

SSDI AND CHILD SUPPORT MODIFICATIONS

Prepared by the Mental Health Legal Advisors Committee
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I have a child support order that was entered before I became disabled and started receiving SSDI. My child, who lives with the other parent or a guardian, receives a dependency benefit directly from Social Security. Do I still have to pay child support?

You have to continue paying on the last entered support order until you get a new order from the court. Under the scenario described above, you can request a modification of your support order from the court to potentially reduce the amount you have to pay in support. There is a court case, called Rosenberg v. Merida, that provides a formula for calculating a new support amount (*see more below*). **Note that you must go to court to request this**—it is not done automatically just because you now receive SSDI. It is important to request a modification as soon as possible because the court cannot change the order until you request it to do so. If you do not pay your court ordered support, you will continue to accrue arrears (back-owed child support) and if the Department of Revenue is involved, they may take enforcement actions against you to pay off those arrears.

What do I need to do to request the modification from the court?

You will need a Complaint for Modification form, which you can find online: <http://www.mass.gov/courts/docs/forms/probate-and-family/cjd104.pdf> or at your local courthouse. Note that if the other parent (or guardian of your child) agrees to modify your support obligation because he or she is receiving the SSDI dependency benefits on behalf of the children, you can file a Joint Complaint for Modification, using this form: <http://www.mass.gov/courts/docs/forms/probate-and-family/cjd104.pdf>

In order to complete the complaint form, you will need a copy of the last judgment that set forth your child support obligation. On the new complaint form, you need to fill in the docket number of the case, the date of that last order, what the amount of the support order was, the change of circumstances since that order (which in this case is that you are no longer working and are receiving SSDI, and your children are getting dependency benefits), and what you are asking the court to do now.

Tips for completing the complaint for modification

- Keep the information on the form simple—you don't have a lot of room. Under the "change of circumstances" section you can write something like: "I lost my job" or "I became disabled from work" and "I am now receiving Social Security Disability Insurance (SSDI) and my child(ren) are receiving a dependency benefit"
- Under the request for modification section you can write something like: "Recalculate the child support obligation taking into account my new

SSDI income and the dependency benefits for the child(ren), retroactive to the date of service of this Complaint for Modification.”

- o Note, however, that technically the court cannot modify your support obligation prior to the time the other party is served with your complaint for modification. However, if you have arrears (past due child support), you can ask the court, in addition to changing the amount of your order going forward, to “equitably adjust” your arrears taking into account any dependency benefits the children received before you filed your complaint.

What does the “Rosenberg” formula look like? Also, what does an “equitable adjustment of arrears” mean?

Here are examples, using sample numbers. *First*, using the “Rosenberg” formula to recalculate your child support obligation goes like this: if you get \$500 a month in SSDI, that equals \$116.27 weekly (this is 500 divided by 4.3, which you need to do to make monthly numbers equal weekly numbers for your financial statement, below). If your child(ren) get \$250 a month in dependency benefits, or \$58.13 weekly, then your weekly income, for the purpose of running the child support guidelines, is your SSDI and the dependency benefit added together. So your income would be $\$116.27 + \$58.13 = \$174.40$. Then your total income and the other parent’s income are plugged into the Child Support Guidelines worksheet to come up with your weekly support obligation. The important part of the Rosenberg formula is that you then get a dollar-for-dollar credit of the dependency benefit against your weekly obligation. So, let’s say your weekly support obligation came out to be \$50.00, the weekly dependency benefit of \$58.13 would cover it! If there is extra money, as in this example, you don’t get any of that back. But if your weekly obligation came out to be \$60, for example, then a judge might make you pay the difference out of your pocket. If it is a very small amount, the judge will probably not order any additional support. If it is a larger amount he or she might; if you really cannot afford any additional money out of your pocket be prepared to present to the judge, using your signed financial statement, and explain why you are unable to pay any extra amount of support to the other parent.

Second, if you have accumulated arrears since the time you began receiving SSDI and your children were receiving dependency benefits during the time your arrears were accruing, you can ask the court to “equitably adjust” your arrears by giving you credit for the amount of benefits your children received. Note that this can only be used for the portion of your arrears that accumulated while your children were receiving benefits. If you have arrears from before that time, you will still be responsible for paying those. So, for example, if you stopped paying child support while you were still working you would still have to pay the arrears that accrued during that period.

