

## § 21.75

## 42 CFR Ch. I (10–1–02 Edition)

and shall provide guidance to the Service regarding administration of the provisions of these regulations.

(b) The Commissioned Personnel Operations Division, Office of Personnel Management, Office of Management, Office of the Assistant Secretary for Health, shall implement the provisions of these regulations.

### § 21.75 Procedures.

(a) *Service of notice.* (1) An authorized person shall serve on the designated official of the Department a signed notice including:

- (i) Full name of the officer;
- (ii) Social security number of the officer;
- (iii) Duty station location of the officer, if known;
- (iv) A statement that support payments are delinquent by an amount at least equal to the amount of support payable for two months;
- (v) A photocopy, along with any modifications, of the underlying support order;
- (vi) A statement of the amount of arrearages provided for in the court order and the amount which is to be applied each month toward liquidation of the arrearages, if applicable;
- (vii) The full name and address of the payee to whom the allotment will be payable;
- (viii) Any limitations on the duration of the support allotment.

(2) The service of notice shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate designated official of the Department. The designated official shall note the date and time of receipt on the notice.

(3) Valid service is not accomplished until the notice is received in the office of the designated official.

(4) If the order of a court or duly authorized administrative agency seeks collection of arrearages, the notice must state that the support allotment qualifies for the additional 5 percent in excess of the maximum percentage limitations found in 15 U.S.C. 1673. Supporting evidence must be submitted to the Department establishing that the support order is 12 or more weeks in arrears.

(5) When the information submitted is not sufficient to identify the officer the notice shall be returned directly to the authorized person with an explanation of the deficiency. However, before returning the notice, an attempt should be made to inform the authorized person who caused the notice to be served that it will not be honored unless adequate information is supplied.

(6) Upon proper service of notice of delinquent support payments and together with all required supplementary documents and information, the Service shall identify the officer from whom moneys are due and payable. The pay of the officer shall be reduced by the amount necessary to comply with the support order and liquidate arrearages if any, if provided by order of a court or duly authorized administrative agency. The maximum amount to be allotted under the provision together with any other moneys withheld from the officer for support pursuant to a court order may not exceed:

(i) 50 percent of the officer's disposable earnings for any month when the officer asserts by affidavit or other acceptable evidence that he or she is supporting a spouse or dependent child or both, other than a party in the support order. When the officer submits evidence, copies shall be sent to the authorized person, together with notification that the officer's support claim will be honored. If the support claim is contested by the authorized person, the authorized person may refer it to the appropriate court or other authority for resolution. Pending resolution of a contested support claim, the allotment shall be made but the amount of such allotment may not exceed 50 percent of the officer's disposable earnings;

(ii) 60 percent of the officer's disposable earnings for any month when the officer fails to assert by affidavit or other acceptable evidence, that he or she is supporting a spouse or dependent child or both;

(iii) Regardless of the limitations above, an additional five percent of the officer's disposable earnings shall be withheld when it is stated in the notice that the officer is in arrears in an amount equivalent to 12 or more weeks' support.

(b) *Disposable earnings.* (1) The following moneys, as defined in the U.S. Public Health Service Commissioned Corps Personnel Manual, are subject to inclusion in computation of the officer's disposable earnings:

- (i) Basic pay;
- (ii) Basic allowances for quarters for officers with dependents and officers without dependents;
- (iii) Basic allowance for subsistence;
- (iv) Special pay for physicians, dentists, optometrists, and veterinarians;
- (v) Hazardous duty pay;
- (vi) Flying pay; and
- (vii) Family separation allowances (only for officers assigned outside the contiguous United States).

(c) *Exclusions.* The following moneys are excluded from the computation of the officer's disposable earnings. Amounts due from or payable by the United States shall be offset by any amounts:

- (1) Owed by the officer to the United States.
- (2) Required by law to be deducted from the remuneration or other payment involved including but not limited to:
  - (i) Amounts withheld from benefits payable under title II of the Social Security Act when the withholding is required by law;
  - (ii) FICA.
- (3) Properly withheld for Federal and State income tax purposes if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he or she were entitled. The withholding of additional amounts pursuant to 26 U.S.C. 3402(i) may be permitted only when the officer presents evidence of a tax obligation which supports the additional withholding.
- (4) Deducted for the Servicemen's Group Life Insurance coverage.
- (5) Advances of pay that may be due and payable by the officer in the future.

