

## Obtaining Child Support: You Can Do It

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In this article Family Court Hearing Examiner John J. Aman discusses introductory child support issues, how to get to Court to obtain child support, and what to do when you get to Court. This article does not attempt to advise you as to what the child support laws are; you should consult an attorney for that. The article oriented toward providing you with practical in-Court pointers should you proceed in the child support Courts without an attorney.

As a Hearing Examiner in Erie County Family Court, I decide child support and child support-related issues upon a daily basis. Hundreds of custodial parents file petitions seeking child support relief every week. Many of these individuals do so in the middle of a busy life, on top emotional distress, and without legal assistance. The purpose of this article is not to teach you the law (you will have to get your legal advice by doing a little research or consulting an attorney), but to give you some practical pointers if you choose to proceed with your child support matter without the assistance of an.

### **Where do I go if I need to file a child support Petition?**

Erie County residents go to the Petition Processing Division of Erie County Family Court. This is located on the fourth floor of the Family Court Building, One Niagara Plaza, Buffalo, New York.

### **How should I prepare before filing the Petition?**

First, you have to know what you want. And to properly determine this, you have to have a basic knowledge of the Child Support Standards Act. This is set forth in Section 413-1 of the Family Court Act. As a custodial parent, you have the right to ask for an amount of child support from the non-custodial parent which is a percentage of the non-custodial parent's income after certain specified deductions. The percentages are 17% for one child; 25% for two children; 29% for three children; 31% for four children; and 35% for five or more children. Further, you have the right to ask for the provision of health insurance coverage for your child or children; a proportioned sharing of all health-related expenses that are not covered by insurance; a proportioned sharing of child care expenses that are necessary for you to work or to attend school; in the appropriate case that the non-custodial parent make a contribution to your child care expenses that are necessary for you to work or to attend school; in the appropriate case that the non-custodial parent make a contribution to your child or children's private school tuition; and in the appropriate case you may request the provision of life insurance.

Bottom line: You should have an idea of what your needs are prior to filing the petition.

### **What if I already have a child support Order and I need it to be changed or enforced?**

Family Court has the authority to modify or enforce child support orders. Even if your order is as a result of a divorce in the Supreme Court; or if your order was entered at the time you were on public assistance; you can file the appropriate relief in our Court.

### **Will I need any paperwork when I file my Petition?**

Yes. If you have a prior judgment or Order, you must bring that with you. If the child or children were born out of wedlock and a Paternity Acknowledgment was filed, bring a copy of the Paternity Acknowledgment with you. If the child or children were born out of wedlock and a Paternity Acknowledgment was not filed, it will be necessary to establish paternity before the issue of support can be determined. If you are filing a paternity petition, bring a copy of the child's birth certificate with you. You should know your children's dates of birth and social security numbers. You should have full information regarding health insurance and day care issues. And you should begin to gather financial records information (your income and expenses) as you will need to prepare a financial statement for the Court.

### **Is there any further preparation that I need?**

Yes. You should begin to prepare yourself emotionally for the proceeding, depending on your particular circumstances. You will find that the Family Court staff and the court personnel are friendly and helpful. However, there will be times where you are going to have to assert your position and provide information. You will be in the same waiting room and courtroom as the non-custodial parent. You have to be emotionally ready for this.

### **When I am ready to file and I appear at Family Court what can I expect?**

I'd like to think the Court is very efficient in the filing of Petitions. However, you probably should come down early in the morning and plan to spend half a day. Petition Processing opens at 8:30 a.m. and they suggest that you come no later than 3:00 p.m. You will first fill out a questionnaire listing basic information and on a first-come-serve basis you will meet with a Petition preparer. The Petition preparer is not an attorney, but is a person who is skilled at drafting this paperwork. He or she will be able to provide all of the assistance necessary so that the Petition is properly drawn and filed.

