

TITLE 8 SOCIAL SERVICES
CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM
PART 130 ADMINISTRATIVE HEARINGS

8.50.130.1 ISSUING AGENCY: New Mexico Health Care Authority - Child Support Services Division.
[8.50.130.1 NMAC - Rp, 8.50.130.1 NMAC, 12/30/2010; A, 7/1/2024]

8.50.130.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.
[8.50.130.2 NMAC - Rp, 8.50.130.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.3 STATUTORY AUTHORITY: Public Assistance Act, Section 27-2-27 et seq., NMSA 1978. The health care authority (HCA) is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.). Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.50.130.3 NMAC - Rp, 8.50.130.3 NMAC, 12/30/2010; A, 7/1/2024]

8.50.130.4 DURATION: Permanent.
[8.50.130.4 NMAC - Rp, 8.50.130.4 NMAC, 12/30/2010]

8.50.130.5 EFFECTIVE DATE: December 30, 2010, unless a later date is cited at the end of a section.
[8.50.130.5 NMAC - Rp, 8.50.130.5 NMAC, 12/30/2010]

8.50.130.6 OBJECTIVE: To provide regulations in accordance with federal and state law and regulations.
[8.50.130.6 NMAC - Rp, 8.50.130.6 NMAC, 12/30/2010]

8.50.130.7 DEFINITIONS: [RESERVED]
[See 8.50.100.7 NMAC]

8.50.130.8 ADMINISTRATIVE HEARINGS: Administrative hearings will be provided by the Title IV-D agency in the following situations:

- A.** an obligor requests a review pertaining to income withholding, consumer reporting, an adverse administrative order, referral for federal tax intercept, referral for state tax intercept, referral for passport denial, referral for administrative offset, lien on lottery winnings, lien on gaming winnings, or a FIDM referral;
 - B.** any IV-A recipient or former IV-A recipient who believes the recipient is entitled to part or all of a support payment that was made to the Title IV-D agency but not disbursed to the recipient;
 - C.** an obligor's spouse who requests the refund of more than one-half of a state tax intercept; and
 - D.** an owner as defined in 8.50.132.7 NMAC who is claiming an interest in undistributed collections.
- [8.50.130.8 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.9 IN GENERAL:

- A.** The hearing process provides the appellant notice and an opportunity to the appellant's claim.
- B.** Hearing appellant: A hearing "appellant" for the purpose of these regulations is any obligor, obligor's spouse (only in cases involving a state tax intercept), or obligee requesting and entitled to a review.
- C.** Appellant's rights: the right to a hearing includes the right:
 - (1)** to be advised of the nature and availability of a hearing;
 - (2)** to safeguards of the appellant's opportunity to present a case;
 - (3)** to have prompt notice and implementation of the decision based upon the hearing results;and
 - (4)** to be advised that if the appellant is not in agreement with the administrative hearing result, a judicial review may be invoked to the extent such review is available under state law.

[8.50.130.9 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.10 NOTICE OF ADMINISTRATIVE ENFORCEMENT ACTION:

A. Notices to obligor of referral to tax-offset program: The IV-D agency or federal office of child support enforcement sends written notice to inform an obligor that due to the amount of the obligor's past-due support the obligor will be referred for a tax refund offset. One or more of the following notices is sent:

- (1) FMS pre-offset notice (obligor);
- (2) taxation and revenue department pre-offset notice (obligor);
- (3) taxation and revenue department pre-offset notice (injured spouse);
- (4) IRS notice of offset; and
- (5) taxation and revenue department final distribution notice.

B. Notice to obligor of FIDM freeze order: The Title IV-D agency will mail a notice of lien to the obligor at the last known address on file with the IV-D agency.

C. Notice to obligor of administrative lien on lottery and gaming winnings: The Title IV-D agency will mail a copy of the notice of administrative lien to the obligor at the last known address on file with the Title IV-D agency.

D. Notice to obligor for passport referral: Notice regarding the referral for passport denial is included in the FMS offset notice and is sent to the obligor at the last known address on file with the Title IV-D agency.

E. Notice to owner of an undistributed collection: The Title IV-D agency will mail a copy of the notice of undistributed collection to the owner at the last known address on file with the Title IV-D agency.

