



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT

NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT

8.50.111.12, Contempt Proceedings
8.50.130.13, Contesting Tax Refund Intercept In Responding Interstate Cases

III. PROGRAM AFFECTED

(TITLE IV) CHILD SUPPORT ENFORCEMENT

IV. ACTION

PROPOSED RULES

V. BACKGROUND SUMMARY

The Human Services Department (the Department) through the Child Support Enforcement Division (CSED), is proposing amendments to rules *8.50.111.12 NMAC, Contempt Proceedings; 8.50.130.13 NMAC, Contesting Tax Refund Intercept in Responding Interstate Cases.*

Changes in the rules are to update language, incorporate standardized rule language, and to provide additional clarification in sections of the rules.

The Department proposes to amend rules as follows:

8.50.111.12 NMAC

Deleted language stating that contempt proceeding are used to enforce an existing order when the non-custodial parent has failed to make support payments as ordered. Revised language IV-D agency will peruse contempt provisions when the non-custodial parent has an ability to pay or otherwise comply with the order.

Adding Section A-C: Adding language stating the IV-D agency will screen case, provide court information regarding the non-custodial parent ability to pay or otherwise comply with the order. IV-D agency will provide clear notice to non-custodial parent that his or her ability to pay constitutes the critical question in the civil contempt action.

8.50.130.13 NMAC

Section B: Deleted language stating at the same time, the central registry sends the OCSE and update to report that the matter is being transferred to the initiating state for the purpose of conducting an administrative hearing.

VI. RULES

These proposed rules will be contained in 8.50.111.12 NMAC, 8.50.130.13 NMAC.

This register and the proposed changes are available on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/Default.aspx>. If you do not have internet access, a copy of the proposed rules may be requested by contacting the Child Support Enforcement Division at 505-476-7186.

VII. EFFECTIVE DATE

The Department proposes to implement these rules effective January 1, 2020.

VIII. PUBLIC HEARING

A public hearing to receive testimony on these proposed rules will be held in ASD/HSD Large Conference Room on the 1st floor, 1474 Rodeo Rd, Santa Fe, New Mexico on Wednesday, July 31, 2019, from 9:00 a.m. to 10:00 a.m. , Mountain Daylight Time (MDT) .

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division in Santa Fe at 505-476-7186. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 505-827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by CSED upon request by providing copies directly to a requestor or by making them available on the CSED website or at a location within the county of the requestor.

IX. ADDRESS

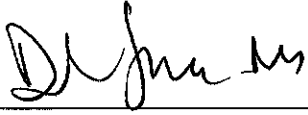
Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: Child Support Enforcement Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 476-7186. Interested persons may also address comments via electronic mail to: Jennifer.Salazar-Va@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MST on July 31, 2019. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

X. PUBLICATIONS

Publication of these rules approved by:

A handwritten signature in cursive script, appearing to read "Dr. David Scrase", positioned above a horizontal line.

DR. DAVID SCRASE, SECRETARY
HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM
PART 111 GENERAL ENFORCEMENT OF SUPPORT OBLIGATIONS

8.50.111.1 ISSUING AGENCY: New Mexico Human Services Department - Child Support Enforcement Division.

[8.50.111.1 NMAC - Rp, 8.50.111.1 NMAC, 12/30/10]

8.50.111.2 SCOPE: To the general public. For use by the IV-D agency and recipients of IV-D services.

[8.50.111.2 NMAC - Rp, 8.50.111.2 NMAC, 12/30/10]

8.50.111.3 STATUTORY AUTHORITY: Public Assistance Act, NMSA 1978, Section 27-2-27. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).