### **Can I bring my child or children?**

The Erie County Family Court has a Children's Center which acts as day care for all young children. They operate on a first-come-first-serve basis. You can bring your child or children when you are filing the Petition and when you go to Court. Take advantage of the Center so that you can give full attention to your legal case.

### **When I file my Petition, will I go to Court immediately?**

Child support cases are not scheduled immediately. They are scheduled rather quickly, though. You will be given a date when you file the Petition which will generally be about 14 days after you file.

### **Now the big question. This article is written for individuals who are proceeding pro se – without a lawyer. Shouldn't I have an attorney to represent me in this type of proceeding?**

I am an attorney. So it is not surprising that my answer is that you should never appear in Court without any attorney. But I do recognize the practical problems. Attorneys can be expensive and you may not be able to afford one. Thus, I focused this article toward those individuals who may not be able to arrange for an attorney to represent them. And, in fact, I would say about 75% of the parties who appear before me are pro se. And most do a fine job. Family Court is user-friendly and is geared toward the pro se litigant. We have less formalities than other Courts and we deal with the issues which concern you every day. Some instances where you might want legal advice are: the non-custodial parent is self-employed and his/her income is not apparent; you have a particular set of facts that are somewhat complex; you are trying to modify an agreement that was made in the context of a divorce proceeding.

## Is free legal advice available if I feel I need to talk to an attorney?

Unfortunately, due to cuts in legal services, many legal service providers cannot prioritize child support cases. However, if you think you need assistance you can call Neighborhood Legal Services, (716) 847-0650; Volunteer Lawyers Project, (716) 847-0662; and Erie County Child Support Collection Unit, (716) 858-8309, which provides legal assistance for custodial parents at a reduced rate. Also, if you make enough phone calls to attorneys in the phone book or supplied by the Erie County Bar Association, you generally can find one who is reasonable and will accept a payment schedule. Finally, if the non-custodial parent resides out of state, you can get legal assistance through the County Attorney's Office, (716) 858-2000.

## Do you have any other advice as I am getting started in this endeavor?

As indicated above, preparation is the key. You should be courteous and patient with the staff and pleasantly persistent in making your needs known.

## I have filed my child support Petition and have just received a notice for my Court appearance. What advice do you have?

Above all, be prepared and organized. Don't be afraid to write down your thoughts beforehand so you know you won't forget them.

If you do not have a Support Order presently and you are asking that the "Hearing Examiner" (the person who will hear your case and decide on the amount of the support) establish one, remember to request that it be retroactive to the date you filed your Petition. Also, you should decide whether you want the Support Order to go through the Erie County Child Support Collection Unit (if you are **receiving** the child support payment, you probably do) or if you will allow the payor to pay you directly. You also should not forget to address health insurance; and the payment of uninsured health related expenses, day care expenses and educational expenses, as appropriate. And, if the Hearing Officer is adjourning the case, ask for a Temporary Order of Support. You have an absolute right to a Temporary Order if there is not an Order in effect.

If you already have a Support Order and you are asking that the Court modify your Order, be prepared to tell the Court how circumstances have changed from the time of your original Order to the present.

If your case is a violation case, make sure you do the math and know specifically how much arrears are owed and how they came to be.

And, because the Hearing Examiner will try to settle the case on the first appearance, have an idea before you go to Court as to the particular circumstances under which you would agree to settle the case.

## How should I act in Court?

### Some Suggestions:

- Dress appropriately;
- Be respectful and courteous, but try not to be bullied by your opponent, your opponent's attorney, or by the Hearing Examiner;
- Know what relief you are asking for and what you want to say before you go to Court. If you think you are going to be nervous and forget things, write them down;
- Be persistent, but stay reasonable in your persistence;
- Try to listen. May parties will leave Court not having any idea as to what happened. Treat this as a business transaction. Try not to get too emotional, but don't be embarrassed if that happens.

As indicated above, be certain as to what you want, but also be reasonable and practical.

