

Chapter DWD 15

CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

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Note: Chapter HSS 215, as it existed on October 31, 1997, was renumbered to chapter DWD 15, Register, October, 1997, No. 502, effective November 1, 1997.

DWD 15.01 Authority and purpose. Pursuant to ss. 49.19 (4) (h), 59.53 (5), 103.005 (17), and 227.11 (2), Stats. This chapter is adopted for the purpose of administering the aid to families with dependent children and the child support and establishment of paternity programs.

History: Cr. Register, December, 1982, No. 324, eff. 1-1-83; correction made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1995, No. 470; renum. from HSS 215.01, Register, October, 1997, No. 502, eff. 11-1-97; **correction made under s. 13.93 (2m) (b) 7., Stats.**

DWD 15.02 Definitions. (1) "Child support agency" means a county or tribal office, officer, board, department, or agency designated by the county board or elected tribal council to administer the child support and establishment of paternity program under s. 59.53 (5), Stats., on behalf of the department. For purposes of this chapter, child support agency includes all county and tribal offices, officers, departments, or agencies providing child support and establishment of paternity services under cooperative agreements with the department.

(2) "Department" means, unless qualified, the state department of health and family services.

(3) "Good cause" means meeting the prescribed criteria set forth in this chapter, which permit, without sanctions, a refusal to cooperate in establishing paternity and securing child support. The criteria apply to any parent or other caretaker relative who is applying for or receiving aid under s. 49.19, Stats.

(4) "Hearing" means the same as in ch. HSS 225.

(5) "Income maintenance agency" means a county or tribal agency under contract with the department to administer aid under s. 49.19, Stats.

(6) "Mental health professional" means an individual with experience and training in the field of mental health, and includes, but is not limited to, a psychiatrist, a psychologist, and a psychiatric social worker.

(7) "Protective payment" means a payment to a payee appointed by the income maintenance agency, other than the parent or other caretaker relative eligible for aid under s. 49.19, Stats.

History: Cr. Register, December, 1982, No. 324, eff. 1-1-83; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1995, No. 470; renum. from HSS 215.02, Register, October, 1997, No. 502, eff. 11-1-97; **corrections in (1) and (2) made under s. 13.93 (2m) (b) 6. and 7., Stats.**

DWD 15.03 Good cause for refusing to cooperate.

(1) COOPERATION AS A CONDITION OF ELIGIBILITY. (a) Unless there is good cause for refusing to do so, each applicant for and recipient of aid under s. 49.19, Stats., shall, as a condition of eligibility, cooperate in:

1. Identifying and locating the parent of a child for whom aid is claimed;
2. Establishing the paternity of a child born out of wedlock for whom aid is claimed;
3. Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed; and
4. Obtaining any other payments or property due to the applicant or recipient or the child for whom aid is claimed.

(b) Cooperation by an applicant for or a recipient of aid under s. 49.19, Stats., includes any action that is relevant and necessary to achieve the purposes specified in par. (a), including, but not limited to:

1. Providing verbal or written information, or documentary or other evidence, known to, possessed by or reasonably obtainable by the applicant or recipient, including the name of the non-custodial parent or alleged father;
2. Appearing as a witness at judicial or other hearings or proceedings;
3. Providing information, or attesting to the lack of information, under penalty of perjury; and
4. Paying to the county or tribe any court-ordered child support payments received directly from the absent parent after an assignment under s. 49.19 (4) (h) 1.b., Stats., has been made.

(c) Cooperation does not include involuntary participation in a polygraph examination. Further, voluntary participation is not an authorization for the results to be used as conclusive evidence against the examinee. However, the results can be used to impeach or substantiate other evidence.

(d) Cooperation does not include any requirement to sign a voluntary statement of paternity under s. 69.15, Stats. The participant may not be required to relinquish the right to request genetic testing under ss. 767.458, 767.48 or 767.62, Stats.