[8.50.111.3 NMAC - Rp, 8.50.111.3 NMAC, 12/30/10]

8.50.111.4 DURATION: Permanent.

[8.50.111.4 NMAC - Rp, 8.50.111.4 NMAC, 12/30/10]

8.50.111.5 EFFECTIVE DATE: December 30, 2010, unless a later date is cited at the end of a section.

[8.50.111.5 NMAC - Rp, 8.50.111.5 NMAC, 12/30/10]

8.50.111.6 OBJECTIVE: To provide regulations in accordance with federal and state laws and regulations.

[8.50.111.6 NMAC - Rp, 8.50.111.6 NMAC, 12/30/10]

8.50.111.7 DEFINITIONS: [RESERVED]

[See 8.50.100.7 NMAC]

8.50.111.8 GENERAL ENFORCEMENT OF SUPPORT OBLIGATIONS: The IV-D agency uses a variety of processes, both administrative and judicial, to enforce support obligations.

[8.50.111.8 NMAC - Rp, 8.50.111.8 NMAC, 12/30/10]

8.50.111.9 PERSONS OWING OVERDUE SUPPORT: Pursuant to state and federal law, the IV-D agency may seek to obtain an order that requires the obligor to adhere to the support obligations or, if the person is not incapacitated, to participate in work activities. The IV-D agency does not charge a late fee for overdue support.

[8.50.111.9 NMAC - Rp, 8.50.111.9 NMAC, 12/30/10]

8.50.111.10 INTEREST CALCULATIONS: The IV-D agency calculates interest in accordance with:

A. New Mexico law regarding the accrual of interest on support obligations is applied to New Mexico support orders; and

B. the interest rules of the issuing state (state that issued the order) apply when New Mexico registers a foreign support order; the initiating state (state requesting registration of a foreign support order) is responsible for providing an accurate audit to include interest, as appropriate.

[8.50.111.10 NMAC - Rp, 8.50.111.12 NMAC, 12/30/10]

8.50.111.11 NON-DISCHARGEABILITY IN BANKRUPTCY: A debt of support is not released by a discharge in bankruptcy. (11 USC 523 (a)).

[8.50.111.11 NMAC - Rp, 8.50.111.15 NMAC, 12/30/10]

8.50.111.12 CONTEMPT PROCEEDINGS: ~~Contempt proceedings are used to enforce an existing order when the non-custodial parent has failed to make support payments as ordered.~~ The IV-D agency will pursue contempt provisions when the non-custodial parent has an ability to pay or otherwise comply with the order, as appropriate. If an obligor is found by a court to be in contempt of court, the IV-D agency may request the court issue a bench warrant for the arrest of the obligor. Any bond requested by the IV-D agency in a bench warrant shall be a cash only bond to be paid to the IV-D agency and distributed in accordance with federal and state laws regarding distribution of support payments.

A. The IV-D agency will screen the case for information regarding the non-custodial parent's ability to pay or otherwise comply with the order.

B. The IV-D agency will provide the court with information regarding the non-custodial parent's ability to pay or otherwise comply with the order.

C. The IV-D agency will provide clear notice to the non-custodial parent that his or her ability to pay constitutes the critical question in the civil contempt action.

[8.50.111.12 NMAC - Rp, 8.50.111.16 NMAC, 12/30/10]

8.50.111.13 GARNISHMENT: The IV-D agency may pursue garnishment of an obligor's wages to reduce his or her arrearage balance. A garnishment will not be pursued if there is currently a wage withholding in effect.
[8.50.111.13 NMAC - Rp, 8.50.111.17 NMAC, 12/30/10]

8.50.111.14 LIENS: The Title IV-D agency has in effect and uses procedures for the imposition of liens against the real or personal property of an obligor who owes overdue support and who resides or owns property in New Mexico. Once a lien is secured, a release of lien will not be issued until there is a complete or partial satisfaction of the arrears, or upon agreement of the parties.
[8.50.111.14 NMAC - Rp, 8.50.111.18 NMAC, 12/30/10]

8.50.111.15 POSTING OF BOND, GUARANTEE, OR OTHER SECURITY: The IV-D agency may request the court to order an obligor to secure the support payment by bond, guarantee, surety or other security deemed appropriate by the court.
[8.50.111.15 NMAC - Rp, 8.50.111.19 NMAC, 12/30/10]

