



STATE OF MICHIGAN  
FAMILY INDEPENDENCE AGENCY  
LANSING



JENNIFER M. GRANHOLM  
GOVERNOR

NANNETTE M. BOWLER  
DIRECTOR

**MICHIGAN IV-D ACTION TRANSMITTAL 2003-013**

**To:** All Friend of the Court Offices  
All Prosecuting Attorneys  
All Office of Child Support Staff

**From:** Marilyn Stephen, Director  
FIA Office of Child Support

**Date:** July 21, 2003

**Subject:** Qualified Domestic Relations Orders and Eligible Domestic Relations Orders:  
Obtaining and Disbursement

PURPOSE

This Action Transmittal sets forth the policy for obtaining Qualified Domestic Relations Orders and Eligible Domestic Orders in Child Support Cases.

Pensions, IRAs and other retirement accounts may be attached through a QDRO or EDRO for the support of a child. QDRO/EDROs are orders that are specific to a certain case and alternate payee. Because the orders are specific to particular cases, support amounts received pursuant to the QDRO/EDRO must be allocated and disbursed to that case. Income Withholding Notices ("IWN") on the other hand are immediately obtained on all child support cases and are allocated across all of an Non Custodial Parent's ("NCP") cases regardless of county of origin. Payments from an IWN are processed through the State Disbursement Unit ("SDU") where they are allocated across the cases. SDU is not currently able to identify special payment cases like the QDRO and direct monies to a particular case.

To resolve the specific payment issue, Michigan IV-D Action Transmittal 2003-005 provides that support obtained from a QDRO is to be sent to the Friend of the Court office in the county where the QDRO/EDRO was issued, and allocated and disbursed to the case or cases specific to the order.

The counties attaching pension accounts through QDROs and EDROs have discovered that some plan administrators are sending payments to the SDU where they are improperly allocated between all of a NCP's cases.

POLICY

QDROs/EDROs are very effective methods of obtaining child support payments. They can be used to obtain monthly support (i.e. if the NCP is retired) or to pay arrearages in a lump sum

payment. Currently the law provides that to assign pension money a QDRO or EDRO must be used. Both QDRO and EDROs must be ordered by the court and deemed “qualified” or “eligible” by the plan administrator. These requirements make a QDRO/EDRO case specific, and support money obtained through these instruments are designated to the named alternate payee.

### **Obtaining a QDRO/EDRO**

Because QDRO/EDROs are case specific and most be allocated to a particular case, the monies obtained should not be sent to the SDU, as they would be allocated across all of the NCP’s cases. Therefore to allocate properly, payments must be made to the Friend of the Court, rather than the SDU until such time as the National Automated Clearinghouse Association (NACHA) formatting can be changed to allow for the identification of specific cases.

The Friend of the Court may initiate the process by making a motion before the Court for a QDRO/EDRO. This can be done as a part of a show cause hearing or through an independent Friend of the Court motion.

The Friend of the Court should use the standard QDRO/EDRO form and contact the plan administrator to determine whether there are any unique provisions that must be included and to determine the correct name of the plan and its address. The QDRO/EDRO should include a provision stating that the Alternate Payee agrees the Friend of the Court may act as the Alternate payee’s agent and that the Plan Administrator must direct payments to the Friend of the Court office. The FOC should code payments with a “Q” receipt code on the CBAT and BATR screens. It is recommended that all orders establishing a QDRO/EDRO contain language allowing the FOC to make adjustments in the QDRO/EDRO without further court order to satisfy the plan administrator.

### **Notification of QDRO/EDROs in All Counties with an NCP’s Case**

At the time the Friend of the Court Office has determined a QDRO/EDRO is an appropriate method of collecting child support, the Friend of the Court office shall consult the CSUM (Case Summary) or CLST (Case List) screens on MiCSES 2.4 to determine whether the NCP has child support cases in other counties. If another case is located, the Friend of the Court shall notify they other Friend of the Court office to notify of the existence of the pension or retirement account A QDRO/EDRO should be entered in every active support case that qualifies for a QDRO/EDRO and where the ordered support payment amount is not being met.

Counties using QDRO/EDROs must use the QDRO chain to set the stage for when NACHA format has been changed to include identification of payments.

Should you suspect payments are going to the SDU rather than FOC, please contact the plan administrator and remind him/her that QDRO/EDRO payments are to be made to the FOC. Please also see the QDRO work around procedure designed to handle this specific situation.

