

Chapter DCF 102

CHILD SUPPORT COOPERATION FOR W-2

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Note: Chapter DWD 15 as it existed on August 31, 2002 was repealed and a new Ch. DWD 15 was created, eff. 9-1-02, Register August 2002 No. 560, eff. 9-1-02. Chapter DWD 15 was renumbered to chapter DCF 102 under s. 13.92 (4) (b) 1., Stats., Register November 2008 No. 635.

DCF 102.01 Authority and purpose. This chapter is adopted pursuant to s. 49.145 (2) (f), Stats., for the purpose of administering the requirement that each parent in a Wisconsin works group cooperate with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which that parent may be responsible, unless the parent has good cause for failing to cooperate.

History: CR 02-039; cr. Register August 2002 No. 560, eff. 9-1-02.

DCF 102.02 Definitions. In this chapter:

(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, spousal support, and establishment of paternity program on behalf of the department pursuant to s. 59.53 (5), Stats., or a cooperative agreement with the department.

(2) "Custodial parent" has the meaning given in s. 49.141 (1) (b), Stats.

Note: Section 49.141 (1)(b), Stats., provides that "'Custodial parent' means, with respect to a dependent child, a parent who resides with that child and, if there has been a determination of legal custody with respect to the dependent child, has legal custody of that child. For the purposes of this paragraph, 'legal custody' has the meaning given in s. 767.001 (2)(a)."

(3) "Department" means the department of children and families.

(4) "Domestic abuse" means subjecting an individual or child to any of the following:

- Physical acts that result in pain, illness, or injury.
- Sexual abuse or sexual assault, including a caretaker relative of a dependent child, (such as a guardian, custodian, or parent) being forced to engage in nonconsensual sexual acts or any sexual activity involving a dependent child.
- Threats of, or attempts at, physical or sexual abuse.
- Emotional or mental abuse.
- Verbal abuse.
- Deprivation or destruction of physical or economic resources.
- Neglect or deprivation of medical care.
- Forced isolation.
- Stalking or harassment.

(5) "Genetic test" has the meaning given in s. 767.001 (1m), Stats.

Note: Section 767.001 (1m), Stats. provides that "'Genetic test' means a test that examines genetic markers present on blood cells, skin cells, tissue cells, bodily fluid cells or cells of another body material for the purpose of determining the statistical probability of an alleged father's paternity."

(6) "Good cause" means the criteria set forth in s. DCF 102.05, which permit a parent in a W-2 group to fail to cooperate, without sanction, with efforts directed at establishing paternity and obtaining support payments or any other payments or prop-

erty to which that parent and any minor child of that parent may have rights or for which that parent may be responsible.

(7) "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 social worker certified or licensed to provide psychotherapy.

(8) "Noncustodial parent" has the meaning given in s. 49.141 (1) (h), Stats.

Note: Section 49.141 (1) (h), Stats., provides that "'Noncustodial parent' means, with respect to a dependent child, a parent who is not the custodial parent."

(9) "Parent" has the meaning given in s. 49.141 (1) (j), Stats.

Note: Section 49.141 (1)(j), Stats., provides that "'Parent' means any of the following:

- A biological parent.
- A person who has consented to the artificial insemination of his wife under s. 891.40.
- A parent by adoption.
- A man adjudged in a judicial proceeding to be the biological father of a child if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803
- A man who has signed and filed with the state registrar under s. 69.15 (3)(b)3. a statement acknowledging paternity."

(10) "Wisconsin works" or "W-2" has the meaning given in s. 49.141 (1) (p), Stats.

Note: Section 49.141 (1) (p), Stats. provides that "'Wisconsin works' means the assistance program for families with dependent children, administered under ss. 49.141 to 49.161."

(11) "Wisconsin works agency" or "W-2 agency" has the meaning given in s. DCF 101.03 (38).

Note: Section DCF 101.03 (38) provides that "'Wisconsin works agency' or 'W-2 agency' means a person, county agency, tribal governing body, or a private agency contracted under s. 49.143, Stats., by the department to administer the Wisconsin works program under ss. 49.141 to 49.161, Stats., and this chapter. If no contract is awarded under s. 49.143, Stats., 'Wisconsin works agency' means the department."

(12) "Wisconsin works group" or "W-2 group" has the meaning given in s. 49.141 (1) (s), Stats.

