

Breaking the Cycle of Defeat for "Deadbroke" Noncustodial Parents Through Advocacy on Child Support Issues

By Daniel L. Hatcher and Hannah Lieberman

Suspensions Pose a Barrier to Getting to a Job or Services

In Maryland child support enforcement offices must suspend an obligor's driver's license as soon as the obligor has arrears equal to or greater than support payments required in a sixty-day period.⁴⁹ Thus the license suspensions may occur immediately after the child support orders begin because many orders start out with a substantial arrearage amount. The suspension of a driver's license obviously can block an obligor's ability to work if the obligor needs to drive to work or if driving is required as part of the obligor's job. The catch-22 is obvious: if an obligor cannot work because he lost his driver's license, he cannot pay off the arrearage in order to get his license reinstated. A 1999 article by Ronald K. Henry, highlighting the problem, explains that "when Maryland decided to get tough with 'deadbeat dads' by suspending 9,000 driver's licenses, only about 800 were able to make sufficient progress on their arrearages to get their licenses restored."⁵² The figures underscore how this "get tough" approach to child support enforcement can backfire when applied to low-income obligors.

Enforcement offices may supply work-restricted licenses for obligors who supply proof of employment.⁵³ However, many of our clients do not know that work-restricted licenses are available or have been told incorrectly by enforcement workers that they may not get a work-restricted license until arrears are

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⁴⁹ 45 C.F.R. § 303.8 (2001). We have yet to see an example of such a notice.

⁵⁰ *Id.*

⁵¹ MD. CODE ANN. FAM. LAW § 10-119 (West, WESTLAW through 2002 session); MD. CODE REGS. 07.07.15.03 (West, WESTLAW through Mar. 7, 2003).

⁵² Ronald K. Henry, *Child Support at a Crossroads: When the Real World Intrudes upon Academics and Advocates*, 33 FAM. L.Q. 235, 237 (1999).

⁵³ MD. CODE REGS. 11.11.08.04 (West, WESTLAW through Mar. 7, 2003).

fully paid. Moreover, work-restricted licenses do not allow an obligor to drive his children to school, drive himself to an education or training program, drive to the grocery store, or drive a sick relative to the doctor's office. In Maryland no clear regulations or policies are made available to the public to explain how to obtain a work-restricted license, what notice should be given to obligors, or what proof of employment is required.⁵⁴

Advocacy Response: Correcting Agency Error. Child support caseworkers in Baltimore are inadequately trained, underpaid, and have enormous caseloads. They often make mistakes and sometimes ignore established policy. We regularly see cases in which a driver's license should not have been suspended or a suspended license should have been reinstated pursuant to regulations. Often a simple telephone call and letter can fix the problem.

For example, we represented a dad with two child support cases, one in Baltimore and the other in Annapolis. He was current on his court-ordered payments, but the agency was not properly dividing the payments between the two cases, and his driver's license had been suspended. He spent almost a year repeatedly contacting both enforcement offices to get his license back. His requests were largely ignored. With a telephone call and letter to both enforcement offices, we were able to get his license reinstated in just a few days.

In another case, an obligor whose license was suspended went to the agency

to request a work-restricted license. He presented the required proof of employment, but the agency worker incorrectly told him that he could get the restricted license only if he settled all his arrearages first.⁵⁵ The obligor was a truck driver, and he lost his job the next day. We were able to help him quickly obtain the work-restricted license. However, the loss of his job may be damage that we cannot redress.

Advocacy Response: Ensuring Adequate Due Process Rights. Before a driver's license may be suspended due to unpaid child support, Maryland regulations require notice to the obligor; the notice must, among other requirements, explain the obligor's right to contest the suspension and opportunity for administrative review.⁵⁶ The child support enforcement office is not supposed to refer a case to the Motor Vehicles Administration for license suspension until the notice and appeals process is completed.⁵⁷ Unfortunately the child support enforcement offices often ignore the regulations. Obligor frequently report to us that they do not receive notice until after the license suspension.⁵⁸ When obligors do receive notice and contest the suspension, the child support enforcement office often initiates the suspension without notifying the obligor of the results of the required investigation or the right of the obligor to request an administrative appeal. Insistence on adherence to basic due process thus has been a significant part of our work for clients who otherwise would be wrongfully denied access to critically needed transportation.

