

THE WIZARDS OF MODS

Pulling back the curtain
to defy problems
and build wicked good solutions

Presented By:

Hon. Timothy P. Thurtle, Family Magistrate, Anne Arundel County

Samantha Phillips-Chester, J.D., Deputy Executive Director, Programs, DHS

Keri Smolka Kelly, Assistant Attorney General, Howard County DSS

THE PROLOGUE

Adorable Young Elphaba – is paternity an issue?



Three Roads to Request Modification

1. File Pro Se Petition to Modify Child Support, form CC-DR-006

- Pro – expedient filing date
- Pro – automatically gets set before Court (subject to service)
- Con - \$31.00 filing fee unless waiver of court costs granted
- Con – no attorney assistance to present case
- Con – must locate and serve other party

2. Hire private counsel

- Pro – represented by attorney, may expedite filing date
- Con – legal fees

3. Department's Modification Packet

- Pro – FREE
- Pro – Department presents case
- Pro – Department will effectuate service of other party
- Con – may take six months to process request which pushes back filing date

Common Issues with Modifications

Retroactivity! How to reconcile the length administrative review process with the statutory retroactivity to filing date

- How to reconcile retroactivity when there is a private custody order regarding the child(ren) at issue granting the obligor custody but child support is not addressed

How does a customer get information on if/when/how to request a modification?

- No per child orders so emancipation is not automatic decrease
- UIFSA/CEJ, where to file and who can modify
- CSA does not file modification on arrears-only cases
- Controlling child support guidelines imperative to determine material change

What is this elusive “modification packet” that we hear about?

Dear Child Support Recipient or Payor:

The novel coronavirus, known as COVID-19, has caused a worldwide pandemic which has impacted the health and financial wellbeing of many individuals. You may find that you need to seek a modification of child support to account for material changes in your employment, custody, or expenses relating to childcare or health care. To better serve you, the Child Support Administration (CSA) developed this COVID-19 Modification Request packet.

Generally, in order to qualify for a child support modification, there must be a “material change in circumstances.” Examples include:

- Emancipation or change in custody of one or more children
- A change in job status of either party – this includes a loss of employment or reduction in hours, unless this change was voluntary (in other words, one of the parties quit his/her job)
- Increased or decreased childcare expenses
- Medical expenses

This packet includes the following documents:

- A six-page *Modification Review Questionnaire* – This questionnaire includes requests for additional relevant documents that must be submitted with your complete modification packet. These additional document requests are highlighted in yellow, bolded, italicized and underlined.
- The *Notice of Legal Representation* – This document verifies that you understand the attorneys who work for the local Offices of Child Support do not represent you.
- The two-page *Financial Statement* – This document, which is signed under penalties of perjury, verifies your income and expenses. You only need to fill in the areas under “FINANCIAL STATEMENT” (and not the case caption information above that, which will be completed by an attorney if a modification is filed).
- A two-page listing of *Local Child Support Offices* where you will need to submit your complete Modification Packet – This document is yours to keep, so you will know how to contact the appropriate local child support office.
- A listing of *Local Self-Help Centers and Non-Profit Legal Services Providers* that can assist you with seeking a modification of child support free of charge – This document is yours to keep in case you want to request a modification on your own.

How to Request a Modification Through the Local Office Child Support

To request a child support modification review from your local child support office, you must complete the Modification Review Questionnaire, Notice of Legal Representation, and Financial Statement (all of which are contained in this packet), and send them – along with the additional documentation requested – to the child support office in the county (or Baltimore City) where your case occurred. Contact information for all local child support offices is provided in this packet.

Failure to submit (1) the Modification Packet; (2) the Notice of Legal Representation; (3) the Financial Statement; and (4) all other requested supporting documents will result in delays in your

modification request being processed. Failing to provide additional documentation requested by the local child support office or the opposing party, or willfully withholding or misrepresenting relevant information may result in (1) denial of your modification review request, or (2) withdrawal of a previously filed Motion for Modification of Child Support.

