

23-3106. Contest and stay of withholding order; when; grounds; hearing; disposition; immediate issuance of order; continuance; additional circumstances warranting issuance of order. This section shall not apply if the notice of intent to initiate income withholding was issued by the IV-D agency pursuant to K.S.A. 39-7,147, and amendments thereto.

(a) A motion to stay issuance of the income withholding order must be filed with the court and a copy served on the obligee or public office within seven days after service on the obligor of a notice pursuant to subsection (h) of K.S.A. 2014 Supp. 23-3103, and amendments thereto. Except as provided in subsection (j) of K.S.A. 2014 Supp. 23-3103, and amendments thereto, the grounds for obtaining the stay shall be limited to a mistake of fact in the notice concerning the amount of the order for support, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor. The motion shall specify the mistake of fact alleged to be the basis for the motion. If the amount of the order for support or the amount of the arrearage is challenged, the motion shall specify the amount of the order for support or the arrearage which is uncontested. In addition to any other penalty provided by law, filing a motion to stay with knowledge of the falsity of any material declaration or without specifying the uncontested amount of the order for support or the arrearage, when required, is punishable as a contempt.

(b) The court, upon notice of the date, time and place of hearing to the obligor and the obligee or public office, shall hear the matter within 14 days after the motion to stay issuance of the income withholding order is filed with the court.

(c) (1) If a motion to stay has been filed and the identity of the obligor is not contested, the obligee, obligor or public office may apply for immediate issuance of an income withholding order pursuant to subsection (d) of K.S.A. 2014 Supp. 23-3103, and amendments thereto, pending resolution of the contested issues. The affidavit shall specify an amount sufficient to satisfy the order for support or the arrearage only to the extent that the amount of the order for support or the arrearage is not contested. A copy of the affidavit shall be served on the obligor.

(2) Whenever an affidavit has been filed as provided in this subsection, the court shall immediately issue the income withholding order.

(d) If the court cannot promptly resolve all issues, the court may continue the hearing on the unresolved issues, provided that within 45 days of the date the notice was served on the obligor the court notifies the obligor and the obligee or public office of whether or not the withholding is to occur. If the court upholds the issuance of an income withholding order in a contested case, the court must include in its order notice of the time within which the withholding will begin and the information given to the payor as required in K.S.A. 2014 Supp. 23-3104 and 23-3105, and amendments thereto.

(e) In addition to any other circumstances warranting issuance of an income withholding order, if the court finds that a notice of intent to initiate income withholding was served on the obligor and that there was an arrearage, as of the date the notice was prepared, in an amount equal to or greater than the amount of support payable for one month, the court shall issue an income withholding order. The provisions of this subsection shall only apply to an order for support of a spouse or ex-spouse if the spouse or ex-spouse is living with a child for whom an order of support is also being enforced.

History: L. 1985, ch. 115, § 6; L. 1990, ch. 117, § 3; L. 1992, ch. 254, § 4; L. 1997, ch. 182, § 27; July 3.