Finally, try not to be hostile or nasty. Don't talk directly to the other part and don't be reduced to mud-slinging. Be as civil as you are able to be under the circumstances.

### **Will my case be resolved on the first Court appearance?**

Sometimes. As stated above, at the time of the appearance the Support Magistrate will try to settle the case and the parties may agree on a settlement.

But if there is no agreement at the first appearance, the Support Magistrate likely will **not** take formal testimony (put the parties under oath) at that time. There may be an adjournment for that purpose, for what's called a "Hearing."

Also, cases may be adjourned for other specific purposes, for example, for one party to get an attorney, or for one or both parties to produce financial records. The Support Magistrate may schedule the parties to "Report Back" on specific cases. If you are told to bring something to Court, for example, a tax return or pay stub or a day care receipt, or if you are told to report back on an issue, do it. If you are told to exchange documents with the other side, do it. You will look better in the Support Magistrate's eyes if you follow directions.

So be open to the fact that you may have to return to Court.

### **If my case is scheduled for a Hearing, how should I prepare?**

As stated above, you should understand that a "Hearing" means that the Support Magistrate will hear testimony (questions and answers under oath) of the parties and any appropriate witnesses.

The Support Magistrate will also consider any documents offered by either of the parties.

So, if your case is scheduled for a Hearing, that means that, you should be prepared to present your case in an organized fashion.

If the parties do not have attorneys, the Support Magistrate will likely allow the parties to make their presentations somewhat informally. You should be allowed to give your presentation without interruption by the other side. Likewise, you should not interrupt your opponent's presentation.

Also, if you have documents that you feel are appropriate, bring them and ask the Support Magistrate to look at them.

If you know of other individuals who might be able to testify in support of your case, bring them and tell the Support Magistrate you'd like them to testify. Be prepared to ask your "witness" questions that will develop answers relevant to your case. Be aware that your opponent will have the opportunity to "cross-examine" (ask questions of) you and your witnesses. Likewise, you will be able to "cross-examine" your opponent and your opponent's witnesses. You should bring paper and take notes when your opponent is testifying. Do not interrupt the opponent's testimony unless you think something he or she is saying is inappropriate and should not be considered by the Court.

And remember, if you go to a Hearing, you are allowing the Support Magistrate to make the final determination.

### **Will the Support Magistrate make a decision immediately after the Hearing ends?**

Sometimes. However, most of the time the Support Magistrate will “reserve decision”. That means the Support Magistrate will review his or her notes, review the law and make a written decision sometime thereafter (fairly soon). You will receive the decision in the mail.

### **Can I appeal the Support Magistrate’s decision if I don’t agree with it?**

Yes. The appeal process for the child support Orders is called “Objections”. This is a very informal process and can be as simple as a letter addressed to the Court (the Family Court Judge who will review the Support Magistrate’s decision) in your own words and handwriting telling the Court why you do not agree with the decision.

You will receive easy-to-read and specific directions with the decision which tell you specifically how to file your Objections.

### **What if I object to the decision and my Objections are denied?**

You still have the right to appeal the Objections to the Appellate Division in Rochester. However, you will need a lawyer for this and it is a somewhat expensive proposition.

At some point you have to accept the fact that you did the best that you could do, and you have to be ready to live with the decision of the Court.

### **Is there anything else I should do after I receive the decision of the Court?**

I would suggest that you get a notebook and keep track of various items in the notebook. The suggestion is especially valuable if you expect to return to Court sometime in the near future.

For example, if the support payments are consistent, I would suggest that you keep track of when you receive the payments and how much the arrears are as they continue to add up. You might not go into Court immediately to enforce the arrears, but it will be helpful to have this record in the future.

Also, keep track of uninsured health related bills that were supposed to be paid but were not and day care expenses that were supposed to be paid but were not.

Finally, you have the right to ask for a new Order of Support if there is a substantial change in circumstances in the future. Keep track of what the circumstances were at the time the Order was established and closely monitor any changes that may happen.

Good Luck!