(2) GOOD CAUSE CIRCUMSTANCES. (a) The income maintenance agency shall determine whether or not cooperation in establishing paternity or securing child support or both is against the best interests of the child. There shall be a waiver of cooperation only if:

1. The parent or other caretaker relative's cooperation is reasonably anticipated to result in any one of the following:
 - a. Physical harm to the child for whom support is to be sought;
 - b. Emotional harm to the child for whom support is to be sought;
 - c. Physical harm to the parent or other caretaker relative with whom the child is living which reduces that person's capacity to care for the child adequately; or
 - d. Emotional harm to the parent or other caretaker relative with whom the child is living, of such a nature or degree that it reduces that person's capacity to care for the child adequately; or

2. At least one of the following circumstances exists and it is reasonably anticipated that proceeding to establish paternity or secure support would be detrimental to the child:

- a. The child for whom support is sought was conceived as a result of incest or sexual assault;
- b. A petition for the adoption of the child has been filed with a court; or
- c. The parent is being assisted by a public or private social agency in deciding whether or not to terminate parental rights and the discussions have not gone on for more than 3 months.

(b) When the income maintenance agency is determining good cause on the basis of physical or emotional harm, the harm must be of a serious nature.

1. When applied to the parent or other caretaker relative, "serious nature" means the physical or emotional impairment is

or will be substantial enough to affect the individual's capacity to care for the child.

2. Emotional harm to the child means that the child is so emotionally impaired that the child's functioning is substantially affected.

(3) CLAIMING GOOD CAUSE. (a) The income maintenance agency shall issue a printed good cause notice to all applicants when they apply for aid and to recipients of aid under s. 49.19, Stats., whenever a child is added to the aid payment.

1. The notice shall describe the right to refuse to cooperate for good cause in establishing paternity and securing child support. This includes advising the parent or other caretaker relative:

a. Of the potential benefits the child may derive from establishing paternity and securing support;

b. That by law, cooperation in establishing paternity and securing support is a condition of eligibility for aid under s. 49.19, Stats.;

c. Of the sanctions provided for in sub. (4) (g) for refusing to cooperate without good cause;

d. That good cause for refusing to cooperate may be claimed and that, if there is good cause, the parent or other caretaker relative will be excused from the cooperation requirement; and

e. That upon request, or following a claim of good cause, the income maintenance agency will provide further notice, as specified in par. (c), with additional details concerning good cause.

2. The notice shall be signed and dated by the parent or other caretaker relative and the income maintenance agency worker.

3. The original shall be placed in the financial aid record and the parent or other caretaker relative shall be given a copy.

(b) The child support agency shall ask each parent or other caretaker relative upon their initial contact, if a good cause notice has been received.

1. If a notice has not been received, the person shall be given one and the opportunity to claim good cause.

2. Anyone who wishes to claim good cause shall be referred back to the income maintenance agency for a good cause determination.

(c) The income maintenance agency shall also issue a printed good cause claim at the request of any applicant for or recipient of aid under s. 49.19, Stats.

1. The claim shall describe the circumstances which support a good cause claim and how a claim is documented.

2. The claim shall state that the income maintenance agency shall direct the child support agency to proceed without the participation of the parent or other caretaker relative as permitted by sub. (11).

3. The claim shall be signed by the parent or other caretaker relative in the presence of an income maintenance agency worker or a notary public.

4. The signature of the parent or other caretaker relative on the claim initiates the claim.

5. The original shall be placed in the financial aid record and the parent or other caretaker relative shall be given a copy. A copy shall also be sent to the child support agency. The child support agency shall be instructed to either not initiate or to suspend activities to establish paternity or secure support or both until the claim is determined, as follows:

a. When good cause is claimed at the time of application for aid under s. 49.19, Stats., a copy shall be attached to the referral to the child support agency.

b. At all other times, a copy shall be forwarded to the child support agency within 2 days after the claim is signed.

(d) Any parent or other caretaker relative who refuses to cooperate and who claims to have good cause for refusing to cooperate has the burden of establishing the existence of a good cause circumstance. The parent or caretaker relative shall:

1. Specify the circumstance that is believed to provide good cause for not cooperating; and

2. Corroborate the circumstance in accordance with the evidence and proof requirements of subs. (7) to (9).

(e) If the requirements of par. (d) are not met, the income maintenance agency shall on that basis determine that good cause does not exist.

(4) DETERMINING GOOD CAUSE. (a) The income maintenance or the social services staff of the county agency created and authorized under s. 46.22, Stats., shall determine whether there is good cause for refusing to cooperate within 45 days from the day the claim is signed.