F. Notice to obligor for administrative offset referral: The Title IV-D agency will mail notice regarding the referral for administrative offset is included in the FMS offset notice and is sent to the obligor at the last known address on file with the Title IV-D agency.

G. All notices will include the process and timeframes for requesting an appeal.
[8.50.130.10 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.11 TIME FRAMES FOR REQUESTING AN ADMINISTRATIVE HEARING: In all cases where a time frame is not specifically provided, the appellant has 15 calendar days following the date of mailing of notice by the Title IV-D agency to submit a written request for an administrative hearing. The appellant has 30 days from the date on the pre-offset notice to request a hearing. In order to be considered timely, the request for a hearing on a pre-offset notice must be received by the Title IV-D agency no later than the close of business on the 30th day, or the next business day if the 30th day is a weekend or federally recognized holiday.
[8.50.130.11 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.12 CONTESTING TAX REFUND INTERCEPT IN INTERSTATE CASES:

A. If an appellant requests an administrative hearing the administrative law judge will send a notice of acknowledgment to the appellant and to the respective Title IV-D agency worker. The notice and acknowledgement shall include a statement regarding the timeliness of the request for hearing. In non-Title IV-A cases, the Title IV-D agency shall notify the custodial party of the time and place of the administrative hearing. The Title IV-D agency worker shall be available to testify at the administrative hearing.

B. If the appeal concerns an IRS joint tax refund that has not yet been intercepted, the appellant is informed that the IRS will notify the injured spouse at the time of intercept regarding the steps to take to secure his or her proper share of the refund. If the appeal concerns a joint tax refund that has already been intercepted, the injured spouse is referred to the IRS to seek resolution.

[8.50.130.12 NMAC - Rp, 8.50.130.9 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.13 CONTESTING TAX REFUND INTERCEPT IN RESPONDING INTERSTATE CASES:

Administrative hearing requests are referred to the central registry in the responding state if the obligor requests a hearing in that state.

A. When the obligor, after receiving the FMS offset notice from the other state, contacts the Title IV-D agency worker, the worker may refer the obligor to the state that issued the notice. However, if the obligor contacts the Title IV-D agency as the last resort because he or she cannot get assistance from the other state, the worker may contact the other state, or refer the obligor to central registry and central registry staff will contact the other state.

B. If a request from the obligor for an administrative hearing in New Mexico is received and the case was submitted based on another state's order, a review of the arrearage computation submitted for tax intercept and the underlying documentation, and any new evidence provided by the appellant is completed, and an attempt is made to resolve the complaint. If the complaint cannot be resolved by the Title IV-D agency worker and the obligor requests an administrative hearing in the initiating state, the other state is notified by the New Mexico Title IV-D

agency of the request and all necessary information is provided within 10 days of the obligor's request for an administrative hearing.

C. The initiating state is responsible for all procedures required for conducting a hearing within that state.

[8.50.130.13 NMAC - Rp, 8.50.130.10 NMAC, 12/30/2010; A, 1/1/2020]

8.50.130.14 CONTESTING THE DENIAL OF PAYMENT OF AN UNDISTRIBUTED COLLECTION:

An owner who is claiming an interest in an undistributed collection has 30 calendar days following the date that the Title IV-D agency denied payment of the undistributed collection to submit a written request for an administrative hearing.

[8.50.130.14 NMAC - N, 12/30/2010; A, 1/1/2022]

8.50.130.15 INITIATION OF HEARING PROCESS:

A. A request for hearing must be made in writing.

B. The administrative law judge shall acknowledge, in writing, the receipt of a written hearing request, and shall provide the appellant with written acknowledgment of the receipt.

C. Upon the request of the appellant, the Title IV-D staff shall assist in the preparation of a notice of hearing. The notice of hearing will be signed by the appellant.

[8.50.130.15 NMAC - N, 12/30/2010; A, 1/1/2022]

8.50.130.16 DENIAL/DISMISSAL OF REQUEST FOR HEARING:

A. The administrative law judge may deny or dismiss a request for hearing when:

(1) the request is not received within the specified time period;

(2) the situation has been resolved;

(3) the request is not made in writing; or

(4) a written withdrawal of request for hearing is received from the appellant, or a written

agreement settling all issues is approved by all parties and is submitted to the administrative law judge.

