



STATE OF MICHIGAN

DEPARTMENT OF HUMAN SERVICES
LANSING

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IV-D MEMORANDUM 2011-021

TO: All Friend of the Court (FOC) Staff
All Prosecuting Attorney (PA) Staff
All Office of Child Support (OCS) Staff

FROM: Marilyn F. Stephen, Director
Office of Child Support

DATE: October 10, 2011

SUBJECT: Termination of Parental Rights – Michigan Supreme Court Decision

UPDATE(S):

- Manual
- Form(s)

RESPONSE DUE: None

POLICY EFFECTIVE DATE: Upon receipt

PURPOSE:

This IV-D Memorandum discusses the Michigan Supreme Court's December 2010 decision in the Beck case (In re Beck, 488 Mich 6 [2010]) regarding child support and the termination of parental rights. It responds to several questions regarding the impact this decision has on processing IV-D cases.

DISCUSSION:

1. What was the Michigan Supreme Court's decision in the Beck case (In re Beck, 488 Mich 6 [2010])?

The Michigan Supreme Court determined that the termination of a parent's *rights* does not terminate the parent's *obligation* to support his/her child unless a court specifically modifies or terminates that support obligation.

When a parent loses his/her rights to the child, (s)he loses any entitlement to the custody, control, services and earnings of the child. However, to distinguish the loss of "rights" from the "obligations" (or "duties") of parents, the court referenced the Status of Minors and Child Support Act. In this Act, rights and duties are discussed as separate and distinct. The loss of one does not mean the loss of the other.

Consequently, without a court specifically terminating the parent's duty to support a child, the duty continues.

Note: The Adoption Code ensures that if a child is **adopted**, the duty of the previous parent(s) to support the child **does terminate**.

2. Does the Beck decision mean that the IV-D worker (the FOC) will continue to enforce current support on orders that already exist in IV-D cases?

Such a question is best answered by the State Court Administrative Office (SCAO). However, it is OCS's expectation that absent an order that terminates the parent's obligation to support the child, the IV-D worker will continue enforcing the order pursuant to the law.

3. Does the Beck decision mean that the support specialists (SSs) will refer cases to PAs to obtain a support order against a parent who has lost his/her parental rights if no support order currently exists?

Yes. Since the Michigan Supreme Court indicates that the "duty" to support continues even upon the termination of rights, the SS will refer the case to the PA to obtain a support order if **all** other case criteria for support order establishment exist. The fact that parental rights have been terminated is not a determining factor for proceeding with order establishment. If the SS has a copy of the termination order, (s)he will review it to determine if it terminates the parent's duty to support. If it clearly terminates the duty to support, the SS will not send a court action referral (CAR).

The SS will transmit a CAR if:

- (S)he does not have a copy of the termination of parental rights order;
- The order fails to terminate the duty to support; or
- (S)he is unsure if the order terminates the duty to support.

When transmitting the CAR to the PA, the SS will document that parental rights have been terminated. The SS will include, if known, the name and location of the court that terminated the parent's rights, the docket number, and the approximate date of the termination.

4. Does the Beck decision mean that OCS, the PA and the FOC will continue to establish and enforce medical support obligations in IV-D cases?

Yes. Medical support, including health insurance coverage, is considered support pursuant to Michigan Compiled Law (MCL) 552.605 and 552.519. Consequently, a parent's obligation to pay cash medical support or to obtain insurance will continue.

5. Will the Beck decision affect IV-D staff's ability to obtain IV-D funding on these cases? Will the federal Office of Child Support Enforcement refuse to fund establishment and enforcement activities with IV-D funds even though these same activities appear appropriate pursuant to the Beck decision?

Establishment and enforcement activities against parents whose rights have been terminated **are eligible** for federal financial participation. The fact that Michigan has a Supreme Court decision that establishes parents' continuing obligation to support their children even in the face of rights termination is authorization enough to continue to work on those children's behalf using IV-D funds.

6. Employers and their insurance providers may refuse to comply with a *National Medical Support Notice (NMSN)* or otherwise discontinue insurance coverage for the child if the employee/parent alerts them to the order of rights termination. Who will inform the employers and providers of the Beck decision?

There is no plan to broadly notify employers of this change. However, this topic will be discussed at the next meeting of the Michigan State Disbursement Unit's Employer Advisory Group.

Page 5 of the NMSN says:

The employer must continue to withhold employee contributions and may not disenroll (or eliminate coverage for) the child(ren) unless ...

- a. The court or administrative child support order referred to in this Notice is no longer in effect; or
- b. The child(ren) is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan.

The Beck decision ensures that termination of parental rights does not meet the standard in "a," above. Consequently, it is the IV-D program's position that the employer/provider must continue to comply with the NMSN.

It is possible that the terms of an employer's health insurance coverage plan may exclude a child as a "dependent" under the plan if parental rights have been terminated. Under section 609(a)(4) of Title I of the Employee Retirement Income Security Act (ERISA), the NMSN does not require a plan to provide any type or form of benefit or any option not otherwise provided under the plan.

If the employer's failure to comply with the NMSN is brought to IV-D staff's attention, they may inform the employer/provider of the Beck decision. However, IV-D staff

should refer the employer/provider to his/her own legal counsel for legal advice. If the employer/provider persists in his/her failure to comply and does not satisfactorily explain why, the court may wish to pursue an Order of Show Cause against the employer to give him/her an opportunity to defend his/her action.

7. How does the Beck decision affect intergovernmental cases in which Michigan is either the initiating or responding state, and parental rights were terminated by a Michigan court or another state's court?

FOC staff must contact SCAO for assistance. Others may contact OCS's Policy Section for assistance if this type of case situation exists.

8. Will the Beck decision change the Department of Human Services (DHS) foster care workers' approach to IV-D referrals?

Yes. The current policy manual for foster care workers requires that they **not** refer cases for IV-D activity if the parents' rights have been terminated unless the court specifically requires support to continue. This policy will change to reflect that the termination of parental rights will not prevent a IV-D referral. However, as always, foster care workers may not refer the child for IV-D activity if it is not in the child's best interest. (Ref: [DHS's Children's Foster Care Manual \[FOM 722-1.\]](#))

NECESSARY ACTION:

Retain this IV-D Memorandum until further notice.

REVIEW PARTICIPANTS:

Program Leadership Group

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SCAO

SUPPORTING REFERENCES:

Federal
Section 609(a)(4) of Title I of ERISA

State
MCL 552.519
MCL 552.605
Status of Minors and Child Support Act

ATTACHMENT(S):

None

MFS/MCA