(b) The 45 day time period may be extended by the income maintenance agency if it is documented in the case record that additional time is needed because the:

1. Information needed to verify the claim cannot be obtained by the agency within the 45 days; or

2. Corroborative evidence was not submitted by the parent or other caretaker relative within 20 days as required by sub. (9) (a).

(c) The determination of whether there is good cause or not shall be reviewed by supervisory staff of the income maintenance agency with the final determination being approved by the agency director or the director's designee and signed by that person.

(d) The final determination of whether there is good cause or not shall be in writing and shall be placed in the financial aid record. This shall include all evidence submitted in support of the claim and a written statement as to how the agency reached its determination. If there is no evidence or verifiable information available which suggests otherwise, the income maintenance agency shall conclude that an alleged refusal to cooperate was, in fact, a case of cooperation to the fullest extent possible.

(e) Written notice of the final determination shall be given to the parent or other caretaker relative, including the right to a hearing, and to the child support agency.

(f) If the income maintenance agency determines that good cause does not exist, the parent or other caretaker relative shall be notified and have 10 days to:

1. Withdraw the claim and cooperate;

2. Exclude allowable individuals from the application or case; or

3. Withdraw the application or request that the case be closed.

(g) When the 10 days provided for in par. (f) have expired and no action as specified in par. (f) has occurred, the income maintenance agency shall, pursuant to s. 49.19 (4) (h), Stats.:

1. Deny aid under s. 49.19, Stats., to the parent or other caretaker relative or remove that person from the aid payment; and

2. Provide aid, without regard to the needs of the parent or other caretaker relative, to each eligible child in the form of protective payments.

(h) The sanctions in par. (g) shall remain in effect until there is cooperation or until cooperation is no longer an issue.

(5) GRANTING OR CONTINUING AID. (a) If the parent or other caretaker relative is cooperating with the income maintenance agency in furnishing evidence and information for a determination on good cause, aid under s. 49.19, Stats., shall not be denied, delayed, reduced, or discontinued pending the determination.

(b) The income maintenance agency shall not use the 45 day period in sub. (4) (a) to extend an eligibility determination beyond the maximum period allowed in s. 49.19 (4) (b), Stats., for processing applications.

(6) PARTICIPATION OF THE CHILD SUPPORT AGENCY. (a) The child support agency shall be given the opportunity to review and comment on the findings of the income maintenance agency prior to the final determination on good cause by the income maintenance agency. Consideration shall be given to any recommendation from the child support agency.

(b) The child support agency may participate in any hearing resulting from a good cause determination.

(c) In cases of disagreement between the income maintenance agency and the child support agency over a potential finding of good cause based on emotional harm, the income maintenance agency shall refer the parent or other caretaker relative to a mental health professional.

1. A written report shall be secured and used in arriving at a final determination.

2. The cost of the referral may be paid with monies from Title XIX of the Social Security Act, if the claimant is eligible; if not, then with Title XX monies, if the claimant is eligible and funds are available; and, if not, with administrative funds of the income maintenance agency.

(d) The final decision on good cause is, however, made by the income maintenance agency.

(7) EVIDENCE. An initial good cause claim shall be based on evidence in existence at the time of the claim. There is no limitation on the age of the evidence. Once a final decision including any hearing is made on the claim, any subsequent claim shall have new evidence as its basis. The following types of evidence may be used in determining good cause:

(a) Birth certificates or medical or law enforcement records which indicate that the child may have been conceived as a result of incest or sexual assault;

(b) Court documents or other records which indicate that a petition for the adoption of the child has been filed with a court;

(c) Court, medical, criminal, child protective services, social services, psychological, school, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child or on the parent or other caretaker relative;

(d) Medical records which indicate the emotional health history and present emotional health status of the parent or other caretaker relative or the child; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the parent or other caretaker relative or the child;

(e) A written statement from a public or private social agency that the parent is being assisted by the agency to decide whether or not to terminate parental rights.

(f) Sworn statements from persons other than the parent or other caretaker relative with knowledge of the circumstance on which the good cause claim is based; or

(g) Any other supporting or corroborative evidence.

(8) SPECIAL REQUIREMENTS FOR PROOF OF GOOD CAUSE. (a) *Emotional harm.* 1. When a good cause claim is based on emotional harm to the child or the parent or other caretaker relative, the income maintenance agency shall consider the:

a. Present emotional state of the person subject to emotional harm;

b. Emotional health history of the person subject to emotional harm;

c. Intensity and probable duration of the emotional impairment;

d. Degree of cooperation to be required; and

e. Extent of involvement of the child in the establishment of paternity or the support enforcement activity to be undertaken.

