



Clearinghouse Rule 18-087

State of Wisconsin Department of Children and Families

DCF 150

A Correction Affecting the Determination of Child Support When the Parents Have Shared Placement and the Payer Receives the Child's SSDI Benefits

The Wisconsin Department of Children and Families proposes to amend s. DCF 150.03 (5) (b) 7., relating to a correction affecting the determination of child support when the parents have shared placement and the payer receives the child's SSDI benefits.

Analysis Prepared by the Department of Children and Families

Statutory authority: Section 49.22 (9), Stats.

Statutes interpreted: Sections 49.22 (9), 767.225, 767.34, 767.501, 767.511, 767.513, 767.59 (4) and 767.89 (3), Stats

Explanation of Agency Authority

Section 49.22 (9), Stats., provides that "the department shall promulgate rules that provide a standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents. The rules shall provide for consideration of the income of each parent and the amount of physical placement with each parent in determining a child support obligation in cases in which a child has substantial periods of physical placement with each parent."

Summary of the Proposed Rule

Rule Revisions Effective July 1, 2018

Changes to ch. DCF 150, the Percentage of Income Standard for setting child support, were published in the Administrative Register June 25, 2018, with an effective date of July 1, 2018. The rule revisions were based on recommendations from the Child Support Guidelines Advisory Committee that was established to provide guidance to the department on revising the guidelines used to determine child support payments and the application of those guidelines in special circumstances.

One of the changes addressed how SSDI benefits for the children should be considered for the purpose of establishing child support when the parent receiving the benefit on behalf of the children does not have primary placement. This provision is intended to give a payer credit for the Social Security benefits his or her child is receiving that are directly attributable to the payer's work history. If the parents share placement of the child/ren, each parent should receive a share of the child(ren)'s benefit that is proportionate to the time the child(ren) spends with that parent.

Proposed Rule

The proposed rule will correct s. DCF 150.03 (5) (b) 7., which applies to the determination of child support when the parents have shared placement and the payer receives the child's SSDI benefits. The provision mistakenly states that the payer should pay either the "greater" of the amount determined under this section or the amount determined under a straight forward application of the percentage standard. The language should require that the payer pay either the "lesser" of the amount determined under this section or the amount determined under a straight forward application of the percentage standard.

Summary of Factual Data and Analytical Methodologies

The rule corrects a drafting error.

Summary of Related Federal Requirements

Wisconsin's Percentage of Income Standard was created to comply with federal requirements in 45 CFR 302.56 (a) that require that as a condition of approval of its State plan, all states must establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State. The methodology to be used in calculating support orders is at state discretion.

Comparison to Rules in Adjacent States

Iowa, Minnesota, and Michigan use an Income Shares Model to establish child support. Illinois uses a Percentage of Income Standard. The amount of support calculated under Wisconsin's Percentage of Income Standard is consistent with that of neighboring states.

Effect on Small Business

The rule will not affect small businesses as defined in s. 227.114 (1), Stats.

Analysis Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis

The proposed rule revisions apply to temporary and final orders for child support or family support of a marital or non-marital child in any action affecting the family under ch. 767, Stats., including stipulated child support settlements under s. 767.34, Stats.

Agency Contact Person

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Public Comment

The department will hold a public hearing on January 9, 2019, at 2 p.m., in the GEF 1 Building, 201 E. Washington, Room H206, Madison. Written comments may be submitted no later than January 9, 2019, to dcfpublichearing@wisconsin.gov or Elaine Pridgen, Office of the Secretary, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916.

SECTION 1. DCF 150.03 (5) (b) 7. is amended to read:

DCF 150.03 (5) (b) 7. Offset the resulting amounts against each other. The parent with the greater child support obligation is the shared-placement payer. The shared-placement payer shall pay either the ~~greater~~ lesser of the amount determined in this subsection or the amount determined using the appropriate percentage standard under s. DCF 150.03 (1).

SECTION 2. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.