B. A request for a hearing is considered abandoned and therefore dismissed if neither the appellant nor his or her representative appears at the time and place of the hearing, and if, within 10 days after a notice of abandonment is mailed by the administrative law judge, the appellant has not presented good cause for failing to appear. Good cause includes verification of a death in the family, doctor's note verifying a disabling personal illness, or other significant emergencies. At the discretion of the administrative law judge, a showing of exceptional circumstances is considered good cause.

[8.50.130.16 NMAC - Rp, 8.50.130.13 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.17 NOTICE OF HEARING: As early as possible and not less than 15 days prior to the hearing, written notice is sent by the administrative law judge to all parties involved in the hearing. The notice shall set forth the time, date and place of the hearing. Arrangements will be made to ensure that the hearing process is accessible to and accommodates the appellant, as long as the appellant provides at least 10 days advance notice to the administrative law judge of the need for reasonable accommodations. The notice of hearing includes an explanation of the hearing process and limitation of the scope of the hearing, the procedures to be followed during the hearing, and notification that the appellant should be ready to produce any required witnesses at the hearing or secure legal counsel prior to the hearing. The appellant is told that neither the department nor the Title IV-D agency will pay for any representation or legal counsel for appellant or for any hearing costs. The issuance of a notice of hearing by the administrative law judge shall act to stay the administrative action, pending the issuance of a ruling.

[8.50.130.17 NMAC - Rp, 8.50.130.12 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.18 APPELLANT'S RIGHTS: The appellant is given adequate opportunity to review and present evidence that is within the scope of the hearing.

A. The appellant may examine all documents to be used at the hearing prior to the date of the hearing, as well as during the hearing. If requested, the Title IV-D staff will provide copies of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records that the appellant will not otherwise have an opportunity to challenge will not be introduced at the hearing or affect the administrative law judge's decision.

B. The appellant may present his or her case or have it presented by a representative.

- C. The appellant may bring witnesses to present information that the appellant believes is relevant to the case.
 - D. The appellant may advance relevant arguments without undue interference.
 - E. The appellant may confront and cross-examine adverse witnesses.
 - F. The appellant may submit relevant evidence to support pertinent facts and defenses in the case.
- [8.50.130.18 NMAC - Rp, 8.50.130.14 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.19 TITLE IV-D AGENCY RESPONSIBILITY: To ensure an appellant's rights during the hearing process, the Title IV-D agency shall:

- A. make available, in a timely manner, without charge, the case documents (excluding any privileged, safeguarded or confidential information) necessary for an appellant or representative to determine whether a hearing should be requested or to prepare for a hearing;
 - B. provide an interpreter if the appellant requests one;
 - C. provide reasonable accommodations, if requested in advance; and
 - D. prepare a summary of evidence to include all documents to be presented by the Title IV-D agency at the hearing and all documents should be provided to the appellant, or his or her representative, by the Title IV-D agency at least 10 days prior to the hearing.
- [8.50.130.19 NMAC - Rp, 8.50.130.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.20 PRE-HEARING ACTIVITY:

- A. Preliminary conference: A preliminary conference may be scheduled prior to the hearing to discuss the issues concerning the hearing. The preliminary conference is held between the Title IV-D agency worker, the appellant, the Title IV-D attorney if an attorney is representing the appellant and the appellant's representative, as applicable. The administrative law judge is not involved and will not participate in the preliminary conference. This conference may provide an opportunity to resolve the dispute. A preliminary conference may lead to an informal resolution of the dispute. However, a hearing shall still be held unless the appellant makes a written withdrawal of his or her request for a hearing. If a written withdrawal is received by the Title IV-D agency worker, it must be forwarded to the administrative law judge. Appellants are advised that the preliminary conference is optional and that it will not delay or replace the hearing process.
 - B. The purposes of the pre-hearing conference include, but are not limited to:
 - (1) clarification, formulation and simplification of issues;
 - (2) resolution of some or all issues;
 - (3) exchange of documents and information;
 - (4) review of any audit findings; and
 - (5) discussion of other matters that might help dispose of any of the pending issues.
 - C. Matters left unresolved: If all matters in controversy are not resolved at the preliminary conference, a hearing is held.
- [8.50.130.20 NMAC - Rp, 8.50.130.16 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.21 CONDUCT OF HEARING:

- A. Conduct of a hearing is as follows:
 - (1) all hearings are conducted telephonically;
 - (2) the hearing is not open to the public;
 - (3) the administrative law judge identifies for the record all persons present at the hearing;
 and
 - (4) the administrative law judge takes administrative notice of those matters the same as state courts take judicial notice of, including the Title IV-D agency's policies and procedures.
- B. Record: A hearing is electronically recorded. The recording is placed on file at the hearings unit and is available for examination by the appellant or representative for 30 days following the hearing. If a decision is appealed, an index log of the tape is prepared by the Title IV-D agency and a copy of the index log is supplied to the appellant free of charge.
- C. Admission of evidence: Formal rules of evidence and civil procedure do not apply. The administrative law judge may allow hearsay testimony if it is deemed relevant to the decision. The rules of privilege will be effective to the extent that they are recognized in civil actions in the New Mexico district courts.

D. Case records: An appellant or representative is allowed to examine the entire hearing case record before, during and after the proceedings. The appellant or representative must request the hearing record and the Title IV-D agency will provide the record within a reasonable period of time.
[8.50.130.21 NMAC - Rp, 8.50.130.17 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.22 DECISION MAKING:

A. Authority: The hearing decision is based only on the evidence introduced and admitted by the administrative law judge during the hearing. This includes the record of the testimony, all reports, documents, forms, etc., made available at the hearing, provided that the appellant was given an opportunity to examine them as part of the hearing process.

B. Written decision: The administrative law judge will issue a written decision within 20 business days after the hearing.

[8.50.130.22 NMAC - Rp, 8.50.130.18 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.23 IMPLEMENTATION OF DECISIONS: The administrative law judge's decision is final and binding on all issues within the scope of a hearing and that have been the subject of a hearing, unless stayed by an appeal or a district court order.

A. Decision favorable to appellant regarding offsets:

(1) If the administrative hearing results in a deletion of, or decrease in, the amount referred for tax intercept, the tax intercept unit notifies the OCSE within 10 business days of the administrative hearing.

(2) If, as a result of the administrative hearing, an amount which has already been offset is found to have exceeded the amount of past-due support owed, the Title IV-D agency refunds the excess amount to the obligor promptly, and reports the refund to the OCSE. In joint return cases, the refund check is made payable to both parties.

B. Decisions regarding liens on lottery, gaming, or FIDM: The Title IV-D agency will take appropriate action in accordance with the decision of the administrative law judge. If the administrative law judge rules in favor of the appellant, the Title IV-D agency will take action to fully or partially release a freeze order or administrative lien, as appropriate. If the administrative law judge rules in the agency's favor, the Title IV-D agency will proceed to have the funds routed for distribution to the obligor's case(s) or held by the Title IV-D agency until all appeals relevant to the action have been exhausted.

[8.50.130.23 NMAC - Rp, 8.50.130.19 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.24 RIGHT OF APPEAL: Either party has the right to judicial review of the administrative law judge's decision or a denial of a hearing issued pursuant to 8.50.130.15 NMAC, unless a written withdrawal of request for hearing was signed by the appellant. If a hearing decision is in favor of the Title IV-D agency, appellant is notified of the right to pursue judicial review at the time of the decision.

A. Timeframes for appealing decision: Within 30 days after the date on the administrative law judge's decision, an appellant or the Title IV-D agency may appeal by filing an appropriate action for judicial review with the clerk of the appropriate district court, and filing a copy with the Title IV-D administrative law judge.

B. Record sent to district court: All appeals to the district court are on the record made at the hearing. The administrative law judge files one copy of the hearing record with the clerk of the appropriate district court and furnishes one copy to the appellant within 20 days after receipt of the notice of appeal.

C. Stay pending appeal: An appeal to the state district court shall act as a stay of the underlying administrative action, pending the court's ruling.