2. If the parent or other caretaker relative submits only one piece of evidence or the income maintenance agency finds the documentation submitted inconclusive, the income maintenance agency may refer the parent or other caretaker relative to a mental health professional for a report specifically relating to the good cause claim.

(b) *Physical harm.* When a good cause claim is based on anticipated physical harm and no evidence is submitted, the income

maintenance agency shall conduct an investigation, according to the provisions of sub. (10).

(c) *Incest or sexual assault.* When a good cause claim is based on the parent or other caretaker relative's statement that the child was conceived as a result of incest or sexual assault, but this is not documented, the claim may be reviewed as one based on emotional harm.

(9) GENERAL REQUIREMENTS FOR PROOF OF GOOD CAUSE. (a) The parent or other caretaker relative who claims good cause, shall provide supporting evidence within 20 days from the day the claim is signed. The income maintenance or the social services staff of the county agency created and authorized under s. 46.22, Stats., may, with supervisory approval, determine that more time is necessary because of difficulty in obtaining certain evidence.

(b) There shall be at least one document of evidence, in addition to any sworn statements from the parent or other caretaker relative. The parent or other caretaker relative shall be encouraged to provide as many types of evidence as possible. The income maintenance agency shall offer assistance in obtaining necessary evidence.

(c) When sufficient evidence to substantiate a good cause claim has not been submitted, the income maintenance agency shall:

1. Notify the parent or other caretaker relative that additional evidence is required and specify that evidence;

2. Advise the parent or other caretaker relative on how to obtain the evidence; and

3. Make a reasonable effort to obtain specific documents which are not reasonably obtainable by the parent or other caretaker relative without assistance.

(d) If after having been notified that additional evidence is required, the parent or other caretaker relative continues to refuse to cooperate or the evidence obtained does not establish good cause, the income maintenance agency shall then notify the parent or other caretaker relative that if no further action is taken within 10 days, good cause will not be found and that he or she may first:

1. Withdraw the claim and cooperate;

2. Exclude allowable individuals from the application or case;

3. Withdraw the application or request that the case be closed;

or

4. Request a hearing.

(e) When the 10 days provided for in par. (d) have expired and no action as specified in par. (d) has occurred, the income maintenance agency shall, pursuant to s. 49.19 (4) (h), Stats.:

1. Deny aid under s. 49.19, Stats., to the parent or other caretaker relative or remove that person from the aid payment; and

2. Provide aid, without regard to the needs of the parent or other caretaker relative, to each eligible child in the form of protective payments.

(10) INVESTIGATION OF GOOD CAUSE CLAIM. (a) The income maintenance agency shall conduct an investigation of any good cause claim based on anticipated physical harm, both when the claim is credible without corroborative evidence and when corroborative evidence is not available. Good cause shall be found when both the parent or other caretaker relative's statement and the investigation satisfy the income maintenance agency that he or she has good cause.

(b) The income maintenance agency may also investigate any good cause claim when the parent or other caretaker relative's statement, together with the corroborative evidence, does not provide a sufficient basis for a determination.

(c) Neither the income maintenance agency nor the child support agency shall, in the course of any investigation, contact the absent parent or putative father from whom support would be sought without first notifying the parent or other caretaker relative in writing of the intention to do so. The parent or other caretaker relative shall have a 10 day period to:

1. Present additional supporting or corroborative evidence or information so that contact with the absent parent or putative father is unnecessary;

2. Exclude allowable individuals from the application or case;

3. Withdraw the application or request that the case be closed; or

4. Request a hearing.

(d) When the 10 days provided for in par. (c) have expired and no action as specified in par. (c) has occurred, the income maintenance agency shall, pursuant to s. 49.19 (4) (h), Stats.:

1. Deny aid under s. 49.19, Stats., to the parent or other caretaker relative or remove that person from the aid payment; and

2. Provide aid, without regard to the needs of the parent or other caretaker relative, to each eligible child in the form of protective payments.

