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**DCSE Policy & Procedures Unit**  
**Policy Update**  
**PPU 05-08-001**  
**August 2, 2005**

**SUBJECT: Protocol For IV-D Staff To Handle Hayden Issues**  
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Please contact the Policy Unit if you have any questions regarding these or any other changes at  
\*DCSE-POLICYQUESTIONS, CSE.POLICY or (602) 274-7951.

*The IV-D PARTNERS should send POLICY inquiries directly to PGriffin@azdes.gov*  
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**Protocol For IV-D Staff To Handle Hayden Issues**

Since 1998, DCSE has been using administrative actions to collect all unpaid support, including arrears not reduced to judgment. In a number of decisions in the trial court and Court of Appeals, the State's authority was confirmed. In one of those cases, the NCP, Jack Hayden, appealed. The Supreme Court issued a decision against the State on July 1, 2005 in State ex rel DES vs. Hayden. This decision will prevent DCSE from collecting support arrearages in a large, but unknown number of cases. The Supreme Court held that administrative remedies can not be used to collect support arrearages after the statute of limitations (SOL) has run.

The Arizona SOL is generally three years after the youngest child subject to the order turns 18. This may be extended beyond age 18 and up to age 19 if the child is still in school. This means that if there is no written judgment for arrearages and the youngest child in the case is over 21, (or at least over 22) DCSE can not collect support arrearages. The Supreme Court found that when the SOL was changed in August 1999, its effect was to bar collection of arrearages not timely reduced to judgment. Child support arrearages not timely reduced to a written judgment are terminated. That means that arrearages are wiped out.

There are some fact situations which are exceptions, and where support may be collected. For that reason, there are several questions that should be asked of the CP who contacts us.

**If there is any question at all about whether CP is entitled to receive monies in suspense or whether DCSE can work the CP's case, the case must be forwarded to the appropriate Enforcement Unit Supervisor or County Partner who must consult with the appropriate local attorney.**

Exceptions to Hayden Allowing Collection of Arrearages

- Did NCP's actions prevented the CP and the agency from getting a timely written judgment? This could be where the NCP took steps to avoid being located, such as changing his name and SSN, leaving the state without notifying CP, DCSE or the court of his address, or put his property and assets in someone else's name to hide his whereabouts.
- Did NCP threaten or coerce the CP into not filing a request for a written judgment?
- Is there also an order from another state, which has a longer SOL.
- Is there a judgment for a portion of the arrearages? In those cases, DCSE can collect those arrearages, but not arrearages that accrued later where there is no written judgment.
- Is there an old judgment (pre-1994), which ATLAS shows was never renewed? If so, arrears may be collectable. See your local attorney for further advice with those cases.

Recommended Responses to Customers

Scenario 1

CP asks why DCSE did not get a judgment and says that it should have been DCSE's job to get a judgment.

### Suggested Response 1:

DCSE acted under the law at the time, which said that a judgment was not required to do administrative enforcement. CP was always free to obtain her own judgment. DCSE does not represent the CP. DCSE provides support enforcement services in a large number of cases and cannot guarantee successful collection in any particular case. DCSE does its best with its limited resources.

### Scenario 2:

CP calls with questions after receiving a notice ATLAS is generating where the system shows the youngest child in the case is over age 21 and there are no judgments for arrearages. (Notices being sent in approximately 5000 cases.)

### Suggested Response 2:

- Let CP know that the law has changed and DCSE is no longer able to enforce arrearages not reduced to judgment before the youngest child's 21<sup>st</sup> birthday unless support was continued past age 18, because of the child's still being in school. In that case, the deadline is extended to 3 years after the support order terminated.
- Let CP know there are a few exceptions. Tell CP we do not have any record of a judgment in her case. Ask CP if she got any written judgments for arrearages on her own. Examples include cases where CP hired own attorney or, in Maricopa County, used Expedited Services. Check ATLAS to see if locate was an issue. Ask CP if there are any orders from another state we do not show on ATLAS.
- If CP has no further information, let CP know that we are sorry, there is nothing we can do. CP will be receiving an additional closure notice and the case will be closed.

### Scenario 3:

CP has been receiving collections on arrearages for which there is no judgment and wants to know why payments have stopped.

### Suggested Response 3:

- We have been collecting arrearages in CP's case based on court decisions. The Arizona Supreme Court has now decided that we cannot continue to collect CP's arrearages. Based on that, we have stopped enforcement action.
- Let CP know there are a few exceptions. Tell CP we do not have any record of a judgment in her case. Ask CP if she got any written judgments for arrearages on her own. Examples include cases where CP hired own attorney or, in Maricopa County, used Expedited Services. Check ATLAS to see if locate was an issue. Ask CP if there are any orders from another state we do not show on ATLAS.
- If CP has no further information, let CP know that we are sorry, there is nothing we can do. CP will be receiving an additional closure notice and the case will be closed.