Once the local child support office receives your documents, they will contact the opposing party in the case, and request additional information from him/her. After all documents have been received, you will receive written notification regarding whether the local child support office intends to file a child support modification request in your case. Please note that this process may take up to 180 days.

Please be advised that, if the local child support office determines, in its opinion, that there is sufficient evidence of a material change in circumstances justifying a modification of support, they will file a request for modification regardless of whether the modification benefits the original requestor or the opposing party. For example, if the requesting party wanted to increase child support, but the local child support office determined that a decrease is appropriate, the office will seek a decrease in the child support obligation. Likewise, if the requesting party wanted to decrease the child support obligation, but the local office found that an increase was appropriate, they would file for an increase in child support.

Alternative Methods of Requesting Modification of Child Support

You can also file a request for a modification with the Court on your own instead of filing a request with the local child support office or after the child support office has declined to file a request on your behalf. You may wish to hire a private attorney to assist you with that filing, or you may seek assistance from a non-profit legal service provider or local self-help center. A listing of local self-help centers is provided with this packet. Due to COVID-19, many of the local self-help centers are not operating or have significantly reduced their hours and operations; however the Maryland Court Self-Help Center is available by calling 410-260-1392, or by reaching out online at www.courts.state.md.us/selfhelp.

Your child support award will not change unless a Court reviews a motion to modify the amount and decides that a modification is appropriate. The Court may backdate the change to the date when the motion was filed with this Court. However, the Court cannot modify any arrears that accrued prior to the filing of the Motion for Modification of Child Support with the Court.

If you have any questions about the information in this packet, please call the toll-free CSA hotline at 1-800-332-6347.

Thank you,

Maryland Child Support Administration

Modification Packet Cover Sheet



REMEMBER TO:



Provide a copy of your I.D



Provide all applicable supporting documentation



Make sure the packet is fully completed



Sign & Date the Financial Statement and Notice of Legal Representation

SEND PACKET VIA EMAIL OR MAIL TO:

HOCOCSA.LEGAL@MARYLAND.GOV

-OR-

HOWARD COUNTY CHILD SUPPORT ADMINISTRATION
9780 PATUXENT WOODS DRIVE
COLUMBIA, MD 21046
ATTN: LEGAL UNIT

Issues with modification packet

Requestor does not understand that the date a modification packet is submitted is NOT the date of filing

Packet is not filled out completely

Required documents are not provided

Unable/did not provide controlling court order and/or guidelines

Did not complete/sign financial statement

ACT ONE – THE ADMINISTRATION



Agency Perspective - Now

- Customers are not knowledgeable about the modification process (e.g. when you should file and what circumstances)
- Agency Pre-screening vs. Pro Se - delays preserving the filing date
- Non-Moving Party reluctant to attend settlement conference for Mods.

How is someone notified their modification is denied?

Child Support Administration
Prince George's County
PO Box 17286
Baltimore, MD 21297



January 22, 2025



Re: Custodial Parent:
Non-Custodial Parent:
Case Number:



Dear [REDACTED]:

Please be advised that your request for modification of the child support order has been received and reviewed. Based on the information provided, it appears that this order does not meet the necessary criteria for modification at this time pursuant to the Maryland Uniform Child Support Guidelines, Family Law Article Sec. 12-202 et seq, Annotated Code of Maryland as follows:

You indicated that your reason for requesting a modification is the emancipation of your child, Rashad Starke, born December 27, 2006. A high school verification form (attached) was provided to our office, and said child's expected graduation date is May, 2025. If a child turns 18, but is still in high school, they are not considered emancipated until they turn 19, or graduate high school, whichever comes first. This is also stated in your order, which I have attached. See page 2 of your order, 2nd clause.

If you wish to pursue this matter further, you may seek private counsel or file for a modification on your own.

If you have any questions regarding this matter, please call [REDACTED].