(11) NOTICE TO CHILD SUPPORT AGENCY. (a) The income maintenance agency shall inform the child support agency whether good cause is found or not. When good cause is found, the child support agency shall also be notified whether or not it should proceed to establish paternity or secure child support or both without the participation of parent or other caretaker relative.

(b) When good cause is found:

1. The income maintenance agency shall direct the child support agency to suspend all further case activities if it is determined that the child support agency's action, even without the participation of the parent or other caretaker relative, is reasonably anticipated to result in physical or emotional harm.

2. In cases where the child support agency's action is reasonably anticipated to not result in physical or emotional harm, that agency shall be directed to proceed without the participation of the parent or other caretaker relative.

a. The parent or other caretaker relative shall be notified immediately by the income maintenance agency.

b. The child support agency shall not be notified for 10 days to allow the parent or other caretaker relative to exclude allowable individuals from the application or case, withdraw the application, or request that the case be closed, or request a hearing.

c. The determination to proceed without the participation of the parent or other caretaker relative shall be in writing and shall contain the income maintenance agency's findings and the basis for its determination. The written determination shall be made a part of the financial aid record.

d. The child support agency may decide to not proceed on its own assessment.

(c) When good cause is not found:

1. Following notice to the parent or other caretaker relative, the income maintenance agency shall wait 10 days before taking further action.

2. If, after the 10 days, the parent or other caretaker relative still refuses to cooperate and did not exclude allowable individuals, withdraw the application, or request that the case be closed, the income maintenance agency shall invoke the sanctions in sub. (4) (g).

3. The parent or other caretaker relative shall be informed of the right to a hearing. If a hearing is requested, the income maintenance agency shall instruct the child support agency to not proceed with any paternity or support enforcement action during the hearing process.

(12) REVIEW OF GOOD CAUSE DETERMINATIONS. (a) Good cause determinations based on permanent circumstances need not be reviewed.

(b) The income maintenance agency shall review good cause determinations involving circumstances which are subject to change at each redetermination of eligibility for aid under s. 49.19, Stats., or upon new evidence.

(c) When good cause is determined to no longer exist, the income maintenance agency shall rescind its determination and immediately notify the parent or other caretaker relative, in writing, of this and the right to a hearing. The child support agency shall not be notified for 10 days to allow the parent or other caretaker relative to:

1. Cooperate;

2. Exclude allowable individuals from the case; or

3. Request that the case be closed.

(d) When the 10 days provided for in par. (c) have expired and no action as specified in par. (c) has occurred, the income maintenance agency shall:

1. Invoke the sanctions in sub. (4) (g), and

2. Inform the parent or other caretaker relative of the right to a hearing.

History: Cr. Register, December, 1982, No. 324, eff. 1-1-83; renum. from HSS 215.03 and am. (1) (b) 1., cr. (1) (d), Register, October, 1997, No. 502, eff. 11-1-97; corrections in (4) (a) and (9) (a) made under s. 13.93 (2m) (b) 7., Stats.

DWD 15.04 Records and reports. The income maintenance agency shall maintain records and submit monthly reports to the department giving:

(1) The total number of cases in which the parent or other caretaker relative claimed to have good cause for refusing to cooperate;

(2) The number of cases in which the parent or other caretaker relative was found to have good cause for refusing to cooperate;

(3) The number of cases in which the claim was made in anticipation of physical harm without corroborative evidence;

(4) The number of cases in which the parent or other caretaker relative was found to have good cause for refusing to cooperate on the basis of anticipated physical harm without corroborative evidence.

(5) The number of cases in which the parent or other caretaker relative was found to have good cause for refusing to cooperate based solely on an examination of the corroborative evidence supplied by the parent or other caretaker relative with no investigation;

(6) The number of cases in which good cause was claimed by the parent or other caretaker relative prior to receiving aid under s. 49.19, Stats., and in which the final determination that good cause did not exist was made after eligibility for aid was determined;

(7) The number of cases in which the parent or other caretaker relative was found to have good cause for refusing to cooperate, but there was a determination that child support enforcement may proceed without the participation of the parent or other caretaker relative; and

(8) For those cases in which good cause was found, which of the circumstances in s. DWD 15.03 (2) (a) were found to exist.

History: Cr. Register, December, 1982, No. 324, eff. 1-1-83; renum. from HSS 215.04, Register, October, 1997, No. 502, eff. 11-1-97.