

### **Chapter 3: Assessment of Income**

#### **(ii) Non-exempt Income**

##### **(i) Spousal Support Payments**

<b>Intent:</b>	To provide guidelines for staff on how to assess spousal support in relation to Income Support eligibility.
<b>Act:</b>	N/A
<b>Regulations:</b>	<p>8 (c) "non-exempt income" means income received by an applicant or recipient for which no exemption applies and which is used in determining eligibility but does not include partially exempt income, and which may be obtained by means of</p> <p>(vi) payments which are monetary in nature or which are quantifiable in monetary terms including payments which are by way of arrears and which are received as spousal maintenance or support by the applicant or recipient under a private agreement, a domestic contract or a court order</p>
<b>Overview:</b>	When possible and practical, Income Support recipients are required to pursue spousal support.
<b>Policy:</b>	<p><b>(100) General</b></p> <ul style="list-style-type: none"><li>Income Support benefits can be provided to all new and active cases for a limited period of time (30-60 days) while the applicant/recipient applies for financial spousal support from their previous partner/spouse, unless an exemption is made.</li><li>The CSO should ensure that spousal support payments are reviewed annually, unless a recalculation clause is included in a previous order or registered domestic contract.</li><li>Support cases can be referred to a departmental social worker through a <a href="#">Support Referral form</a> or a direct referral can be made through the CAPS system depending on regional practices. Please see <a href="#">Support Application Referral Process</a>.</li><li>Effective June 1, 2019, child support benefits are exempt from Income Support eligibility. Although seeking child support is no longer mandatory for Income Support applicants/recipients, departmental social workers can still assist clients in obtaining child support on a voluntary basis if they request assistance.</li></ul>

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- Spousal support payments must be considered non-exempt income and deducted in full from the amount of eligibility for Income Support entitlement.
- If the Income Support applicant does not comply with the referral to a social worker to seek spousal support or does not engage in their services, all Income Support benefits may be suspended or redirected to the local office. This does not apply to child support give that it is considered exempt income.
- A lump sum spousal support payment must be assessed as non-exempt income. Please see the policy on Determining Continued Eligibility for Recipients – Lump Sum Payments for further information.
- As child support became exempt effective June 1, 2019, lump sum payments for child support with a covering period that pre-dates June 1, 2019 that overlap with Income Support benefits must be considered non-exempt income. Payments provided beyond June 1, 2019 are exempt.
- If it is verified that spousal support payments are registered with the Support Enforcement Agency and payments have not been received within 10 calendar days of the due date, adjustments can be made to the client's Income Support entitlement.

**(200) Assignment/Subrogation of a Spousal Support Order**

- There are cases where a recipient never receives a spousal support payment, rarely receives the support payment on time or receives the support payments sporadically. In these situations, recipients must be advised that their support orders must be registered with the Support Enforcement Agency (SEA) before any reimbursement can be made.
- In addition, recipients are required to subrogate their support payments to the Minister when one or more of the following situations occurs:
  - Spousal support payments have been missed for three consecutive months
  - The recipient was reimbursed for missed spousal support payments at least three times in the past year
  - The client is not receiving a spousal support payment at all and the order/agreement is registered with SEA

- When spousal support orders are assigned to the Minister, all future support payments received by the SEA are forwarded directly to the Department. In addition, any retroactive payments received for periods identified on the Affidavit of Arrears for payments which the Department reimbursed the recipient, will also be forwarded directly to the Department. The advantage to the recipient of assigning their support order to the Minister is to eliminate hardship caused by sporadic payments and having to be reimbursed at a later date. If the recipient refuses to assign the spousal support payment, the amount of the order must be deducted in full and any reimbursements because of a non-payment cannot be considered.

**(300) "Opting Out" of the Support Enforcement Agency**

- Persons in receipt of Income Support benefits who do not have their orders assigned to the Minister are permitted to withdraw their orders from the SEA. In these situations, the person is required to complete forms to opt out of the program. In a situation where a recipient of Income Support benefits does not receive the spousal support payment and has "opted out" of the SEA, the same condition applies as for all cases with delinquent payments which require the recipient to re-register his/her order with the Agency before any delinquent payment is replaced. However, for persons in receipt of Income Support benefits who have their orders assigned to the Minister, the SEA will not permit them to opt out.

**(400) Methods of Spousal Support Payments:**

- Support may be paid in the following ways:
  - directly by the former partner/spouse
  - to the Support Enforcement Agency which forwards the payment
  - to a third party on behalf of the client (a landlord, bank, etc.)
- When support payments are made on mortgages by an absent partner/spouse, please refer to policy on [Shelter Assistance \(Rent and Mortgage\)](#).

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- In all three cases above, the amount of spousal support income is deducted from the client's Income Support entitlement.
- Payments will be made to the Support Enforcement Agency when support has been subrogated (assigned) to the Minister. In these cases no money is deducted from the Income Support entitlement.