Thank you for your prompt response and cooperation.

Sincerely,

Mod Trn Link.png

Just the stats brought to you from Prince George's County

2024 - Case Load # # 30,382	
#of Modification packets received	398
#NCP Mod apps	243
#CU mod apps	155
#forwarded to interstate workers	34
#ones processed as establishment	0
#approved for filing	147
#rejected - Top 3 reasons for rejections	211
Less than 36 mo	
No 25% / Mat. Change	
Insuffcient Info	

Agency Perspective - Future

- Training and engagement when the order is filed to set clear expectations
- Increased engagement when the customer files a mod to reduce the rate of rejection

ACT TWO – LEGAL REVIEW



Dancing Through Law

MD Family Law § 12-104. Modification of support award

- ▶ (a) The court may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance.
- ▶ (b) The court may not retroactively modify a child support award prior to the date of the filing of the motion for modification.
- ▶ (c) If a party becomes incarcerated, the court may determine that a material change of circumstance warranting a modification of child support has occurred, provided that the party's ability to pay child support is sufficiently reduced due to incarceration.

No Good Deed

MD Family Law § 10-115. Initiation of legal proceedings; legal representation

- ▶ (b) In any support action in which the Administration is providing child support services under federal law, the Administration may initiate a legal proceeding to establish, modify, or enforce a duty of support.
- ▶ (d) An attorney who initiates or participates in a legal proceeding under this section shall represent the Administration.
- ▶ (e) Representation of the Administration by an attorney under this section:
 - ▶ (1) creates an attorney-client relationship between that attorney and the Administration; and
 - ▶ (2) does not create an attorney-client relationship between that attorney and any other person.
- ▶ (f) The attorney representing the Administration in a legal proceeding under this section shall advise the person whom the Administration has approved for child support services that the attorney's representation of the Administration does not create an attorney-client relationship between the attorney and that person.

Behind the Scenes



- ▶ CSA attorneys must ensure modification is legally sufficient before signing off on filing
- ▶ Customers often do not provide necessary documentation with modification packet
- ▶ Unemployment is often considered a temporary change in circumstances
- ▶ Controlling guidelines required to sign off on a Modification
- ▶ UIFSA/CEJ - can Maryland even modify the order? Is it a Maryland order?

Just the Stats

Brought to you by Howard County

- ▶ Case Load = 4014 cases, 3302 with court orders
- ▶ Calendar Year 2024
- ▶ 103 modification packets received (3.1% cases with orders)
 - ▶ 71 NCP/Obligor requests (69%)
 - ▶ 32 CU/Obligee requests (31%)
 - ▶ 7 forwarded to interstate enforcement worker
 - ▶ 4 - MD lost CEJ as neither party still resides in Maryland
 - ▶ 3 - Not a Maryland order to modify
 - ▶ 9 processed as establishment
 - ▶ General charge/in lieu of/obligation suspended --> specific support
- ▶ Of the 87 remaining:
 - ▶ 19 approved for filing (22%)
 - ▶ 68 denied (78%)