(d) *Officer Notification.* (1) As soon as possible, but not later than 30 calendar days after the date of receipt of notice, the Commissioned Personnel Operations Division shall send to the officer

at his or her duty station, written notice:

- (i) That notice has been served, including a copy of the documents submitted;
  - (ii) Of the maximum limitations set forth, with a request that the officer submit supporting affidavits or other documentation necessary for determining the applicable percentage limitation;
  - (iii) That by submitting supporting affidavits or other necessary documentation, the officer consents to the disclosure of such information to the party requesting the support allotment;
  - (iv) Of the amount of percentage that will be deducted if the officer fails to submit the documentation necessary to enable the designated official of the Service to respond to the legal process within the time limits set forth;
  - (v) That a consultation with a legal officer is authorized and will be provided by the Department. The name, address, and telephone number of the legal officer will be provided;
  - (vi) That the officer may waive the personal consultation with a legal officer; however if consultation is waived action will be taken to initiate the allotment by the first end-of-month payday after notification is received that the officer has waived his/her consultation;
  - (vii) That the allotment will be initiated without the officer having received a personal consultation with a legal officer if the legal officer provides documentation that consultation could not be arranged even though good faith attempts to do so had been made; and
  - (viii) Of the date that the allotment is scheduled to begin.
- (2) The Commissioned Personnel Operations Division shall inform the appropriate legal officer of the need for consultation with the officer and shall provide the legal officer with a copy of the notice and other legal documentation served on the designated official.
- (3) If possible, the Commissioned Personnel Operations Division shall provide the officer with the following:
- (i) A consultation in person with the appropriate legal officer to discuss the legal and other factors involved with

the officer's support obligation and his/her failures to make payment;

(ii) Copies of any other documents submitted with the notice.

(4) The legal officer concerned will confirm in writing to the Commissioned Personnel Operations Division within 30 days of notice that the officer received a consultation concerning the officer's support obligation and the consequences of failure to make payments. The legal officer concerned must advise the Commissioned Personnel Operations Division of the inability to arrange such consultation and the status of continuing efforts to contact the officer.

(e) *Lack of money.* (1) When notice is served and the identified officer is found not to be entitled to any moneys due from or payable by the Department of Health and Human Services, the Commissioned Personnel Operations Division shall return the notice to the authorized person, and advise in writing that no moneys are due from or payable by the Department of Health and Human Services to the named individual.

(2) Where it appears that moneys are only temporarily exhausted or otherwise unavailable, the Commissioned Personnel Operations Division shall advise the authorized person in writing on a timely basis as to why, and for how long, the moneys will be unavailable.

(3) In instances where the officer separates from active duty, the authorized person shall be informed in writing on a timely basis that the allotment is discontinued.

(f) *Effective date of allotment.* Allotments shall be withheld beginning on the first end-of-month payday after the Commissioned Personnel Operations Division is notified that the officer has had a consultation with a legal officer, has waived his/her right to such consultation, or the legal officer has submitted documentation that a consultation with the officer could not be arranged after good faith attempts to do so were made by the legal officer. The Service shall not be required to vary its normal allotment payment cycle to comply with the notice.

(g) *Designated official.* Department of Health and Human Services, General

Counsel, Room 5362 North Building, 330 Independence Avenue, SW., Washington, DC 20201.

(Approved by the Office of Management and Budget under control number 0937-0123)

## PART 22—PERSONNEL OTHER THAN COMMISSIONED OFFICERS

### HANSEN'S DISEASE DUTY BY PERSONNEL OTHER THAN COMMISSIONED OFFICERS

Sec.

22.1 Duty at a station of the Service devoted to the care of Hansen's disease patients; additional pay.

#### SPECIAL CONSULTANTS

22.3 Appointment of special consultants.

22.5 Leave without pay while on detail.

AUTHORITY: Sec. 208(e) of the Public Health Service Act, 42 U.S.C. 210(e); E.O. 11140, 29 FR 1637.

### HANSEN'S DISEASE DUTY BY PERSONNEL OTHER THAN COMMISSIONED OFFICERS

#### §22.1 Duty at a station of the Service devoted to the care of Hansen's disease patients; additional pay.

(a) Non-commissioned officers and other employees of the Service shall not receive any additional compensation by reason of being assigned to any duty requiring intimate contact with persons with Hansen's disease. However, any such officer or employee who was entitled, on January 4, 1986, to receive additional pay by reason of being assigned to full-time duty, for a period of 30 days or more, at a station of the Service devoted to the care of Hansen's disease patients and who continues to be assigned to such duty, shall receive special pay as long as such assignment continues without a break.

(b) Such special pay shall, on any future date, be at an annual dollar level equal to the lower of the levels that would be paid under the following subparagraphs:

(1) 25% of the lowest level of basic pay that he or she has been receiving on any date from January 4, 1986, through that future date;

(2) The amount by which the level of an employee's basic pay plus special pay on January 4, 1986, exceeds the level of that employee's basic pay on that on that future date, except that