

441—98.40(252B) Difficult-to-collect arrearages. Child support services may refer difficult-to-collect arrearages to a collection entity under contract with child support services or with another state entity. Upon referral, a surcharge, in addition to the support, shall be due and payable by the obligor as provided in Iowa Code chapter 252B.

98.40(1) *Difficult-to-collect arrearage.* A difficult-to-collect arrearage is one based upon a court or administrative order that meets all the following criteria:

- a. There is no order for current support and only an arrearage is owing.
- b. There has been no payment, except for federal or state tax refund offset payments, in the past three months.
- c. There is no valid reason for exemption from the referral and surcharge process. Valid reasons for exemption and acceptable verification are those listed in subrules 98.33(1), 98.33(3), and 98.33(6). Upon verification of those conditions, child support services will bypass or exempt the obligor's arrearages from the referral and surcharge process. When the information to verify the exemption is not available to child support services through online sources, child support services will request, and the obligor will provide, verification of the reason for exemption.

98.40(2) *Notice of the possibility of referral and surcharge.* Child support services will provide notice of the possibility of a referral and surcharge to the obligor as mandated by Iowa Code chapter 252B. The notice will be provided at least 15 days before child support services sends the notice of referral and surcharge to the obligor, subject to the following:

- a. *Notification contained in order.* When the support order under which the arrearage has accrued contains language advising of statutory provisions for referral and surcharge, no other preliminary notice will be required.
- b. *Notification issued by child support services.* When the support order under which the arrearage has accrued does not contain language regarding the statutory provisions for referral and surcharge, or was entered under a foreign jurisdiction and notification was not included in the support order or provided as a separate written notice, child support services will issue a notice to the obligor pursuant to Iowa Code section 252B.23.

98.40(3) *Notice of referral and surcharge.* Child support services will send notice of a referral and surcharge to the obligor by regular mail to the obligor's last-known address, with proof of service completed according to Rule of Civil Procedure 1.442. The notice will contain all the information mandated by Iowa Code chapter 252B. The notice will be sent at least 30 days before child support services refers the arrearage to the collection entity.

98.40(4) *Contesting the referral and surcharge.* An obligor may contest the referral and surcharge. The right to contest is limited to a mistake of fact, including but not limited to a mistake in the identity of the obligor, a mistake as to whether there was a payment in the three months before the date of the notice specified in subrule 98.40(3), a mistake as to whether an exemption in paragraph 98.40(1) "c" applies, or a mistake in the amount of arrearages.

a. An obligor may contest the referral and surcharge by submitting a written request for a review to child support services within 20 days of the date on the notice of referral and surcharge specified in subrule 98.40(3). Upon receipt of a written request for review, child support services will follow the criteria and procedures specified in Iowa Code chapter 252B for resolving the request.

(1) If child support services determines there is a mistake in the identity of the obligor, if there was a payment, other than a federal or state income tax offset, within the three months before the date of the notice specified in subrule 98.40(3), or if there is another mistake of fact and the arrearage does not meet the criteria for referral, child support services will issue a written notice to the contestant or obligor of the determination and not refer the arrearages. If child support services later determines an arrearage may be subject to referral, it will issue a new notice as provided in subrule 98.40(3).

(2) If child support services determines there was a mistake in the amount of arrearages, but the corrected amount of arrearages will still be referred, or if child support services determines there is no mistake of fact, child support services will issue a written notice of the determination of the review to the obligor by regular mail to the last-known address of the obligor. The notice will include the amount of the

arrearages that will be referred and the surcharge that will be assessed. The notice will also include information on requesting an additional review by the department, and on requesting a judicial hearing.

b. An obligor may contest the notice of determination of review by submitting a written request for an additional review by the department within 20 days of the date of the notice of determination of the review issued under paragraph 98.40(4) “*a.*” Upon receipt of the written request for additional review, child support services will review the facts of the case.

(1) If the department determines a mistake in the identity of the obligor has occurred, if there was a payment, other than a federal or state income tax offset, within the three months before the date of the notice specified in subrule 98.40(3), or if there is another mistake of fact and the arrearage does not meet the criteria for referral, the department will issue a written notice to the contestant or obligor of the determination and the arrearages will not be referred. If child support services later determines an arrearage may be subject to referral, it will issue a new notice as provided in subrule 98.40(3).

(2) If the department determines that there was a mistake in the amount of the arrearage but the corrected amount of arrearages will still be referred, or if there is no mistake of fact, the department will send a written notice of the additional review determination to the obligor by regular mail to the last-known address of the obligor. The notice will include the amount of the arrearage that will be referred and the surcharge that will be assessed. The notice will also include information on requesting a judicial hearing.

c. Following the issuance of a notice of determination of a review under paragraph 98.40(4) “*a.*,” or issuance of a notice of determination of an additional review under paragraph 98.40(4) “*b.*,” the obligor may request a district court hearing. The obligor will make a request by sending a written request for a hearing to child support services within ten days of the date of the department’s written determination of the review, or within ten days of the date of child support services’ written determination of an additional review, whichever is later. Procedures for a district court hearing are specified in Iowa Code chapter 252B.

d. Child support services will not refer arrearages and assess a surcharge until after completion of any review, additional review or judicial hearing process.

98.40(5) *Referral and surcharge.*

a. If the obligor has not paid the arrearage, has not contested the referral, or if, following child support services review, the department’s additional review, and any judicial hearing, child support services, or court does not find a mistake of fact, the arrearage will be referred to the collection entity.

b. The amount of the arrearage referred will be the amount that is unpaid as of the date of the referral. The amount of the surcharge will be an amount equal to the amount of the arrearage unpaid as of the date of the referral, multiplied by the percentage specified in the contract with the collection entity.

c. Child support services will file a notice of the surcharge with the clerk of the district court in the county in which the underlying support order is filed.

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