### Scenario 4:

CP heard about this decision from a friend and want to know what it means in CP's case.

### Suggested Response 4:

- Let CP know that the law has changed and DCSE is no longer able to enforce arrearages not reduced to judgment before the youngest child's 21<sup>st</sup> birthday unless support was continued past age 18, because of the child's still being in school. In that case, the deadline is extended to 3 years after the support order terminated.
- Let CP know there are a few exceptions. Tell CP we do not have any record of a judgment in her case. Ask CP if she got any written judgments for arrearages on her own. Examples include cases where CP hired own attorney or, in Maricopa County, used Expedited Services. Check

ATLAS to see if locate was an issue. Ask CP if there are any orders from another state we do not show on ATLAS.

- If CP has no further information, let CP know that we are sorry, there is nothing we can do. CP will be receiving an additional closure notice and the case will be closed.

#### Scenario 5

There will be CPs who will be receiving a notice from ATLAS in cases where there is a judgment, but there are also arrearages not reduced to judgment. For example, there may have been a judgment for arrearages when the youngest child was fourteen, but no judgment for subsequent arrearages.

#### Suggested Response 5

You should tell CP the amount of the judgment(s) shown on ATLAS and the begin and end dates of the judgment(s).

**You should ask CP the following two questions:**

**(1) Has CP obtained any written judgments DCSE does not know about.?**

**(2) Is there an order from another state DCSE doesn't know about?**

If there are no other judgments or orders not in ATLAS, tell CP we can collect on the arrearages in the judgment, but not any other arrearages.

#### Scenario 6

CPs who have a judgment for arrearages prior to August 1994, where the system does not reflect that the judgment has been renewed.

#### Suggested Response 6

You should review the payment history to determine if any payments were made after entry of the judgment. You should tell the CP that the answer to whether we can continue to collect on CP's case is complicated and that the case will be referred to the caseworker who will discuss the issue with the State's attorney.

#### Scenario 7

NCPs who have heard about this decision and want enforcement stopped. (Here, NCP's may call who will not meet the criteria- the CSEO must review the case. The "paint" may stop enforcement now, however, it may be determined that it is a collectable debt after review.

#### Suggested Response 7

Explain that DCSE acted according to court decisions at the time.

Tell NCP that enforcement actions have been suppressed.

Let NCP know that any payments being taken now will be held and may be refunded to NCP.

Tell NCP that cases are being reviewed for closure as quickly as possible.

**If NCP is requesting a refund, and ATLAS shows that the SRD date was after July 1 and money is in suspense, tell NCP a refund MAY be issued and take steps to determine if that the money may be released to NCP.**

**If NCP requests a refund of payments made between August 1999 and June 30, 2005 and the money has already been distributed, tell NCP that the collection was distributed before the change in the law, and we cannot give him a refund.**

**If attorney for NCP calls, confirm their status as the attorney of record and refer the call to the AGO Cap Center.**

**If there is any question at all about whether arrears are collectable in a particular case, refer the case to the (ENFORCEMENT) SUPERVISOR IN THE REGIONAL OFFICE who should consult with the appropriate attorney about the case.**

**\*\*\*\*Cases that have money coming in and it is now in suspense under SNHA and there appears to be valid judgments these cases may now be referred to the (ENFORCEMENT) SUPERVISOR in the local office to pull the file and review it with an AG (or Office Attorney) to determine if based on the JOA information in the file that the money may be released to the case or to the CP prior to any planned systematic releases.**

Everyone involved in making decisions about these issues is aware there will be a number of customer service issues involved with the cases. The AG is working to support DCSE in all possible ways in order to make this as smooth a change as possible for DCSE. Additionally, SAA is working very hard to deal with many of the debt and suspense issues through automation, however, there will be several interim actions that will need to be taken by LSA staff.

POLICY HAS BEEN DESIGNATED AS THE CENTRAL POINT OF CONTACT FOR HAYDEN ISSUES. POLICY WILL CONTINUE TO NOTIFY STAFF AS ISSUES ARE RESOLVED OR AS WE RECEIVE INSTRUCTIONS FROM MANAGEMENT AND THE AG. If you have any questions that are not answered in this protocol, please contact POLICY at [\\*DCSE-POLICYQUESTIONS](mailto:DCSE-POLICYQUESTIONS) or [County Partners contact us directly at Pgriffin@azdes.gov](mailto:CountyPartners).

Thank you for your cooperation.