**Procedure: (500) Spousal Support Orders**

**When Spousal Support Orders/Domestic Contracts are Terminated:**

- If the order was registered with the Support Enforcement Agency, the worker can verify that the account is closed and the support order is no longer being enforced.
- If the order/domestic contract is terminated and was not registered with the Support Enforcement Agency, the individual in receipt of Income Support will need to provide verification of same to the Department, and the information should be added to TRIM.

In both cases, given that spousal support is no longer in pay, the income should not be deducted from the total eligibility for Income Support.

**(600) Spousal Support Payment Arrears and Lump Sum Payments**

- If an individual receives a lump sum payment for spousal support arrears, please refer to the policy on "[Determining Continued Eligibility for Recipients – Lump Sum Payments.](#)"
- If the amount is forwarded to the Department as a result of the order being subrogated to the Minister, no action is required by the CSO.
- There may be situations where the former spouse/partner is required to pay off spousal arrears by increasing the monthly payment. In these situations, the total amount of the monthly payment, including the additional amount for arrears, is considered non-exempt income and deducted from the recipient's Income Support benefits. When the arrears are paid in full, then the monthly amount will be reduced and the Income Support entitlement is to be adjusted accordingly.

## **Support Enforcement Agency (SEA)**

### **(700) Transferring Support Orders for Enforcement from One Jurisdiction to Another**

- There may be occasions when a spousal support order will have to transfer from one jurisdiction to another. This is usually the case when both the recipient and/or payer no longer live in the jurisdiction where the order was originally registered for enforcement. In such cases, the client or the Client Services Officer should contact the SEA and request a registration form. Along with the completed registration form, the individual will need a copy of existing spousal support order(s) and the account /case number from the previous jurisdiction. When this is received by the SEA, a letter is sent to the previous jurisdiction advising them that the client has now registered with the SEA in this province and to forward an updated Affidavit of Arrears and a Statement of Account. Once this information is received, the SEA will open a file on behalf of the client.
- If the spousal support order is not being enforced by another jurisdiction, SEA will require the parent to submit a SEA registration form, four certified copies of the spousal support order(s) and Affidavit of Arrears.
- Although child support is considered exempt income, Departmental staff may still assist clients who request support in transferring child support orders from other jurisdictions.

### **(800) Adjusting Income Support Benefits due to Delinquent Support Payments**

- As child support became exempt effective June 1, 2019, income support benefits will not be adjusted for delinquent child support payments issued for June 1 onward. Funds collected with a covering period before June 1, 2019 are considered non-exempt income and must be deducted from Income Support eligibility.

### **Registered Spousal Support Agreements**

- If the spousal support agreement/order is verified as registered with the SEA and it is confirmed that the Agency has not received the payment within 10 calendar days of the due date, the Client Services Officer may issue an adjustment cheque to replace the income deducted from the client's Income Support entitlement.

### **Non- Registered Spousal Support Agreements**

- If the spousal support agreement/order is not registered with the SEA, the client will be required to register the agreement/order and provide proof of registration prior to any adjustments being issued. Any exceptions to this policy shall be approved by the Client Services Manager. Please note that the Affidavit of Arrears form shall be completed by the client as part of the registration process.
- If a spousal support payment is replaced in any method noted above, an overpayment is to be set up at the time the payment is received by the recipient. Unless the arrears are received by the client, no overpayment is deemed to occur. These cases should be closely monitored to determine if the Support Enforcement Agency has issued the payment(s) to the recipient.

### **(900) Assignment/Subrogation of a Spousal Support Order**

- In order to assign a spousal support order to the Minister, the CSO must have the Assignment of Spousal Support Payment (G.45) completed and signed by the client. While completing this form, the CSO must indicate in Section 1 that the agreement/order is between the client and the respondent (former spouse/partner) and include the date the agreement/order was signed.
- It is also extremely important that the client's Social Insurance Number be added to the information sent to the SEA, as the SIN is a key identifier with SEA.
- In addition, an Affidavit of Arrears must be completed indicating only the arrears owed to the Department. This affidavit must also indicate that future payments will now be

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assigned to the Department's Minister. It should be noted that the SEA will assign the full spousal support amount and cannot assign partial amounts.