8.50.111.16 STATE OR FEDERAL CRIMINAL PROSECUTIONS: The IV-D agency will refer support obligors for state or federal criminal prosecution pursuant to state and federal law (See 18 USC 228 and NMSA 1978, Section 30-6-2). During the time a referral is being considered by or accepted by a state or federal agency for prosecution, the IV-D agency will suspend civil enforcement (court proceedings) unless otherwise instructed by the appropriate prosecutor's office. The IV-D agency will continue to administratively enforce the obligation.
[8.50.111.16 NMAC - Rp, 8.50.111.20 NMAC, 12/30/10]

HISTORY OF 8.50.111 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

ISD CSEB 501.1100, State and Local Requirements, 6-23-80.

ISD CSEB 501.1100, State and Local Requirements, 6-23-80.

ISD CSEB 561.0000, Procedures for Enforcement, 6-23-80.

ISD CSEB 564.0000, Collection by IRS, 6-23-80.

ISD CSEB 564.0000, Collection by IRS, 3-7-84.

ISD CSEB 565.0000, U.S. District Court Enforcement, 6-23-80.

ISD CSEB 566.0000, Voluntary Wage Allotments of Federal Employees and Processing of Garnishment Orders for Child Support and/or Alimony, 11-3-81.

NMAC History:

8 NMAC 5.CSE.000 through 8 NMAC 5.CSE.970, 12-30-94.

History of Repealed Material:

8 NMAC 5.CSE, Child Support Enforcement - Repealed effective 5/31/2001.

8.50.111 NMAC, General Enforcement of Support Obligations, filed 5/14/2001 - Repealed effective 12/30/2010.

TITLE 8 SOCIAL SERVICES
CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM
PART 130 ADMINISTRATIVE HEARINGS

8.50.130.1 ISSUING AGENCY: New Mexico Human Services Department - Child Support Enforcement Division

[8.50.130.1 NMAC - Rp, 8.50.130.1 NMAC, 12/30/2010]

8.50.130.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of IV-D services.

[8.50.130.2 NMAC - Rp, 8.50.130.2 NMAC, 12/30/2010]

8.50.130.3 STATUTORY AUTHORITY: Public Assistance Act, NMSA 1978, Section 27-2-27. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).

[8.50.130.3 NMAC - Rp, 8.50.130.3 NMAC, 12/30/2010]

8.50.130.4 DURATION: Permanent.

[8.50.130.4 NMAC - Rp, 8.50.130.4 NMAC, 12/30/2010]

8.50.130.5 EFFECTIVE DATE: December 30, 2010, unless a later date is cited at the end of a section.

[8.50.130.5 NMAC - Rp, 8.50.130.5 NMAC, 12/30/2010]

8.50.130.6 OBJECTIVE: To provide regulations in accordance with federal and state law and regulations.

[8.50.130.6 NMAC - Rp, 8.50.130.6 NMAC, 12/30/2010]

8.50.130.7 DEFINITIONS: [RESERVED]

[See 8.50.100.7 NMAC]

8.50.130.8 ADMINISTRATIVE HEARINGS: The Title IV-D agency will provide for administrative hearings for:

A. an obligor requesting a review pertaining to an adverse administrative order, or referral for federal tax intercept, state tax intercept, referral for passport denial, lien on lottery winnings, lien on gaming winnings, or the FIDM program;

B. any IV-A recipient or former IV-A recipient who believes he or she is entitled to receive part or all of a support payment that was received by the Title IV-D agency but not disbursed to the recipient;

C. an obligor's spouse who requests the refund of more than one-half of a state tax intercept; and

D. an owner as defined in 8.50.132.7 NMAC who is claiming an interest in undistributed collections.

[8.50.130.8 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010]

8.50.130.9 IN GENERAL:

A. The hearing process provides the appellant notice and an opportunity to assert his or her claim.

B. Hearing appellant: A hearing "appellant" for the purpose of these regulations is any obligor, obligor's spouse (only in cases involving a state tax intercept), or obligee requesting and entitled to a review.

