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

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Public Assistance and Child Support

Note: The genders used below are for simplicity in most of the article. For example, if you are a father caring for a child under 21 and you apply for Public Assistance, you may also have to go through the requirements below. The difference will be that DSS will want information on the mother of the child.

What happens if I already receive child support?

If you have a child support order and you are on Public Assistance, child support paid by the absent parent is usually paid to the Support Collection Unit. The Support Collection Unit may be part of the Department of Social Services (DSS) office in your county. If you have one child, your local DSS gives you the first \$100 of support received for that child in the month in addition to your regular Public Assistance grant. This is called a “pass-through”. If you have two or more children, your pass-through is the first \$200 of support received for the children. Your local DSS keeps the rest of the support collected as reimbursement for Public Assistance it pays you.

If the other parent pays you support directly, you are required to turn it over to your local DSS. You will then receive the pass-through.

If the support order is more than your welfare grant plus the pass-through, your Public Assistance case will be closed. You will receive all the child support instead.

What are the child support cooperation requirements?

If you apply for Public Assistance or receive Public Assistance and there is a child under 21 in your household, you must:

1. Turn over (“assign”) your right to get support to the Department of Social Services (DSS).
2. Cooperate with DSS to:
 - a. name the father of your child (“establish paternity”).

b. get any support owed to you and any child living with you.

What do I have to do to cooperate?

To cooperate, you must:

1. Meet with the Child Support Enforcement Unit (“CSEU”, which is sometimes called “4D”).
2. Provide information to identify and locate the father, including:
 1. name
 2. social security number
 3. date of birth
 4. telephone number
 5. address
 6. employer’s name and address

If you do not know some of this information, you must fill out, sign, and swear to a form called “Attestation to Lack of Information”.

1. Go to court or other hearings if needed to establish paternity or establish, modify or enforce support.
2. Have a DNA test and take the child for a DNA test, if ordered by a court.

You may see the father referred to as either an “absentee parent” or as the “putative father.” This can be confusing if you have heard of these terms before. If there is a child in the household, a parent who lives outside the household is referred to as an “absentee parent.” If the child’s father lives in the household but is not married to the mother and has not been recognized by a court to be the father of the child, he is a “putative father.”

Are there exceptions to the child support cooperation requirements?

Yes, there are exceptions. You do not have to cooperate if you have “good cause.” This is another way of saying you have one or more good reasons. Good cause is found when pursuing paternity or child support would not be in your child’s best interest. Some examples of good cause are:

1. Cooperation is likely to cause physical or emotional harm to you and/or your child.
2. The child came from a pregnancy due to incest or rape.
3. You are trying to have your child adopted.

If you do not want to pursue child support because you are a victim of domestic violence, you should tell DSS. DSS should have an employee for just this type of situation. They are called the domestic violence liaison. If you tell DSS that you do not want to pursue child support because of domestic violence, you will be referred to talk to the domestic violence liaison. The domestic violence liaison can grant a waiver. With the waiver, you do not have to cooperate with seeking support or establishing paternity.

How do I claim good cause?

Tell DSS that you want to claim good cause for not pursuing child support. If you are applying for assistance or recertifying, you can check the box at the bottom of the Notice of Responsibilities and Rights for Child Support form that are required to sign. The box says that you “cannot pursue child support as it would expose my children or myself to physical or emotional harm.”

You do not have to wait for that form though. You can claim good cause at any time if something happens to make pursuing child support harmful to you or your children.

What happens when I claim good cause?

When you claim good cause, DSS must look into your reason. You will have 20 days to give DSS any documents that support your claim. These can include court documents, medical records, child protective services or police records. These can also include statements from other people that have seen how the other parent might harm you or your child.

Tell DSS if you know you need help getting these documents. If you try to get the documents and cannot you should contact DSS and tell them this. DSS should help you if you tell them you cannot get the documents on your own. DSS should not contact the other parent without telling you first.

You are excused from cooperating with child support requirements while your good cause claim is being decided. DSS must decide on your good cause claim within 30 days from the date you make it.

When DSS makes a decision, they can decide to do one of the following:

- **Accept** your claim for good cause and not proceed with establishing paternity and support.
- **Accept** your claim for good cause, but proceed with establishment of paternity and support without your participation. They do this if they believe it can be done without causing harm to you or your child.
- **Deny** your claim for good cause. If your claim of good cause is denied, you are given the choice of withdrawing your application, cooperating with child support requirements, or being sanctioned for not cooperating (see below).

What can I do if DSS denied my claim for good cause?

If DSS denies your claim for good cause and you disagree you can request a Fair Hearing. See the bottom of this article for more information on how to request a Fair Hearing.

If I am pregnant do I have to cooperate in establishing paternity and support from the baby's father?

No. You cannot be sanctioned for refusing to cooperate with paternity or support establishment before the baby is born. If you are applying or receiving Public Assistance and are pregnant, you will be referred to the CSEU. They will encourage you to pursue support and they may initiate

paternity or support proceedings on your behalf. If the alleged father denies that the child is his, the CSEU cannot continue with the paternity case until 60 days after your baby is born.

What happens if I do not cooperate with child support requirements?

If you are required to cooperate with child support requirements and you do not cooperate, you can be sanctioned by DSS. This means that the amount of Public Assistance you and your family receive can be cut by 25%. This reduction will last until you comply with the requirements.

What can I do if DSS sanctions me for not cooperating and I disagree?

If DSS sanctions you for not cooperating and you disagree you can request a Fair Hearing. See the bottom of this article for more information on how to request a Fair Hearing.

How do I request a Fair Hearing?

You can request a Fair Hearing by mail, telephone, fax, or by using the Internet. Your request goes through a New York State agency called the Office of Temporary and Disability Assistance (OTDA).

MAIL:

You can mail your request to:

**New York State Office of Temporary and Disability Assistance
Office of Administrative Hearings
P.O. Box 1930
Albany, New York 12201-1930.**

FAX:

You can fax your request to (518) 473-6735.

TELEPHONE:

You can request a hearing by telephone by calling **1-800-342-3334**

INTERNET:

To request a hearing using the Internet, you should go to <http://www.otda.state.ny.us/> and then click on the "Programs and Services" button on the left side. From there, follow the options to request a Fair Hearing online.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

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