Do I need to submit a financial statement form to the court with my complaint? How do I do this?

Yes, you need to complete, sign under the pains and penalties of perjury, and file your financial statement with the court when you file your complaint for modification. You can find a blank

financial statement and instructions on how to complete it are on the court website, here: <http://www.mass.gov/courts/forms/pfc/pfc-forms-gen.html#6>

What other documents do I need to make my case to the court that my child support obligation should be adjusted?

In addition to the complaint and the financial statement, you should have documents from Social Security showing the amount of your benefit, and if possible, what your child receives as a dependency benefit. You can request a “Proof of Income” letter (sometimes called a “Proof of Award” letter from Social Security. You can select the information you would like reported in this letter, but it is important for it to state the amount of money you receive for your SSDI benefits. To request this letter, you can fill out a request form online, at <https://secure.ssa.gov/apps6z/BEVE/main.html>, or you can call Social Security and submit a request through their automated system, at 1-800-772-1213.

If Social Security will not tell you the exact amount that the children receive in dependency benefits (and you do not know this information from the other parent), you can ask the court to require the other parent to get proof of the amount of dependency benefits so that your child support obligation can be calculated correctly.

What if the other parent objects to me getting the credit for the dependency benefits because I am “not paying support out of my own pocket?”

Simply put, the other parent should not be concerned about whether you are “paying out of your pocket” or not—he or she should only be concerned that the children are being properly supported given the income and circumstances of both parents. Furthermore, the Rosenberg v. Merida case explains that SSDI and SSI are different kinds of benefits—you are eligible for SSDI because you have a work history, and the dependency benefit for your children was something that your Social Security taxes paid for when you were working. So even if the money is not coming out of your pocket now, your taxes paid into this insurance system when you were working, for precisely the possibility that you might at some point become disabled from work.

After I have my complaint and financial statement all ready, what do I do next?

Make sure to make several copies of your original documents—you will need to keep at least one copy for yourself, and you need to serve a copy on the other parent, and one copy on the Department of Revenue (DOR), if your support is collected by DOR. Take your original complaint and financial statement, as well as your service copies, to the courthouse to file. Ask the clerk for an “Affidavit of Indigency” form so you can request that the fees for filing and for service can be waived. This form and instructions for filing it out are also available on the court website, here: <http://www.mass.gov/courts/forms/pfc/pfc-forms-gen.html#6>

It is your responsibility to make sure the other parties are served—the court does not do this!

You can mail them to the court as well, but if you do so, make sure to write a cover letter with the name of the case and the docket number, and enclose the completed Affidavit of Indigency form. You will need to request that the court mail you back the service copies stamped with the filing date so you can serve them on the other party to the case (and DOR if necessary.) Note that if there is any way you can get to the courthouse this will be faster and easier; you can get the documents processed by the clerk while you wait, and in most cases you can serve DOR by hand at their office in the courthouse.

Note that you will need to ask for a court hearing—this will not happen automatically. If there are no issues in your complaint for modification other than the child support, you may want to ask for a Pre-Trial Conference as soon as it can be scheduled. If DOR collects the support the hearing may have to be scheduled on a DOR day.

You should bring the Social Security documents proving your income to the first court date rather than filing them with your initial papers.

Before the hearing, if there have been any changes to your financial statement, you should prepare an updated statement. Bring this to the hearing. Have an original to file with the court and copies for yourself, the other parent, and DOR. Assuming your papers are in order the court will most likely have DOR or a probation officer run the new child support guidelines and then the court will enter that order. For any arrears, you need to make a brief presentation to the court that you should not have to pay arrears for the time that the other parent was collecting the dependency benefit, because the best interests of the child have been met by receiving that benefit, and it would be a hardship for you to pay additional support toward those arrears given your reduced income. In other words, any dependency benefit the other parent may have received should be credited towards the amount that you owe for past due child support; any lump sum amount that was received when you first started receiving SSDI, as well as the monthly payments that the other parent has received.

If you have visitation rights with your children and those visits cost you money, such as for travel and entertainment, you can explain to the judge that it is in the best interests of the children that you can still afford to pay for those visits, which you would not be able to if you have to pay the arrears. It will be at the judge's discretion as to whether or not to waive any portion or all of your arrears after applying the credit for the dependency benefits.