C. Appellant's rights: the right to a hearing includes the right:

(1) to be advised of the nature and availability of a hearing;

(2) to safeguards of the appellant's opportunity to present a case;

(3) to have prompt notice and implementation of the decision based upon the hearing; and

(4) to be advised that judicial review may be invoked to the extent such review is available

under state law.

[8.50.130.9 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010]

8.50.130.10 NOTICE OF ADMINISTRATIVE ENFORCEMENT ACTION:

A. Notices to obligor of referral to tax-offset program: The IV-D agency sends written notice to inform an obligor that the amount of his or her past-due support will be referred for a tax refund offset. One or more of the following notices is sent:

- (1) FMS pre-offset notice (obligor);
- (2) taxation and revenue department pre-offset notice (obligor);
- (3) taxation and revenue department pre-offset notice (injured spouse);
- (4) IRS notice of offset; and
- (5) taxation and revenue department final distribution notice.

B. Notice to obligor of FIDM freeze order: The Title IV-D agency will mail a copy of the freeze order to the obligor at the last known address on file with the IV-D agency. The freeze order will inform the aggrieved party of the right to appeal the order by mailing a request for appeal within fifteen (15) calendar days by certified mail to the address indicated on the form provided by the IV-D agency.

C. Notice to obligor of administrative lien on lottery and gaming winnings: The Title IV-D agency will mail a copy of the notice of administrative lien to the obligor at the last known address on file with the IV-D agency.

D. Notice to obligor for passport referral: Notice regarding the referral for passport denial is included in the FMS offset notice and is sent to the obligor at the last known address on file with the IV-D agency.

E. Notice to owner of an undistributed collection: The Title IV-D agency will mail a copy of the notice of undistributed collection to the owner at the last known address on file with the IV-D agency.

[8.50.130.10 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010]

8.50.130.11 TIME FRAMES FOR REQUESTING AN ADMINISTRATIVE HEARING: In all cases where a time frame is not specifically provided, the appellant has fifteen (15) calendar days following the date of mailing of notice by the IV-D agency to submit a written request for an administrative hearing. The appellant has thirty (30) days from the date on the pre-offset notice to request a hearing. In order to be considered timely, the request for a hearing on a pre-offset notice must be received by the Title IV-D agency no later than the close of business on the thirtieth (30th) day, or the next business day if the thirtieth (30th) day is a Sunday or federally recognized holiday.

[8.50.130.11 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010]

8.50.130.12 CONTESTING TAX REFUND INTERCEPT IN INTERSTATE CASES:

A. If an appellant requests an administrative hearing in writing, a tax hearing request form is completed by the appellant or the IV-D staff and is submitted within ten (10) days to the administrative law judge. The administrative law judge sends a notice of acknowledgment to the appellant and to the respective Title IV-D agency worker. The notice and acknowledgement shall include a statement regarding the timeliness of the request for hearing. In non-Title IV-A cases, the Title IV-D agency notifies the custodial party of the time and place of the administrative hearing. The Title IV-D agency worker should be available to testify at the administrative hearing.

B. If the appeal concerns an IRS joint tax refund that has not yet been intercepted, the appellant is informed that the IRS will notify the injured spouse at the time of intercept regarding the steps to take to secure his or her proper share of the refund. If the appeal concerns a joint tax refund that has already been intercepted, the injured spouse is referred to the IRS to seek resolution.

[8.50.130.12 NMAC - Rp, 8.50.130.9 NMAC, 12/30/2010]

8.50.130.13 CONTESTING TAX REFUND INTERCEPT IN RESPONDING INTERSTATE CASES:

Administrative hearing requests are referred to the central registry in the responding state if the obligor requests a hearing in that state.

