

39-7,149. Same; hearing. (a) The responsible parent may request: (1) An administrative hearing pursuant to K.S.A. 75-3306, and amendments thereto, for review of a notice of intent to initiate income withholding served pursuant to K.S.A. 39-7,147 and amendments thereto by complying with procedures established by the secretary within seven days after service of the notice of intent; or (2) a de novo court review pursuant to K.S.A. 39-7,139, and amendments thereto. If the notice is served by mail, the time for requesting review shall be extended by three days. The request for review shall specify the mistake of fact alleged to be the basis for the stay or any applicable defense under this section. If the amount of the current support order or the amount of arrearages is challenged, the request shall specify the amount that is uncontested.

(b) The issues on review shall be limited to whether a mistake of fact existed at the time the notice to the responsible parent was prepared or, if specified in the request for review, whether a defense exists under this section. As used in this section, "mistake of fact" means an incorrect statement of the amount of current support due, the amount of arrearages, the amount of income to be withheld or the identity of the responsible parent.

(c) Except as otherwise provided in this subsection, the presiding officer shall immediately authorize issuance of an income withholding order upon request of the secretary if the identity of the responsible parent is not contested and the uncontested facts in the case show that the requirements of subsection (d) of K.S.A. 39-7,147 and amendments thereto have been met. If a defense under subsection (g) has been alleged, the presiding officer shall authorize immediate issuance of an income withholding order only if the uncontested arrearages equal or exceed the amount of support due for one month. A copy of the request shall be served on the responsible parent. The income withholding order authorized by this subsection shall specify an amount sufficient to satisfy the order for current support and to defray any arrearages, but only to the extent that each amount is not contested. Any income withholding order issued pursuant to this subsection shall be effective until modified or terminated.

(d) Entry of the income withholding order may be stayed only to the extent permitted by the income withholding act, and amendments thereto, or this section. A request for review under this section shall stay issuance of the administrative income withholding order until further order of the presiding officer.

(e) Within 45 days of the date the notice of intent to initiate income withholding was served on the responsible parent, the presiding officer shall provide the responsible parent an opportunity to present the responsible parent's case, determine if an income withholding order may be issued and notify the responsible parent and the secretary whether or not withholding is to occur.

(f) In addition to any other circumstances warranting issuance of an income withholding order under this section and notwithstanding any claim made pursuant to subsection (g), if the presiding officer finds that a notice of intent to initiate income withholding was served on the responsible parent and that there were arrearages, 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 presiding officer shall authorize issuance of an income withholding order. Subsequent payments to defray arrearages shall not prevent issuance of an income withholding order under this subsection unless there is no current support due and all arrearages are satisfied.

(g) If an income withholding order was not entered at the time the support order was entered because the tribunal found that there was good cause not to order immediate income withholding or that the parties had entered into an agreement for an alternative arrangement, the responsible parent may request that income withholding be stayed pursuant to this subsection.

If the responsible parent shows that the tribunal issuing the support order found good cause not to require immediate income withholding and that the basis for the finding of good cause still exists, the presiding officer shall stay issuance of the income withholding order unless subsection (f) applies.

If the responsible parent shows that the tribunal issuing the support order did not require immediate income withholding based upon an agreement of the interested parties for an alternative arrangement, the presiding officer may stay issuance of the income withholding order unless the presiding officer finds that: (1) Subsection (f) applies; (2) the agreement was not in writing; (3) the agreement was not approved by all interested parties, including any IV-D agency involved in the case at the time of the agreement; (4) the terms of the agreement or alternative arrangement are not being met; (5) the agreement or alternative arrangement is not in the best interests of the child; or (6) the agreement or alternative arrangement places an unnecessary burden upon the custodial parent, the responsible parent, or a public office.

(h) If the proposed administrative income withholding order specifies a periodic amount to defray arrearages, the presiding officer may order a reduction in the periodic amount to defray arrearages only if the total arrearages owed are less than the periodic amount to defray arrearages.

History: L. 1997, ch. 182, § 18; July 3.