[8.50.130.24 NMAC - Rp, 8.50.130.20 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.25 STATE DIRECTORY OF NEW HIRES PENALTY ASSESSMENT HEARINGS: The human services department, Title IV-D agency, has established a hearing process that provides for impartial review of New Mexico state directory of new hires claims against non-complying employers. (45 USC 653(d)). For purposes of these regulations, an employer requesting a hearing is referred to as an appellant.

A. Appellant eligibility: The Title IV-D agency established a hearing process for any individual who meets the following criteria:

(1) any employer who believes he or she has been erroneously assessed penalties; and

(2) who has been unable to resolve this issue with the New Mexico state directory of new hires representative at a preliminary conference.

B. Hearing appellant: A hearing appellant for the purposes of these regulations is any employer requesting review.

C. Appellant's rights: The right to a hearing includes the right:

- (1) to be advised of the nature and availability of a hearing and the process to request a hearing;
- (2) to be represented at the hearing by counsel or other person of the appellant's choice;
- (3) to have a hearing that safeguards the appellant's opportunity to present a case;
- (4) to have prompt notice and implementation of the administrative law judge's decision and
- (5) to be advised that the appellant may request judicial review to the extent such review is available under state law, and that the Title IV-D agency does not pay for the cost of such proceedings

D. Penalty assessment notice: The New Mexico state directory of new hires sends written notice to inform an employer that penalties have been assessed. Each penalty assessment notice will:

- (1) cite the statutory authority (Section 50-13-4 et seq., NMSA 1978) for the assessment of the penalty;
- (2) include the name and last four digits of the social security number for each party not reported;
- (3) list the total amount of penalties assessed;
- (4) inform the employer that failure to report is the basis for penalty and does not require a knowing or deliberate act on the part of the employer;
- (5) inform the employer that conspiracy can be established by circumstantial evidence;
- (6) list requirements for employers to request a hearing if they disagree with the assessment;
- (7) provide the name and business telephone number of a Title IV-D agency contact to provide additional information or answer questions relating to the assessment of penalties and to request a hearing.

E. Time frames for requesting hearing: The appellant has 30 days from the date on the penalties assessment notice to submit a written request for a hearing. In order to be considered timely, the request must be received by the administrative law judge no later than the close of business on the 30th day. When a timely request for hearing is received by the administrative law judge, the administrative law judge notifies the new hires directory, state project manager immediately so that a preliminary conference can be scheduled.

F. Notice of hearing: Upon receipt of a timely request for hearing, written notice is sent by the administrative law judge to all parties involved in the hearing regarding the time, date and place of the hearing. Arrangements will be made to ensure that the hearing process is accessible to and accommodates the appellant. In the hearing notice, appellants are also given an explanation of the hearing process, the procedures to be followed for the hearing, and enough time to secure witnesses or legal counsel. The appellant shall be informed that neither the department nor the Title IV-D agency pays for representation or legal counsel for appellant or for any hearings costs, and are provided the name and business telephone number of a contact who can provide additional information relating to the assessment of penalties. A hearing may be continued or rescheduled with the consent of all parties.

G. State directory of new hires responsibility: To ensure an appellant's rights during the hearing process, the state directory of new hires staff will:

- (1) upon request, make available in a timely manner the documents necessary for an appellant or representative to determine whether to request a hearing or to prepare for a hearing;
- (2) upon request, help appellant submit a written hearing request.

H. Effect of issuance of notice of hearing: All provisions contained in sections 8.50.130.15, 8.50.130.17, 8.50.130.19, 8.50.130.20 and 8.50.130.22 NMAC apply when a notice of hearing is issued pursuant to subsection F above.

[8.50.130.25 NMAC - Rp, 8.50.130.21 NMAC, 12/30/2010; A, 1/1/2022]

History of 8.50.130 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

ISD CSEB 501.1100, State and Local Requirements, 6/23/1980.

NMAC History:

8 NMAC 5.CSE.000 through 8 NMAC 5.CSE.970, 12/30/1994.

History of Repealed Material:

8 NMAC 5.CSE, Child Support Enforcement - Repealed effective 5/31/2001.

8.50.130 NMAC, Administrative Hearings, filed 5/14/2001 - Repealed effective 12/30/2010.