A. When the obligor, after receiving the FMS offset notice from the other state, contacts the Title IV-D agency worker, the worker may refer the obligor to the state that issued the notice. However, if the obligor contacts the Title IV-D agency as the last resort because he or she cannot get assistance from the other state, the worker may contact the other state, or refer the obligor to central registry and central registry staff will contact the other state.

B. If a request from the obligor for an administrative hearing in New Mexico is received and the case was submitted based on another state's order, a review of the arrearage computation submitted for tax intercept and the underlying documentation, and any new evidence provided by the appellant is completed, and an attempt is made to resolve the complaint. If the complaint cannot be resolved by the Title IV-D agency worker and the obligor requests an administrative hearing in the initiating state, the other state is notified by the New Mexico Title IV-D agency of the request and all necessary information is provided within ten (10) days of the obligor's request for an administrative hearing. ~~At the same time, the central registry sends the OCSE an update to report that the matter is being transferred to the initiating state for the purpose of conducting an administrative hearing.~~

C. The initiating state is responsible for all procedures required for conducting a hearing within that state.
[8.50.130.13 NMAC - Rp, 8.50.130.10 NMAC, 12/30/2010]

8.50.130.14 CONTESTING THE DENIAL OF PAYMENT OF AN UNDISTRIBUTED COLLECTION:

If an appellant requests an administrative hearing, an undistributed collections hearing request form is completed by the appellant or the IV-D staff and is submitted within ten (10) days to the administrative law judge. The administrative law judge sends a notice of acknowledgement to the appellant and to the respective Title IV-D agency worker to include a statement regarding the timeliness of the request for hearing.
[8.50.130.14 NMAC - N, 12/30/2010]

8.50.130.15 INITIATION OF HEARING PROCESS:

A. A request for hearing must be made in writing.
B. Receipt of a written hearing request shall be acknowledged in writing to the appellant by the administrative law judge.
C. Upon the request of the appellant, the IV-D staff shall assist in the preparation of a notice of hearing. The notice of hearing will be signed by the appellant.
[8.50.130.15 NMAC - N, 12/30/2010]

8.50.130.16 DENIAL/DISMISSAL OF REQUEST FOR HEARING:

A. The administrative law judge may deny or dismiss a request for hearing when:
(1) the request is not received within the specified time period;
(2) the situation has been resolved;
(3) the request is not made in writing; or
(4) a written withdrawal of request for hearing is received from the appellant, or a written agreement settling all issues is approved by all parties and is submitted to the administrative law judge.
B. A request for a hearing is considered abandoned and therefore dismissed if neither the appellant nor his or her representative appears at the time and place of the hearing, and if, within ten (10) days after a notice of abandonment is mailed by the administrative law judge, the appellant has not presented good cause for failing to appear. Good cause includes verification of a death in the family, doctor's note verifying a disabling personal illness, or other significant emergencies. At the discretion of the administrative law judge, a showing of exceptional circumstances is considered good cause.
[8.50.130.16 NMAC - Rp, 8.50.130.13 NMAC, 12/30/2010]

8.50.130.17 NOTICE OF HEARING: As early as possible and not less than ten (10) days prior to the hearing, written notice is sent by the administrative law judge to all parties involved in the hearing. The notice shall set forth the time, date and place of the hearing. Arrangements will be made to ensure that the hearing process is accessible to and accommodates the appellant, as long as the appellant provides at least ten (10) days advance notice to the administrative law judge of the need for reasonable accommodations. The notice of hearing includes an explanation of the hearing process and limitation of the scope of the hearing, the procedures to be followed during the hearing, and notification that the appellant should be ready to produce any required witnesses at the hearing and secure legal counsel prior to the hearing. The appellant is told that neither the department nor the IV-D agency will pay for any representation or legal counsel for appellant or for any hearing costs. The issuance of a notice of hearing by the administrative law judge shall act to stay the administrative action, pending the issuance of a ruling on the merits of the hearing.
[8.50.130.17 NMAC - Rp, 8.50.130.12 NMAC, 12/30/2010]

8.50.130.18 APPELLANT'S RIGHTS: The appellant is given adequate opportunity to review and present evidence that is within the scope of the hearing.

