

Conducting the Ability to Pay Hearing for an Obligor Held on a Support Warrant

Documents for review prior to the hearing:

- Obligor Questionnaire
- Wage and Hour report
- Payment History
- Current Support Order

Suggested Steps for obtaining all necessary information from the Obligor:

- Review the Obligor Questionnaire and other documents
- Swear the Obligor
- Begin with the Demographic Questions below, reviewing, as needed, the Questionnaire with the Obligor (the questions that are included in the Questionnaire *are in italics with the Questionnaire number (in parentheses)*)
- Clarify inconsistent, inconclusive or ambiguous answers
- Determine why the bligor is failing to pay support
- Ensure that the Obligor has a plan to address arrearages – memorialize the plan in an order

Demographic Questions: (to complete or confirm the information in the questionnaire)

- What is your current address? (28)*
(Do not accept only a Post Office Box number; obtain a residential address.) (28)
- What is your Social Security Number? (11)*
- What is your Date of Birth? (8)*
- Where were you born? (10)*
- Are you employed? (40)*

Current Support Order:

- Probation is saying you owe \$_____, do you agree?
- How many children are on the order, what are their ages?
- Do you have other children you are required to support? (34)*
- What are you prepared to pay today?
- How much can you raise?
- Why have you not paid the support amount? (Listen to the Obligor’s responses before you initiate further questions.)
- What is your plan to try to satisfy the arrears and pay the child support?

Living Arrangements (Section 1):

Do you own your home, pay a mortgage or rent? (24)

Are you current with your rent or mortgage? (36)

What is the amount of your rent/mortgage? (80)

Who is paying for your rent and food?

Is the lease in your name?

If no, who rents the place?

How long have you lived there?

Are you living alone? (32)

If the Obligor is employed (Section 2)

Where are you employed? (41)

Please give the full address and telephone number of your employer. (41/45)

How long have you been employed? (49)

How many hours do you work? (48)

Are you salaried or paid by the hour? (62/47)

How often are you paid? (Weekly, monthly, twice a week or every two weeks)

Do you have any other source of income?

How much do you make?

Did you have a pay stub available?

Do you receive tips or other monies not reflected in your paycheck?

Medical Coverage:

Does your employer provide medical coverage? If no, are you a member of a union?

Have you applied for medical coverage for your child/children through this job or union?

Do you have the medical coverage for your child/children? Do you have proof? (such as a copy of the insurance card.)

If the Obligor is unemployed (Section 2)

How long have you been unemployed? Or, When was your last job? (42/58)

What happened to your prior job? (44)

What type of work did you do? (46/56)

How long were you there? Or, When did you start working in that job?

Did you apply for Unemployment Insurance payments? (43/64)

Are you collecting unemployment compensation? (43/64)

Do you have any prospects for a job? (*See Comment Section on Questionnaire*)

What have you done to try to find a job? (*See Comment Section on Questionnaire*)

Are you disabled in any way that I should know about? (See Comment Section on Questionnaire)

If so, do you have medical proof of the disability?

Did you apply for any type of disability income?

Are you collecting any disability payments? State? Social Security? Veterans? Worker's Compensation?

Do you have proof of the type of income you are receiving as a result of the disability?

Is the obligor receiving any Social Security income? Determine if it is SSI (Supplemental Security Income) or SSDI (Social Security Disability Insurance) payments.

Is your child receiving any kind of income as a result of your disability payment?

Other income source: (See Comment Section on Questionnaire)

Have you filed any lawsuit? (75)

If so, what is the name, address and phone number for your attorney?

What is the status of the lawsuit?

Do you have a workers compensation claim? (See Comment Section on Questionnaire)

What is the status of your case, and are you represented by counsel in this case?

Do you own any property, stocks and/or bonds, or annuities? (63/65/73)

Are you receiving any pension income? (68)

Have you had any winnings from the lottery or from a casino in the last six months?
(If yes) how much?

Do you have any other assets?

Ask the Obligee, if present, if she or he is aware of any assets the Obligor has?