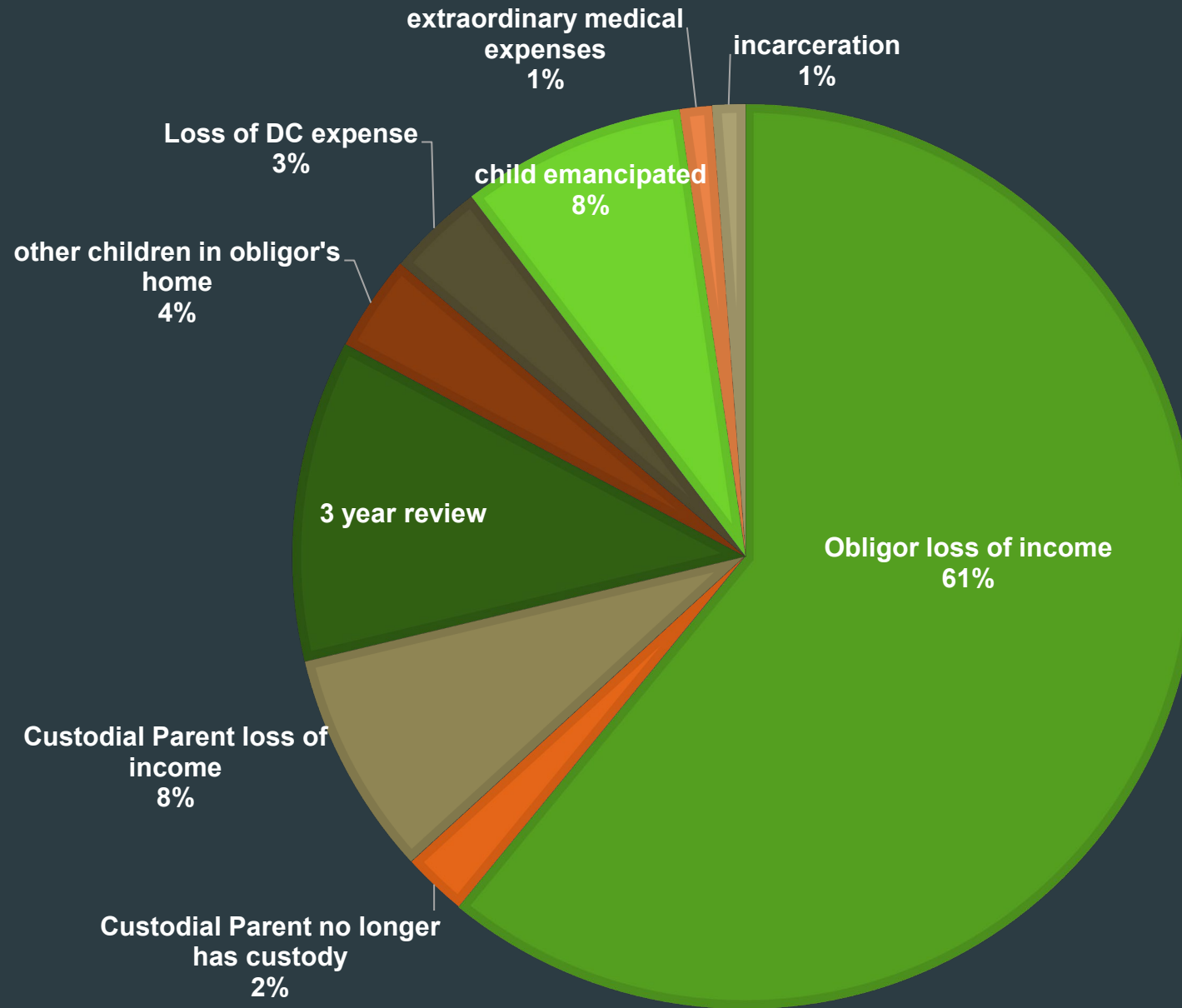
More Stats from our friends in Frederick

Approximately 50
modification packets per
year forwarded from
Department to SAO/Legal