A. The appellant may examine all documents to be used at the hearing prior to the date of the hearing, as well as during the hearing. If requested, the IV-D staff will provide copies of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records that the appellant will not otherwise have an opportunity to challenge will not be introduced at the hearing or affect the administrative law judge's decision.

B. The appellant may present his or her case or have it presented by a representative.

C. The appellant may bring witnesses he or she wants to present information that he or she believes is important to his or her case.

D. The appellant may advance arguments without undue interference.

E. The appellant may question or overcome any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

F. The appellant may submit relevant evidence to support pertinent facts and defenses in the case. [8.50.130.18 NMAC - Rp, 8.50.130.14 NMAC, 12/30/2010]

8.50.130.19 TITLE IV-D AGENCY RESPONSIBILITY: To ensure an appellant's rights during the hearing process, the IV-D agency shall:

A. make available, in a timely manner, without charge, the case documents (excluding any privileged, safeguarded or confidential information) necessary for an appellant or representative to determine whether a hearing should be requested or to prepare for a hearing;

B. provide a translator if the appellant is not proficient in English; and

C. prepare a summary of evidence to include all documents to be presented by the Title IV-D agency at the hearing and all documents should be provided to the appellant, or his or her representative, by the Title IV-D agency at least ten (10) days prior to the hearing.

[8.50.130.19 NMAC - Rp. 8.50.130.15 NMAC, 12/30/2010]

8.50.130.20 PRE-HEARING ACTIVITY:

A. Preliminary conference: A preliminary conference may be scheduled prior to the hearing to discuss the issues concerning the hearing. The preliminary conference is held between the IV-D agency worker, the appellant, and the appellant's representative, as applicable. The administrative law judge is not involved and will not participate in the preliminary conference. This conference may provide an opportunity to resolve the dispute. A preliminary conference may lead to an informal resolution of the dispute. However, a hearing shall still be held unless the appellant makes a written withdrawal of his or her request for a hearing. If a written withdrawal is received by the IV-D agency worker, it must be forwarded to the administrative law judge. Appellants are advised that the preliminary conference is optional and that it will not delay or replace the hearing process.

B. The purposes of the pre-hearing conference include, but are not limited to:

(1) clarification, formulation and simplification of issues;

(2) resolution of some or all issues;

(3) exchange of documents and information;

(4) review of any audit findings; and

(5) discussion of other matters that might help dispose of any of the pending issues.

C. Matters left unresolved: If all matters in controversy are not resolved at the preliminary conference, a hearing is held.

D. Tax hearing request form: If the dispute cannot be resolved, within ten (10) days of the receipt of the request for administrative hearing, a tax hearing request form is sent to the child support enforcement division, administrative support bureau.

[8.50.130.20 NMAC - Rp, 8.50.130.16 NMAC, 12/30/2010]

8.50.130.21 CONDUCT OF HEARING:

A. Conduct of a hearing is as follows:

(1) all hearings are conducted telephonically;

(2) the hearing is not open to the public;

(3) the administrative law judge identifies for the record all persons present at the hearing;

and

(4) the administrative law judge takes administrative notice of those matters the same as state courts take judicial notice of, including the IV-D agency's policies and procedures.

B. Record: A hearing is electronically recorded. The recording is placed on file at the hearings unit and is available for examination by the appellant or representative for thirty (30) days following the hearing. If a decision is appealed, an index log of the tape is prepared by the Title IV-D agency and a copy of the index log is supplied to the appellant free of charge.