- When all documents are completed, they are to be forwarded directly to the Director of the SEA with a covering letter. If the Affidavit of Arrears G.44 and G.46 spreadsheet are to be completed at a later date, the CSO must indicate that on the covering letter. Upon receipt of these forms, the SEA will forward all future spousal support payments as well as any retroactive payments owed to the Minister directly to provincial office.
- CSO's can check if the assignment of this spousal support order already exists in the system by selecting the assignment tab on Screen AM5000.
- When the subrogation is completed, the CSO will indicate this in CAPS notes and enter the assignment of benefit as follows into the CAPS system:
  - **Recurring Pay Cases:** The CSO must first suspend the allowance and complete a reassessment in order to capture the support income.
  - **Non-Recurring Pay Cases:** The CSO will add the support income on the family's next request for Income Support benefits.
  - **Screen AM5000 (Request Details):** Click on the "income" magnifying glass and then the new income tab. Scroll down to support payment and make the appropriate selection (child support and/or spousal support). Select A1 or A2 "applied" then click next, which will display AM5820.
  - **Screen AM5820 (Income):** Add start date, if known, and payment schedule. Enter SEA account number and any necessary comments.
  - Save information and system will prompt you to add "Assignment of Benefit." Enter okay and continue with income information. Next enter pay stubs and approve same. Select the save icon and close screen.

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- **Screen AM5000:** Select the “assignment tab” on the lower right side of this screen.
- **Screen AM5100 (assignment browse):** Select the add button.
- **Screen AM5110 (Assignment of Benefits):** Select the income source, date assigned and current status (open and forward to agency). Save and close screen. **Note: status options indicating close would only be selected if the spousal support payments have ended** (i.e. client is no longer eligible for support).
- **Any payment amount entered for the “Assigned Support Payment” will now be reduced to zero and the “Assigned to Minister” box is now ticked by the system (double click on spousal support payment income to verify). This process will result in a prompt for the CSO to notify the Support Enforcement Agency any time a recurring pay case which is subrogated to the Minister is suspended.**
- **Note:** No subrogation should be completed when a client’s support order is higher than their eligible amount of Income Support benefits. In these cases, the CSO will issue Income Support benefits through non-recurring pay for appropriate overpayments to be set up (i.e. if or when support payments are received by the recipient for the same covering period).

**(1000) Management of Cases where Spousal Support Orders are Assigned/Subrogated to the Minister**

- Until the SEA is notified by the Department that the client is no longer in receipt of Income Support benefits, the SEA will continue to forward the support payments to the Department as per the original “Assignment of Spousal Support Agreement.”
- If the client is no longer in receipt of Income Support benefits, the CSO must immediately notify the SEA (using Form G.47 “Termination of Assignment /Subrogation”), so that future payments, if any, are sent directly to the person entitled to receive support. Verifying is important regardless of whether the client is no longer eligible for Income Support benefits or the client is being transferred to non-recurring pay. **Caps will**

**also provide a message prompt for the user any time a case is being suspended where the “Assigned to Minister” box on previous or new income was indicated.**

- **Transferring to Non-Recurring Pay:** The CSO must realize when a support order is assigned to the Minister that there is no direct deduction being made from the client's Income Support benefit. Since transferring cases from recurring pay to non-recurring pay may be the result of a change in income, the combined incomes (declared income plus the spousal support payment) may make the parent ineligible for Income Support. The CSO must ensure, when calculating Income Support entitlement, that all income (including assigned spousal support payment amount) of the client is taken into account.
- In situations where spousal support orders are assigned to the Minister, the payments may increase/decrease due to the conditions of the order (i.e. when the debtor is required to pay a higher amount when employed). When this happens, the higher amount received may be greater than the amount of eligibility for Income Support benefits.

#### **(1100) Suspending Income Support Cases which are Assigned**

- If a person is no longer in receipt of Income Support benefits, it is extremely important that notification be sent immediately to the SEA following the suspension of Income Support benefits to avoid a disruption in the family's income. Failure to do so will mean the arrears will be credited to the Minister or the payment will continue to be sent to the Minister erroneously.
- The notification to SEA should indicate that the effective date for the termination of the subrogation is the day prior to the last spousal support payment due. For example, if Income Support benefits ended on the 21st of the month and the last spousal support payment was due on the 15th, then the subrogation would be suspended on the 14th day of that month. However, if the support was due on the 1st of the month, then the subrogation would be suspended on the last day of the previous month. SEA can only consider “full payments,” not “partial payments.” Any adjustments will have to be calculated manually and if necessary, an account receivable can be set

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	<p>up. Payments can only be adjusted if it can be verified that the debtor actually made the payment.</p> <ul style="list-style-type: none"><li>• If support payments are being sent to the Department after the person is no longer in receipt of Income Support benefits, the SEA will determine the amount of money forwarded to the Department erroneously. If the support payments are owed to the client, the Agency will request the money from the Department and then forward the amount directly to the parent.</li><li>• In some cases, a subrogation may be terminated and a review of the file indicates there are intermittent periods when the client did not receive Income Support benefits, but their support money for the same period was subrogated. The CSO should complete a full assessment of the file and note covering dates when no Income Support benefits were issued and spousal support payments were subrogated. This information should be sent to the Department's Finance Division so that money can be reimbursed to the client from the General Revenue Account.</li></ul>
<b>Authority Level:</b>	Client Services Officer Client Services Manager – funds for the service of documents
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