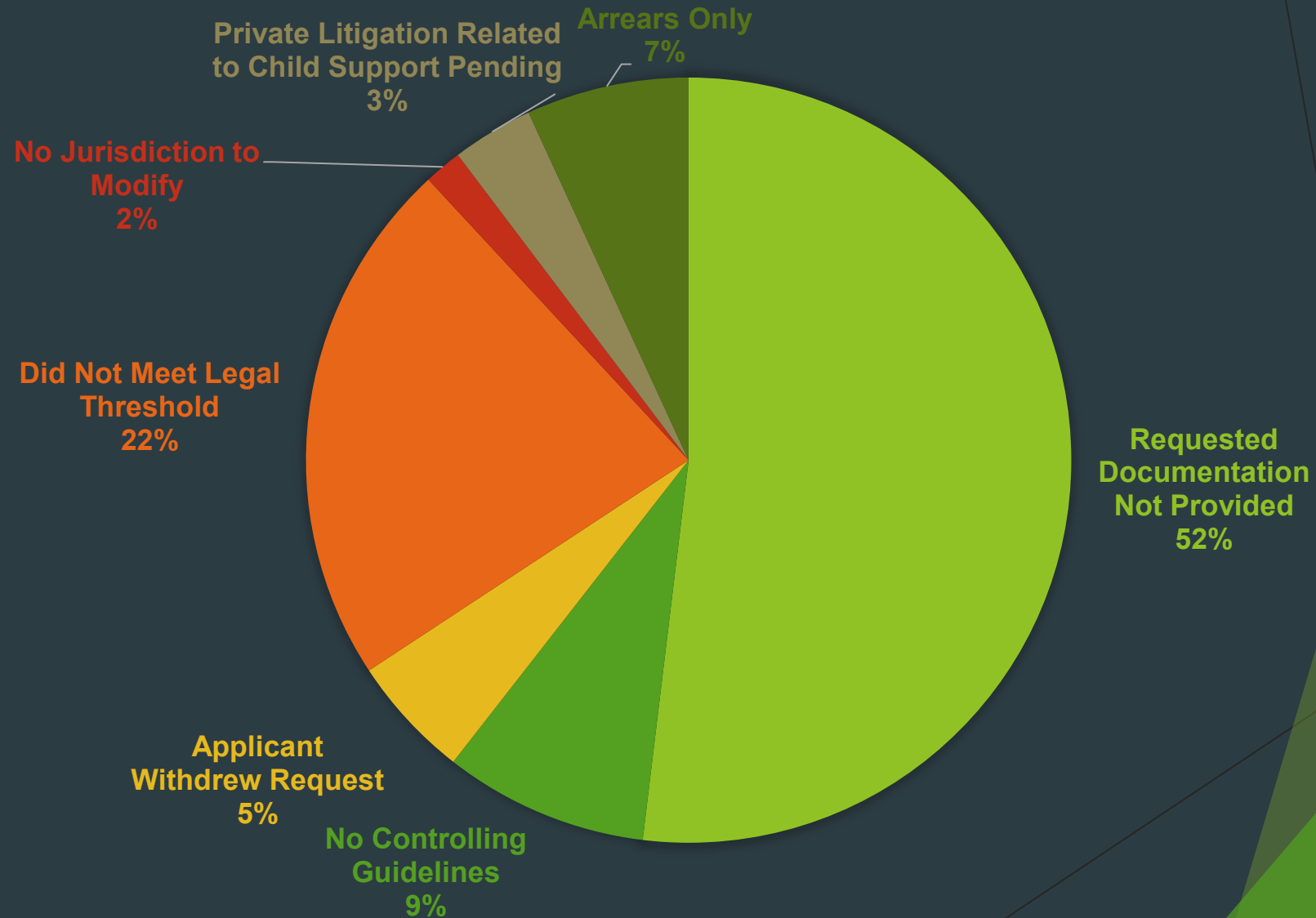
In the last four months,
22 modification packets
received from the
Department

- Of the 22, only 6 approved

WHAT IS THE *ARTICULATED** BASIS FOR SEEKING A MODIFICATION?



Why was the modification packet denied?



How is someone notified their modification is denied?



Howard County Department of Social Services



410-872-8700 | 9780 Patuxent Woods Drive | Columbia | Maryland 21046 | howco.dss@maryland.gov

Howard County Department of Social Services

Child Support Administration

9780 Patuxent Woods Drive

Columbia, MD 21046

RE: _____ vs _____

Review of Child Support Order

Child Support Case No.: _____

Dear _____:

Your case has been reviewed for a possible change of the amount of child support ordered in your case. After reviewing the information needed to calculate the child support, it is decided that your case does not meet the Child Support Administration's criteria to file a Complaint to Modify Child Support in the Circuit Court at this time. The Department is denying your request for services to file for a modification in your case for the following reason(s).