C. Admission of evidence: Formal rules of evidence and civil procedure do not apply. The administrative law judge may allow hearsay testimony if it is deemed relevant to the decision. The rules of privilege will be effective to the extent that they are recognized in civil actions in the New Mexico district courts.

D. Case records: An appellant or representative is allowed to examine the entire hearing case record before, during and after the proceedings. The appellant or representative must request the hearing record and the Title IV-D agency will provide the record within a reasonable period of time.
[8.50.130.21 NMAC - Rp, 8.50.130.17 NMAC, 12/30/2010]

8.50.130.22 DECISION MAKING:

A. Authority: The hearing decision is based only on the evidence introduced and admitted by the administrative law judge during the hearing. This includes the record of the testimony, all reports, documents, forms, etc., made available at the hearing, provided that the appellant was given an opportunity to examine them as part of the hearing process.

B. Written decision: The administrative law judge will issue a written hearing decision notice within twenty (20) business days after the hearing. The decision will clearly state whether the administrative law judge is finding in favor of the appellant of the Title IV-D agency and shall include reference to the admitted evidence that supports the decision.
[8.50.130.22 NMAC - Rp, 8.50.130.18 NMAC, 12/30/2010]

8.50.130.23 IMPLEMENTATION OF DECISIONS: The administrative law judge's decision is final and binding on all issues within the scope of a hearing and that have been the subject of a hearing, unless stayed by an appeal or a district court order.

A. Decision favorable to appellant regarding offsets:
(1) If the administrative hearing results in a deletion of, or decrease in, the amount referred for tax intercept, the tax intercept unit notifies the OCSE within ten (10) business days of the administrative hearing.
(2) If, as a result of the administrative hearing, an amount which has already been offset is found to have exceeded the amount of past-due support owed, the IV-D agency refunds the excess amount to the obligor promptly, and reports the refund to the OCSE. In joint return cases, the refund check is made payable to both parties.

B. Decisions regarding liens on lottery, gaming, or FIDM: The Title IV-D agency will take appropriate action in accordance with the decision of the administrative law judge. If the administrative law judge rules in favor of the appellant, the Title IV-D agency will take action to fully or partially release a freeze order or administrative lien, as appropriate. If the administrative law judge rules in the agency's favor, the Title IV-D agency will proceed to have the funds routed to the Title IV-D agency for distribution to the obligor's case(s) or held with the Title IV-D agency until all appeals relevant to the action have been exhausted or foreclosed due to deadlines.
[8.50.130.23 NMAC - Rp, 8.50.130.19 NMAC, 12/30/2010]

8.50.130.24 RIGHT OF APPEAL: Either party has the right to judicial review of the hearing decision or a denial of a hearing issued pursuant to 8.50.130.15 NMAC other than for a written withdrawal of request for hearing signed by the appellant. If a hearing decision is in favor of the Title IV-D agency, appellant is notified of the right to pursue judicial review of the decision at the time of the decision.

A. Timeframes for appealing decision: Within thirty (30) days after the date on the hearing decision notice, an appellant or the Title IV-D agency may appeal a decision by filing an appropriate action for judicial review with the clerk of the appropriate district court, and filing a copy with the Title IV-D administrative law judge.

B. Record sent to district court: All appeals to the district court are on the record made at the hearing. The administrative law judge files one (1) copy of the hearing record with the clerk of the appropriate district court and furnishes one copy to the appellant within twenty (20) days after receipt of the notice of appeal.

C. Stay pending appeal: An appeal to the state district court shall act as a stay of the underlying administrative action, pending the court's ruling.
[8.50.130.24 NMAC - Rp, 8.50.130.20 NMAC, 12/30/2010]

8.50.130.25 STATE DIRECTORY OF NEW HIRES PENALTY ASSESSMENT HEARINGS: The human services department, Title IV-D agency, has established a hearing process that provides for impartial review of New Mexico state directory of new hires claims against non-complying employers. (45 USC 653(d)). For purposes of these regulations, an employer requesting a hearing is referred to as an appellant.

