

**53<sup>rd</sup> CIRCUIT COURT POLICY FOR CHILD SUPPORT ENFORCEMENT  
PENDING RESOLUTION OF AN APPLICATION FOR DISABILITY**

All courts are experiencing an influx of cases where the payer of support has, or claims, a disability which prevents him/her from working. The payer may have applied for Social Security Disability (from here on referred to as SSD) and/or Supplemental Security Income (from here on referred to as SSI). The general circumstances have existed for any number of years. The current concern is twofold: (1) The significant increase in the number of such applications for SSD and SSI; and (2) The ever increasing delay in resolution of the applications. To address this in a consistent manner, the following policy is adopted.

**ESTABLISHING THE DISABILITY**

When it comes to the attention of the Friend of the Court that a payer of support is, or claims to be, unable to work because of a disability the Friend of the Court must require the payer to provide appropriate, competent medical evidence of the disability. In most cases, this must be a statement from the treating professional. Medical records are not required or helpful. It is not the role of the Friend of the Court to interpret medical records to establish or refute a claim of disability.

**RESPONSE TO THE CLAIM OF DISABILITY**

The Friend of the Court has no resource to challenge a competent medical statement of disability. Competent medical evidence must be accepted on its face. However, if a payer provides competent medical evidence of a disability, the Friend of the Court may require the payer to seek SSD and/or SSI benefits. SSD and/or SSI are resources which are available to substitute ability to work. To accomplish this, the Friend of the Court will enforce the support order in spite of the evidence of disability until such time as evidence of application for SSD/SSI is provided.

**VERIFYING THE APPLICATION**

The Friend of the Court must require the payer to verify application for disability. Presentation of the application is not adequate. The payer must provide the Friend of the Court with a response from the Social Security Administration verifying that the application has been received and is being processed.

**MODIFYING SUPPORT**

*Once the disability has been established and the application for disability verified, a motion to modify support may be filed.* If such a motion is filed, the motion will be held in abeyance pending the outcome of the disability claim. The attached order will be entered in the interim.

## **MONITORING THE CLAIM**

The Friend of the Court will conduct periodic reviews to monitor the process of the claim. The reviews can be scheduled as required; normally they will be at six month intervals. The reviews should not be adjourned in advance even if circumstances have not changed. The payer must be made to appear and update the Court. This also is an opportunity for the payee to comment as well as to be kept updated. *It may be appropriate to require the payer to produce updated statements from medical professionals, attorneys or others at the review.*

## **INTERIM ENFORCEMENT**

Unless the payer has a source of income other than that derived from ability to work, the Friend of the Court will take no enforcement action while the claim is pending. The account will continue to charge and arrearage will accrue. The arrearage will be addressed once the claim is resolved; whether denied or granted.

## **ACTION IF CLAIM IS GRANTED**

If Social Security is awarded it may be SSD, SSI or a combination of both. If SSD, there will likely be a substantial retroactive payment which usually exceeds the arrearage. If SSI, since SSI is not considered income for the purposes of child support, no payment will be made, retroactive or prospective. If a claimant lacks sufficient earnings to qualify for SSD which exceeds the SSI payment level the SSD will be supplemented by SSI to bring the matter to the SSI payment level. If this is the case, the matter is to be treated as if it were an award of SSI only.

*If a motion to modify support has been filed, the motion should be noticed for re-hearing. If the award is for SSI, the Friend of the Court may move to administratively close the case.*

## **ACTION IF CLAIM IS DENIED**

If the claim is denied, that is a determination by the Social Security Administration; the payer is not disabled and is able to work. The Friend of the Court will begin normal enforcement procedures. This will include enforcement on the arrearage which accumulated while the claim is pending.

If a motion to modify support has been filed, the motion should be noticed for re-hearing.