support payments to be taken directly out of their their paycheck or unemployment check, (c) send information on the nonpayment to the credit bureaus which may affect their non-custodial parent's ability to get credit, (d) seize tax refunds and lottery winnings, (e) suspend the non-custodial parent's driver's license or even or professional licenses, such as a license to practice medicine or law and (f) freeze that parent's bank accounts. The SCU also keeps a record of your case and all payments made. Finally, when an order is made payable through the SCU, the SCU automatically reviews the order and will take steps to have it adjusted for increases in the cost of living, if appropriate.

In addition to asking for help from the SCU, you can also go back to court if the non-custodial parent has not made payments and the Hearing Examiner can take steps to enforce the order, up to and including ordering the non-custodial parent jailed. The Hearing Examiner is not likely to order that the non-custodial parent be jailed unless that parent is able to pay and the non-payment of support has been going on for a long time.

**If you have more questions about child support you can call the SHIELD Program's Legal Advice Helpline at (212) 626-7383 between the hours of 9:00 - 12:30, Monday through Friday.**

## How to estimate the amount of child support the court will order in your case

It is not difficult to estimate how much the non-custodial parent will be ordered to pay, if the parent works "on the books" and you know roughly how much money he or she makes. (If the parent does not work on the books, it is more difficult to predict how much he or she will be ordered to pay, because the Hearing Examiner's initial determination of how much money the parent is making is dependent on many factors. For example, the determination will depend on how much evidence the custodial parent is able to produce regarding the non-custodial parent's expenses and lifestyle.)

**To make the calculation of child support**, take the non-custodial parent's gross annual income. This includes income from any source, not just work.

**Second**, subtract from this amount, any money they paid in for Medicare and Social Security taxes. These may appear as "FICA" on their W-2 or pay stub.

**Third**, subtract any money that the parent paid in New York City or Yonkers taxes. These may appear as "local" or "city" taxes on their W-2 or pay stub. **NOTE:** If you don't have a copy of the non-custodial parent's W-2 or pay stub, but you know the parent works on the books in New York City or Yonkers, you can approximate his or her Medicare, Social Security, and city taxes by multiplying the gross income by 10% (.10). Then subtract that amount from the gross income.

**Fourth**, you should also subtract any child support that the parent pays pursuant to a court order for their other children.

**Fifth**, after you subtract Medicare, Social Security, local taxes and any other child support from the non-custodial parent's gross income (other expenses may be subtracted too, but these are the most common), multiply the result by the applicable percentage. The percentages are 17% (.17) for one child, 25% (.25) for two children, 29% (.29) for three children, 31% (.31) for four children, and at least 35% (.35) for five or more children. The result is the amount of child support that the non-custodial parent will owe each year. To find out how much would be owed each month, divide by twelve.

Attempts at Service Log

Date	Time of Day	Address	Comments

SHIELD (The Center for Self-Help, Information, Education and Legal Defense) is a program of the Association of the Bar of the City of New York Fund, Inc.

SHIELD is funded in part by the New York State IOLA Fund, the New York Community Trust, the Mary J. Hutchins Foundation, the Rhodebeck Charitable Trust and Equal Justice Works. This brochure was made possible by a contribution by Patricia H. Trainor.