1. The Maryland child support guidelines indicate only a small change in the current amount ordered. It is not substantial enough for the Department to file a modification with the court.
2. The Maryland child support guidelines indicate that a(n) _____ in child support may be warranted.
3. This office is unable to establish the other parent's income information necessary to review your support order. The child support guidelines cannot be calculated without this information.
4. Maryland does not have jurisdiction over your case. The State of _____ has jurisdiction to decide any modification of your case. You can request the other state modify your child support.
5. The change in your circumstances is only temporary and not expected to last longer than six months.
6. A child in your case has emancipated. However, the following changes have occurred since the child support was set by the court, resulting in no significant change in the amount of the guidelines:
Your income has increased.
Expenses for your child(ren) have increased.
7. There is private litigation pending in your case. We cannot file for a modification while this is occurring.
8. The reason stated for your request does not meet the legal requirements for a modification.

www.dhr.maryland.gov

Equal Opportunity Employer

Wes Moore, Governor | Aruna Miller, Lt. Governor | Rafael López, Secretary | Dr. Calvin Ball, County Executive

Geneva Rieus, Director

☐ 9. You did not provide all documents requested and necessary to review your support order

☐ 10. Other:

The Department's decision to deny your request to file for a modification in this case does not prevent you from seeking services to file for a modification somewhere else. You can obtain the services of a private attorney, seek help from the Family Law Assistance Program at the Howard County Circuit Court Law Library by contacting 410-313-2135, or you may file on your own. Forms are available online at <https://www.courts.state.md.us/family/family-forms>.