⁵⁴ The Code of Maryland Regulations explains that the Maryland Department of Motor Vehicles should provide the work-restricted license after the child support enforcement office certifies that the obligor is gainfully employed. *Id.* No further clarification is provided.

⁵⁵ See *id.* The only requirement is certification of gainful employment.

⁵⁶ Md. CODE REGS. 07.07.15.03 (West, WESTLAW through Mar. 7, 2003) (requiring notice to the obligor, including an explanation of the obligor's right to contest the suspension); *id.* 07.07.15.05 (requiring opportunity for administrative review).

⁵⁷ *Id.* 07.07.15.03 (requiring notice to the obligor, including an explanation of the obligor's right to contest the suspension); *id.* 07.07.15.05 (requiring opportunity for administrative review).

⁵⁸ In addition to clients reporting that they did not receive notice until after their license had been suspended, that only 27 appeals from driver's license suspensions were filed in 2001 (out of 8,607 total suspensions) is further evidence that obligors are not adequately informed of their due process rights. See Letter from Teresa Kaiser, Executive Director, Maryland Child Support Enforcement Administration, to Robert C. Embry, President, Abell Foundation (Mar. 7, 2002) (on file with Daniel L. Hatcher).

Even with the right to notice and appeal, whether obligors in Maryland are afforded sufficient due process protections is unclear.⁵⁹ Maryland regulations limit the grounds for contesting and appealing a suspension only to claims that the support obligation does not exist or that the amount of arrearages specified in the notice is incorrect.⁶⁰ A noncustodial parent who uses his car to drive the children to school and to medical appointments may not, under current Maryland statute and regulations, contest a license suspension on the ground that the suspension is not in the children's best interests. Nor may he raise special needs related to disabling conditions.

For example, a child support obligor may be disabled and unable to work. Although his current support obligation is stopped because of the disability, he still owes substantial arrears. If he receives notice that his license is being suspended because of the arrearages, Maryland law does not allow him to contest the suspension on the ground that his customized van (to accommodate his wheelchair) is critical to his mobility and allows him to attend physical therapy sessions. In pending administrative appeals, we are challenging the constitutionality of the limitations on defenses and insisting on reinstatement of the license as a reasonable accommodation under the Americans with Disabilities Act.⁶¹

Advocacy Response: Seeking Court Intervention. Even where a driver's license suspension is procedurally and legally correct, we have convinced the court to order reinstatement of the license based on the best interests of the children. For example, one of our clients was a young, unemployed father who received financial assistance through a "one-stop"

employment center to attend truck-driving school at a local community college. However, shortly before he was to begin the class, his driver's license was suspended due to unpaid child support, and he could not participate in the class without a valid license. We tried to convince the child support enforcement office of the obvious: that the obligor could pay much more support if he were allowed to complete the training. The agency refused and insisted on a lump-sum payment of at least one-half of the total arrearages—an impossible option for someone out of work and with no financial resources.

We filed a motion seeking immediate reinstatement, obtained an expedited hearing, and convinced the judge that reinstating the driver's license was in the children's best interests. The court scheduled a review hearing upon completion of the truck-driving school. The obligor completed the course, received his commercial driver's license, found a truck-driving job within weeks of graduation, agreed to increased child support payments, and cooperated with establishing a wage garnishment. Parents, children, and the Child Support Enforcement Administration all ultimately benefited from our intervention.

⁵⁹ For an excellent discussion about how license-suspension statutes vary considerably from state to state and a discussion of the differing procedural protections and possible due process challenges, see Naomi R. Cahn & Jane C. Murphy, *Collecting Child Support: A History of Federal and State Initiatives*, 34 CLEARINGHOUSE REV. 165, 177-80 (July-Aug. 2000).

⁶⁰ MD. CODE REGS. 07.07.15.05 (West, WESTLAW through Mar. 7, 2003).

⁶¹ See 42 U.S.C.A. § 12132 (West, WESTLAW through Pub. L. No. 108-6, approved Feb. 13, 2003); 28 C.F.R. § 35.130(a) (2002). The extent to which the Americans with Disabilities Act applies to the Maryland Child Support Enforcement Administration and whether obligors are entitled to reasonable accommodations are unresolved questions in Maryland.

⁶² MD. CODE REGS. 07.07.12.02 (West, WESTLAW through Mar. 7, 2003).