A. Appellant eligibility: The IV-D agency established a hearing process for any individual who meets the following criteria:

(1) any employer who believes he or she has been erroneously assessed penalties; and

(2) who has been unable to resolve this issue with the New Mexico state directory of new hires representative at a preliminary conference.

B. Hearing appellant: A hearing appellant for the purposes of these regulations is any employer requesting review. The right to file a request for a hearing is not to be limited or interfered with in any way by the IV-D agency as long as the request is made in a timely manner.

C. Appellant's rights: The right to a hearing includes the right:

- (1) to be advised of the nature and availability of a hearing;
- (2) to be represented by counsel or other person of the appellant's choice;
- (3) to have a hearing that safeguards the appellant's opportunity to present a case;
- (4) to have prompt notice and implementation of the decision on the hearing, and
- (5) to be advised that judicial review may be invoked to the extent such review is available

under state law, and that the IV-D agency does not pay for the cost of such proceedings; the requirements of due process apply to hearing proceedings.

D. Penalty assessment notice: The New Mexico state directory of new hires sends written notice to inform an employer that penalties have been assessed. Each penalty assessment notice will:

- (1) cite the statutory authority (NMSA 1978, Section 50-13-4) for the assessment of the penalty;
- (2) include the name and last four digits of the social security number for each party not reported;
- (3) list the total amount of penalties assessed;
- (4) inform the employer that failure to report is the basis for penalty and does not require a knowing or deliberate act on the part of the employer;
- (5) inform the employer that conspiracy can be established by circumstantial evidence;
- (6) list requirements for employers to request a hearing if they disagree with the assessment;
- (7) provide the name and business telephone number of a Title IV-D agency contact to provide additional information or answer questions relating to the assessment of penalties.

E. Time frames for requesting hearing: The appellant has thirty (30) days from the date on the penalties assessment notice to submit a written request for a hearing. In order to be considered timely, the request must be received by the administrative law judge no later than the close of business on the thirtieth (30th) day. When a timely request for hearing is received by the administrative law judge, the administrative law judge notifies the new hires directory, state project manager immediately so that a preliminary conference can be scheduled.

F. Notice of hearing: Upon receipt of a timely request for hearing, written notice is sent by the administrative law judge to all parties involved in the hearing regarding the time, date and place of the hearing. Arrangements will be made to ensure that the hearing process is accessible to and accommodates the appellant. In the hearing notice, appellants are also given an explanation of the hearing process, the procedures to be followed for the hearing, and enough time to secure witnesses or legal counsel. The appellant shall be informed that neither the department nor the IV-D agency pays for representation or legal counsel for appellant or for any hearings costs, and are provided the name and business telephone number of a contact who can provide additional information relating to the assessment of penalties. A hearing may be continued or rescheduled with the consent of all parties.

G. State directory of new hires responsibility: To ensure an appellant's rights during the hearing process, the state directory of new hires staff will:

- (1) upon request, make available in a timely manner the documents necessary for an appellant or representative to determine whether to request a hearing or to prepare for a hearing;
- (2) upon request, help appellant submit a written hearing request.

H. Effect of issuance of notice of hearing: All provisions contained in sections 8.50.130.15, 8.50.130.17, 8.50.130.19, 8.50.130.20 and 8.50.130.22 NMAC apply when a notice of hearing is issued pursuant to subsection F above.

[8.50.130.25 NMAC - Rp, 8.50.130.21 NMAC, 12/30/2010]

History of 8.50.130 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

ISD CSEB 501.1100, State and Local Requirements, 6/23/1980.

NMAC History:

8 NMAC 5.CSE.000 through 8 NMAC 5.CSE.970, 12/30/1994.

History of Repealed Material:

8 NMAC 5.CSE, Child Support Enforcement - Repealed effective 5/31/2001.

8.50.130 NMAC, Administrative Hearings, filed 5/14/2001 - Repealed effective 12/30/2010