Regards,

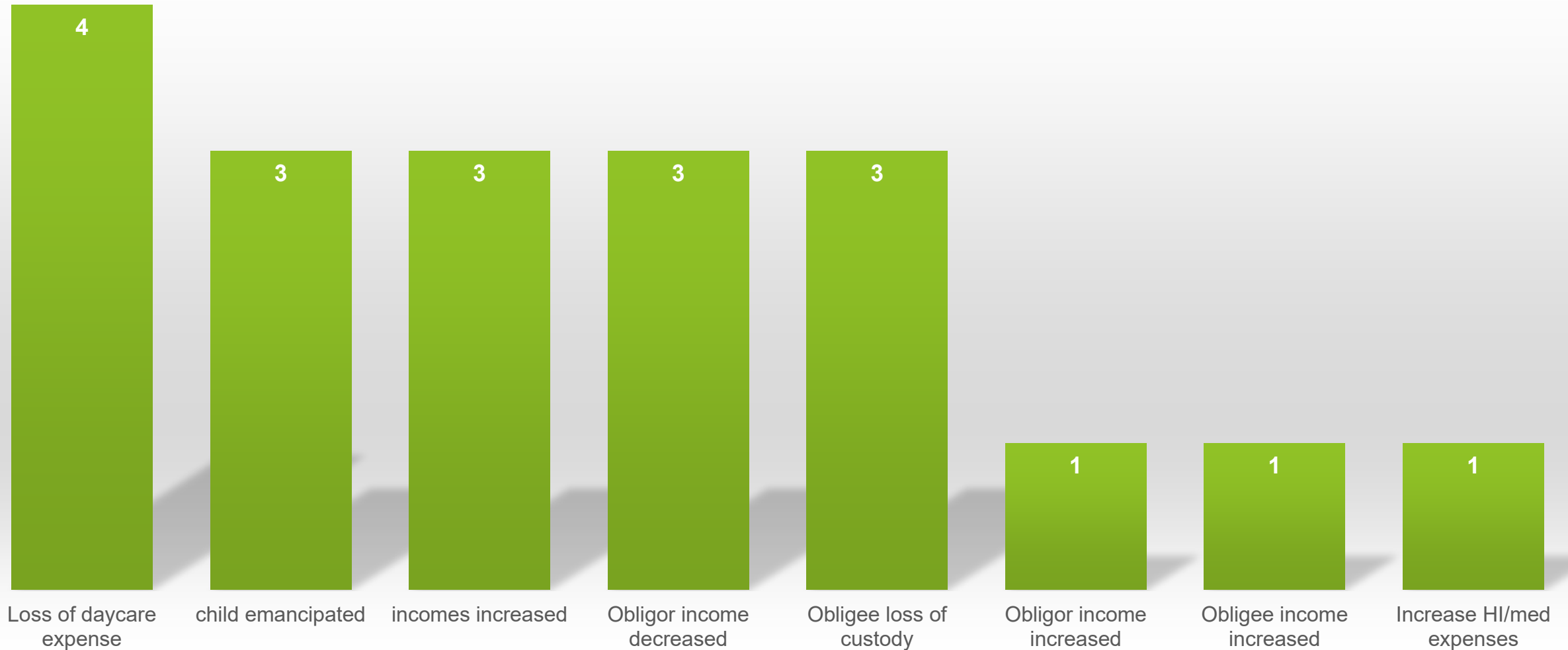
Howard County DSS

Child Support Administration

www.dhr.maryland.gov

Equal Opportunity Employer

Why was a modification packet APPROVED for filing?



ACT THREE – THE COURT



Child Support Modifications: a view from the bench

- ▶ An overview of some best practices in hearing child support modifications.
- ▶ Things outside the box to consider when modifying child support.
- ▶ What possible Rule or statutory changes are needed with child support modifications?
- ▶ The proposed child support modification rule: Maryland Rule 9-202.1.

By: Timothy P. Thurtle
Magistrate for the Circuit Court for Anne Arundel County

Best Practices for Judges and Magistrates in child support modifications

- ▶ 1. Be clear in the Order: who is paying child support, who is receiving the child support, who is the support for, make sure to address whether there is an arrearage, the amount of payment on an arrearage, and include the statutory language required in child support Orders.
- ▶ 2. Avoid any language that is vague or unenforceable on the payment of child support.
- ▶ 3. Articulate on the record or in the written report/Order, whether there has been a material change of circumstance.
- ▶ 4. Always include a Child Support Guidelines Worksheet when hearing a child support modification.

Best Practices

- ▶ 5. If the case is being reset for another hearing, take the opportunity to direct in an Order that the parties are to bring to the next hearing income information and other documentation necessary to calculate child support.
- ▶ 6. For UIFSA cases, if there is a need to have the out-of-state party to participate via telephone, reset the hearing and include in the Order what each party is to bring or submit for the next hearing.
- ▶ 7. If child support has been ordered in a different case in Maryland, obtain a copy of the current Order (and Child Support Guidelines Worksheet) that is to be modified.

Best Practices

- ▶ 8. Be cognizant of whether there is an existing child support arrearage when decreasing child support, so to possibly avoid the obligor from having a “credit” and to ensure that there is a payment made on the arrearage.
- ▶ 9. Avoid “per child” Orders.
- ▶ 10. Be active in managing child support modifications, so that hearings can be set timely to minimize claims for retroactive awards that result in overpayment and for huge retroactive increases.
- ▶ 11. Be clear on whether payments are direct or through the child support administration.

Best Practices

- ▶ 12. Be mindful of the charge date when retroactively modifying the Order. For example, if the charge date is the 1st day of the month, try to avoid setting a different charge date other than the 1st day of the month—to ensure there is not a double charge! You can also always pro-rate a month if you need to—to keep the 1st day of the month as a charge date.
- ▶ 13. Consider the following language in your Orders: “That at such time as the Obligor is no longer obligated to pay current, on-going support, the Obligor shall continue to pay the current support ordered payment and any arrearage payment in full until any arrearage has been paid in full.”
- ▶ 14. Helpful court order language - ““The child support guidelines calculation includes a credit to (NAME) for the cost of WORK-RELATED CHILDCARE and/or HEALTH INSURANCE PREMIUM, and HE or SHE shall notify the Court and the PLAINTIFF or DEFENDANT within three (3) days of any change in cost of this coverage”.”



