

Testimony

Interim Tribal and State Relations Committee Representative Merle Boucher, Chairman

July 27, 2010

Chairman Boucher, members of the Tribal and State Relations Committee, I am Mike Schwindt, Child Support Enforcement Director with the Department of Human Services. I am here to provide an update of the interactions between the tribes and the state on child support enforcement services and to discuss interest charged on outstanding obligations.

Update. We continue our efforts to increase interactions between the Tribal governments and the Child Support Enforcement program. Recent interactions include:

- **Internal Revenue Service.** We signed an amendment to our cooperative agreement with the Three Affiliated Tribes IV-D program to submit tribal cases for federal income tax refund offset, administrative offset, and passport denial. The initial submission involved about 50 obligors and, so far, has resulted in \$21,000 of collections. Under current federal law, a tribal program needs to work through a state IV-D program to access the IRS offset process. We are hopeful Congress will change the law to give tribal programs direct access to the IRS process.
- **Guidelines review committee.** Bill Woods, Three Affiliated Tribes attorney, has been a member of our quadrennial guidelines review committee. Subsequent to the committee's establishment, we learned that Standing Rock was looking at submitting its application for direct

federal funding. Consequently, we invited Marie Hanken, who will be developing the application, and Mike Swallow, Associate Tribal Judge, to participate as observers. We do appreciate the advice and perspectives provided.

- Turtle Mountain tribal court. We have filed a couple of actions in an effort to again provide services to children and families where tribal court is the appropriate court.
- This week. Lee Bjerklie, our State Disbursement Unit supervisor, is attending the National Tribal Child Support Conference hosted by the Mescalero Apache. While there, she and Bill Woods are presenting a session on tribal/state cooperation for intercepting federal payments including tax refunds on tribal cases.

Interest. Interest on outstanding child support obligations generally generates significant discussion. In its simplest form, interest is the recognition of the time value of money and of the risk associated with getting the principal back. In this program, the risk of principal recovery shifts to the family and potentially the taxpayers when the family is on assistance.

Federal law is silent on charging interest on overdue child support. About half the states currently charge interest; the rates charged vary considerably from state to state, and some, like North Dakota, vary from year to year.

Under North Dakota law, simple interest accrues on all unpaid North Dakota judgments. An order for child support is a judgment by operation of law. As such, any unpaid child support is subject to judgment interest. By law,

interest on unpaid child support is added to the unpaid balance and may be collected through appropriate child support enforcement remedies.

When our automated child support enforcement system was first designed in the 1990s, it did not account for judgment interest. Following a couple of North Dakota Supreme Court decisions, our system was modified and we now post interest once a month on any unpaid arrears that are due under a North Dakota judgment.

Based on 2005 legislative changes, interest on judgments in North Dakota, including child support, is calculated at a rate equal to the prime rate published in the Wall Street Journal on the first Monday in December of each year plus three percentage points rounded up to the next one-half percentage point. Since the variable interest rate was implemented in 2006, the interest rate has been:

2010 = 6.5%
2009 = 7.0%
2008 = 10.5%
2007 = 11.5%
2006 = 10%

The previous fixed rate for several decades was 12%, nearly double the rate that will apply in 2010. Even though the rate has dropped considerably, with statewide principal outstanding in excess of \$235 million (plus \$47 million of unpaid interest) at June 30, 2010, management of the interest is a key component to arrears management. State law gives the Child Support Enforcement program broad authority to negotiate interest with cooperative obligors or to write-off uncollectible interest.

Child Support Enforcement does not calculate interest on unpaid child support that accrues under an order from another state or from a tribal court. But if interest is calculated by another state or tribal entity on the order and furnished to us, the amount will be entered on the records of our SDU for collection through appropriate enforcement remedies. Also, if an order from another state or from a tribal court has been modified in North Dakota, then interest accrues on the portion of the arrears that first became due after the modification since we would have continuing exclusive jurisdiction and our state law governs the order.

Who gets the interest? The general answer is the interest goes with the principal:

- If the arrears are owed to the family, then interest we collect on those arrears is also paid to the family.
- If the arrears are assigned to the State because the family received TANF or Medicaid benefits or the child was in Foster Care, then interest we collect on those arrears is retained by the State to offset the costs of those programs.
- We do not keep interest to finance the Child Support program.

In many cases, some of the arrears are assigned and some are unassigned, so we connect interest collections with the appropriate principal in arrears to ensure proper distribution. The oldest arrears are paid off first.

That concludes my testimony. I'd be happy to answer questions.