

Legal Assistance of Western New York, Inc. ®

Child Support Arrears

We provide free legal aid to people with civil legal problems in western New York.

www.lawny.org

Child Support Arrears Cap

Family court can cap a parent's child support arrears at \$500 when his/her income is below poverty level guidelines. Typically, family court cannot forgive the debt of unpaid child support, but in certain circumstances, the court can stop the accrual of arrears above \$500. This cap prevents money judgments in large amounts and high interest rates.

The non-custodial parent has the responsibility to request the cap and to prove that the cap applies to his/her situation. First, the non-custodial parent must file the proper documents with the family court. If a violation petition is already pending, the non-custodial parent can file a motion to apply the cap. If there is no violation petition, the non-custodial parent can file a modification petition to request the cap and a lower child support order. Second, the non-custodial parent must prove that his/her income was below the poverty level guidelines for one person during any or all periods of nonpayment. The poverty level for one person in 2017 is \$252 per week. Paystubs, tax returns, public assistance or food stamp awards, and other financial documents help to prove income during the periods when he/she did not pay child support. To determine whether the cap applies to a particular situation, the court will consider several factors, including 1) whether the parent's income was below poverty when the order was issued; 2) whether the parent's income fell below poverty level through his/her fault; 3) whether the parent tried hard enough to increase his/her income to satisfy the child support order; and 4) whether the parent requested the cap soon after he/she stopped making payments. The parent should provide testimony and documentation related to these considerations.

Although a non-custodial parent can request the cap without an attorney, a free attorney might be available to assist him/her. If the parent wants to request the cap during a pending violation petition, he/she is entitled to assigned counsel. He/she can ask the family court to assign an attorney to the case. If there is only a modification petition, the parent is not entitled to assigned counsel. However, he/she can contact the LawNY office in his/her county to learn if there are resources available to represent him/her and if he/she qualifies for that service.

Printed: April 23, 2019

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