Things outside the box to consider when modifying child support:

1. Prepare a Child Support Guidelines Worksheet, even if the motion to modify child support has been denied for no material change of circumstance.
2. Be aware and be assertive when changing custody to address child support issues.
3. When modifying another State's original Order for child support, consider stating the age of emancipation pursuant to the other's State's law in the new child support Order.
4. Consider entering an Order that includes an automatic modification of child support based on a child's emancipation, if imminent and certain.

Possible statutory changes:

- ▶ 1. A statute that requires the Court to provide information on how to modify child support and when child support is modifiable.
- ▶ 2. A statute that requires the Court to address child support when the Court is addressing custody, even if child support has not been pled.
- ▶ 3. A statute that establishes a statute of limitations on challenging paternity.
- ▶ 4. A statute that permits UIFSA actions to be retroactive to the date the UIFSA petition is signed and not when actually filed with the court.
- ▶ 5. A statute that allows for parties to waive/modify child support.
- ▶ 6. Modifying the current statute to explicitly allow for additional reasons to deviate.
- ▶ 7. Establish a three-month case time standard for all child support cases.

Proposed Maryland Rule 9-202.1 (The highlights)

► Rule 9-202.1. CHILD SUPPORT MODIFICATION

- This Rule would specifically apply to child support modifications.
- This Rule specifically allows a child support modification to be filed as a counter-claim.
- This Rule would improve how litigants may obtain alternate service.

Proposed Maryland Rule 12-104

- ▶ House Bill 218/Senate Bill 195
- ▶ 12-104.
- ▶ (a) [The] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE court may modify a child support award subsequent to the filing of a [motion] PETITION for modification and upon a showing of a material change of circumstance.
- ▶ (b) The court may not retroactively modify a child support award prior to the date of the filing of the [motion] PETITION for modification.
- ▶ (c) If a party becomes incarcerated, the court may determine that a material change of circumstance warranting a modification of child support has occurred, provided that the party's ability to pay child support is sufficiently reduced due to incarceration.
- ▶ (D) THE COURT MAY MODIFY THE AMOUNT TO BE PAID TOWARD AN ARREARAGE AT ANY TIME WITHOUT A SHOWING OF A MATERIAL CHANGE OF CIRCUMSTANCE.

Proposed Maryland Rule 12-104.2

§12-104.2.

The Court shall terminate a child support order that was previously established or assigned for a child receiving foster care maintenance payment, *without a showing of a material change in circumstance*, on the filing for a termination by the child support administration, local office of child support, or local department, after the Social Services Administration, or its designee, determines that the order is no longer appropriate.

THE EPILOGUE



Settlement Conferences for Modifications

- ▶ Do you conduct them?
- ▶ Are they successful?
- ▶ Are parties reluctant to comply when they know the other side is trying to increase/decrease?



Retroactivity

Is there a court pleading to be used as a “placeholder” for retroactivity while the modification packet is being reviewed by the Department?

In what context does retroactivity go back to the filing date and in what situations is the “may” in the statute not exercised?

What do you call it?

Controlling order reads, “parents are generally charged with the support of the minor child(ren)”	Controlling order reads, “in lieu of child support, parents....”	Adding a Child to an Existing Obligation
Establishment?	Establishment?	Establishment?
Modification?	Modification?	Modification?
Is the change in circumstances articulated in the pleadings?	Is the change in circumstances articulated in the pleadings?	Is the change in circumstances articulated in the pleadings?

Current Events

- How will the layoffs in the federal government in recent months be handled as it pertains to loss of employment by both Obligors and Obligees?



THE END

FOR GOOD?