If the Obligor states that she/he is disabled and is not receiving any benefits based on the Disability: (See Comment Section on Questionnaire)

What is the nature of your disability?

How did the injury or condition happen?

When did this happen?

Were you employed at the time of your injury? If yes, who was the employer?

Are you under the care of a doctor? Obtain the name and location of doctor.

What is the diagnosis and prognosis according to your doctor?

When did you last see the doctor? What was the reason? What did the doctor say? When is your next appointment?

Are you taking any prescribed medications? Do you have any medical coverage?

Does your condition affect your ability work? How – seek specific details.

Do you have anything in writing from your doctor as to your ability to work?

(If the Obligor is not under medical supervision ask if she/he plans to see a doctor and request medical documentation as to disability.)

If the Obligor is participating in a Rehabilitation, or “Back to Work” Program: (See Comment Section on Questionnaire)

Is this a voluntary Program?
What is the name of the Program?
What is the address and phone number for the Program?
Who can we contact to confirm your participation?
Do you have any proof that you are participating in the Program?
When did you start the Program?
How long does the Program last?
Is it an in-patient or outpatient Program?
Are you allowed to work while your participate in the Program?
If yes, where have you been looking for work?
If working, what do you earn?
Do you have to pay the Rehabilitation Program any fees?
Are you receiving any training as part of the Program?
When will you be completing the Program?

If the Obligor has been incarcerated: (See Comment Section on Questionnaire)

How long were you incarcerated?
When were you released?
If unemployed, what have you been doing to find work?
What type of work did you do before?
Do you have any prospects for employment?
Are you living alone?
Are you on Criminal Probation or Parole? What is the name of your P.O.?
Are Child Support payments a condition of your probation or parole?
Do you have any criminal fines to pay?

For the Obligor who is unemployed and states he/she lacks income but is not disabled. (See Comment Section on Questionnaire)

(Note: Question carefully to ascertain how obligations are being met.)

Do you have any income from any source?
What is your cell phone number?
Do you have a car? Is it yours? Is it leased or financed? Make, model and color.
Is the car insured? What is the name of the insurance company? How much do you pay to insure it?
If no car, how did you get here today?
If by public transportation – how much did that cost? How did you get the money?
If someone else drove Obligor, ask who. How does Obligor know the person who gave Obligor the lift. Did you provide money for gas?
Do you have any consumer debt? Credit cards? (Get details of balance, and status of payments. Note that a good credit score means that a minimum payment is made on time.)
Any loans? (If yes, obtain details)
If Obligor lives at own place – Do you have cable? Internet access? How much is paid for these services?
Besides this case, are you responsible for supporting anyone else?

Possible Orders:

Order to Return to Incarceration

Insure that specific findings necessary to support the Order are included on the face of the Order to facilitate appellate review.

Order for alternative disposition

Consider all possible remedies such as:

- Wage Execution, if not in place
- Lump Sum payable today
- Lump Sum payable on a future date
- Missed payment status (also known as a bench warrant stipulation, usually stating that missing two subsequent payments may result in issuance of a new bench warrant)
- Lien on lawsuit
- Job search report to Probation (directing Obligor to provide proof of application for X number of suitable jobs on a weekly or biweekly basis to Probation)
- Referral to DOL One Stop Center (Work Requirements Program)
- Direct Obligor to apply for benefits to which she/he may be entitled such as Social Security
- Direct Obligor to provide Probation/MNSM Center with medical insurance information
- Initiation of Drivers or Professional License Suspension or Restoration
- Community service as provided in R. 5:3-7(b)
- Direct Obligor to sell assets and tender proceeds into court.

If Obligor's responses lead the court to conclude that modification of the support order may be appropriate because of the Obligor's incarceration, disability, or other change in circumstance, the court, in its discretion, may (1) recommend that the Obligor file for a modification of support or (2) arrange for a hearing to address the relevant change in circumstances on a date provided by the Division Manager that will allow adequate time for service of notice to the Obligee.