

How to get maintenance for a child from a pension fund

Court can grant an attachment of debt

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If maintenance is not paid, you can go back to court.

Money in a retirement fund is protected by law from any form of attachment by order of court, but there are exceptions.

The Maintenance Act and the Pension Funds Act allow you to claim maintenance from the pension fund of the person owing maintenance. If you go to court to claim maintenance from a person who has a legal duty to support you, or on behalf of a child, the court may order that person to pay maintenance as may be decided by the court.

The first maintenance order normally operates directly against the person owing maintenance. This would be in his or her personal capacity and no third party would be required to do anything. If the person fails to pay the money on the dates set out then you can go back to court and ask to enforce the order that was granted.

Depending on the circumstances, this can be done in any of the following ways:

Emoluments attachment order

This is often referred to as a garnishee order. Once the court is satisfied the person ordered to pay maintenance has failed to do so, it may grant another order directing the person's employer to deduct the money directly from their salary or wages.

The employer will have to do this before paying the employee. If the employer fails to deduct the money and pay it over as directed then the employer will be personally liable for the unpaid maintenance money. The emoluments attachment order carries a specific provision that the employer must notify the maintenance officer at the court should the employee's employment be terminated.

Warrant of execution

Once issued by the court, it authorises the sheriff of the court to go to the place where the person owing maintenance stays and to attach property the sheriff can sell to get the unpaid maintenance money.

Attachment of debt

This is normally granted by a court after the above options have been exhausted. As soon as the employer notifies the court that the person has resigned, the maintenance investigator will source more information. This will be around whether there is a pension fund in place and the pension fund administrator will be served with a subpoena to release information such as the value of the fund benefit due.

If the court becomes aware of the existence of a fund benefit being due to the person owing maintenance then it will order that the maintenance money be deducted from such fund benefit. The court order will have to:

- Identify the person owing maintenance and the fund in the order;
- Set out the amount that the pension fund is being directed to deduct from the member's benefit; and
- Set out the bank account details into which the maintenance money has to be paid.

In the case of a maintenance order, unlike divorce orders, there is no need for the pension fund member to be an active member on the date the order is granted. So, the fund can pay the maintenance money even where the person could have long left the employer's service, as long as the money is still held in the fund.

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