## WORKING ARRANGEMENTS

### **Friend of the Court**

Friend of the Court will motion the court for the Qualified or Eligible Domestic Relations Order, and will contact other counties which have a case for the Non-Custodial Parent, to help obtain concurrent QDRO/EDROS. Friend of the Court will also receipt payments from Plan Administrators.

### **OCS –Central Enforcement Unit**

Central Enforcement Unit may help locate information regarding other jurisdictions in which the NCP, subject to a QDRO/EDRO, has cases.

## LEGAL BASIS

29 USC 1056 allows for private pension and retirement accounts to be assigned to an alternate payee for the purpose of paying child support through an Qualified Domestic Relations Order (“QDRO”).

MCL 38.1701 provides for the assignment of retirement benefits in the government retirement system through the use of a Eligible Domestic Relations Order (“EDRO”).

## LEGAL REQUIREMENTS

*29 USC 1056* - Private pension accounts are protected from assignment unless they are attached through a Qualified Domestic Relations Order.

*29 USC 1056(d)* – “Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.” . . .

*29 USC 1056(d)(3)* – “Paragraph (1) shall apply to the creation, assignment or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.”

*29 USC 1056(G)(ii)* – Requires each plan to establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

*MCL 38.1703* - Provides the right of an alternate payee to an interest in a share of a retirement benefit of a government plan, that is or will become payable to a participant.

*MCL 38.1708* – Provides that the assignment of an interest in a government retirement plan, through an EDRO is not a prohibited assignment under a retirement system.

*MCR 3.208(C)(2) and (3)* – Provides conditions under which a payment will be applied to a particular case rather than allocated and distributed across all of the obligor’s cases.

If the court determines that following the guidelines established by the state court administrator would produce an unjust result in a particular case, the court may order that receipts be made in a different manner... If a payer with multiple cases makes a receipt directly to the friend of the court rather than through a income withholding, and the payer requests a different allocation in writing at the time of the receipt and provides (specific) information about each case for which the receipt is intended.

*MCL 400.237 Transition schedule.*

(1) The department shall develop a schedule for the transition from receipt and disbursement of support and fees by offices of the friend of the court to centralized receipt and disbursement by the state disbursement unit. The schedule may provide for the transition to take place in stages so that, during the transition period, the SDU is responsible for the receipt and disbursement of the support and fee payments of less than all the payers and recipients of support whose cases are administered by a particular office of the friend of the court. In developing the schedule, the department shall consult with other state agencies and with local agencies.

*MCL 552.509*

(2) An office shall receive support order and service fee payments, and shall disburse support, as required by subsection (1) until the state disbursement unit implements support and fee receipt and disbursement for the cases administered by that office. At the family independence agency's direction and in cooperation with the SDU, an office shall continue support and fee receipt and support disbursement to facilitate the transition of that responsibility to the SDU as directed in, and in accordance with the transition schedule developed as required by, the office of child support act, 1971 PA 174, MCL 400.231 to 400.240.

DEFINITIONS

*Alternate Payee* – any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order in having a right to receive all or a portion of the benefits payable under a plan with respect to the participant.

*Domestic Relations Order* – any judgment, decree, or order which relates to the provision of child support or alimony payments and is made pursuant to a State domestic relations order.

*Eligible Domestic Relations Order* – a domestic relations order that is considered an eligible domestic relations order that attaches government plans.

*Government Plan* – includes any city, county, state, federal, military, or railroad retirement plan.

*Participant* – a member of a pension plan. Also referred to as the Non-Custodial Parent (“NCP”).

*Plan* – refers to the private sector or public entity retirement plan.

*Plan Administrator* – the person or persons who administer the plan. If the name of the plan administrator is not in the plan document, the employer is considered to be the plan administrator.

*Qualified Domestic Relations Order* - a domestic relations order which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a participant under a pension plan.

#### LEGAL AUTHORITY

29 USC 1056  
MCL 38.1701  
MCL 38.1703  
MCL 38.1708  
MCL 400.237  
MCL 552.509  
MCR 3.208

#### REFERENCE MATERIALS

FIA Action Transmittal 2003-05  
Combined IV-D Policy Manual (4DM 545)  
MI-SUPPORT intranet website Work Around

#### AT MAINTENANCE:

This policy supplements AT 2003-05, which deals with special payments.

EFFECTIVE DATE: Upon receipt.

#### REVIEW PARTICIPANTS:

Steven Capps, State Court Administrators Office  
Mike Day, Friend of the Court Association  
Ron Kollen, Child Support Systems

CONTACT PERSON: Denise Stork, Policy Analyst, Office of Child Support  
(517) 241-5053, [storkd@michigan.gov](mailto:storkd@michigan.gov)

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