Note: Section 49.141 (1) (s) provides that "'Wisconsin works group' means an individual who is a custodial parent, all dependent children with respect to whom the individual is a custodial parent and all dependent children with respect to whom the individual's dependent child is a custodial parent. 'Wisconsin works group' includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent."

History: CR 02-039; cr. Register August 2002 No. 560, eff. 9-1-02; corrections in (3), (6) and (11) made under s. 13.92 (4) (b) 6. and 7., Stats., Register November 2008 No. 635.

DCF 102.03 Cooperation as a condition of eligibility.

(1) COOPERATION REQUIREMENTS. (a) *Custodial parent.* Unless the W-2 agency determines that a good cause exemption applies, each custodial parent who is a member of a Wisconsin works group shall cooperate in good faith with efforts directed at all of the following for any minor child of that parent:

- Identifying and locating an absent parent.
- Establishing the paternity of any child of the custodial parent.
- Obtaining any support payments or any other payments or property to which that parent and any minor child of that parent may have rights.

(b) *Noncustodial parent.* Unless the W-2 agency determines that a good cause exemption applies, each noncustodial parent

who is a member of a Wisconsin works group shall cooperate in good faith with efforts directed at all of the following for any minor child of that parent:

1. Establishing the paternity of an alleged child of that parent.
2. Obtaining any support payments or any other payments or property for which that parent may be responsible.

(2) ACTS OF COOPERATION. (a) *Custodial parent.* Acts of cooperation for a custodial parent include any action that is relevant to achieve the purposes in sub. (1) (a) including all of the following:

1. Providing verbal information, written information, or other evidence that the custodial parent knows, possesses, or might reasonably obtain or signing an affidavit declaring a lack of information, subject to penalty of false swearing pursuant to s. 946.32, Stats.
2. Attending interviews and responding to written requests for information by the child support agency.
3. Appearing as a witness at hearings or other legal proceedings.
4. Submitting to genetic tests pursuant to judicial or administrative order.
5. Paying to the department or its designee any court-ordered child support payments received directly from the absent parent after an assignment under s. 49.145 (2) (s), Stats., has been made.

(b) *Noncustodial parent.* Acts of cooperation for a noncustodial parent include any action that is relevant to achieve the purposes in sub. (1) (b) including the following:

1. Providing verbal information, written information, or other evidence that the noncustodial parent knows, possesses, or might reasonably obtain.
2. Appearing at hearings or other legal proceedings.
3. Submitting to genetic tests pursuant to judicial order.
4. Paying court-ordered child support to the department or its designee.

(3) EXCLUSIONS. Acts of cooperation for custodial and noncustodial parents do not include the following:

- (a) Involuntary participation in a polygraph examination. The results of a voluntary polygraph examination may be used only to impeach or substantiate other evidence and may not serve as conclusive evidence.
- (b) A requirement to sign a voluntary statement of paternity under s. 69.15, Stats.
- (c) Relinquishment of the right to request a genetic test under s. 49.225, 767.805, 767.84, or 767.863, Stats.
- (d) A requirement to sign a stipulation for a child support, physical placement, or custody order.

(4) NONCOOPERATION. The child support agency shall determine whether a parent is not cooperating with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which the parent may be responsible as follows:

(a) *Custodial parent.* The child support agency may determine that a custodial parent is not cooperating if the custodial parent does any of the following without adequate reason:

1. Misses two consecutive agency appointments.
2. Misses one agency appointment and fails to respond to a written communication from the agency within a 90-day period.
3. Fails to appear for a hearing, other legal proceeding, or genetic test.

(b) *Noncustodial parent.* The child support agency may determine that a noncustodial parent is not cooperating if the noncustodial parent is the subject of a warrant relating to paternity or support, including a criminal warrant for failure to support pursuant to s. 948.22, Stats., a civil warrant for contempt of court pursuant

to ch. 785, Stats., or an arrest warrant pursuant to s. 818.02 (5) or (6), Stats., excluding a warrant issued for failure to effect service of process.

(5) ADEQUATE REASON. (a) Adequate reason for a custodial parent's failure to respond to a written communication or failure to attend an appointment, genetic test, or hearing or other legal proceeding includes any of the following:

1. Personal or family illness or injury.
2. Family crisis.
3. Breakdown in transportation arrangements.
4. Inclement weather that causes a general breakdown in travel.
5. Failure to receive a hearing notice, appointment notice, or written request for information due to a demonstrable mail problem, address change, or extended time away from home.
6. Other reasonable circumstances as determined by the child support agency or the department.

(b) The child support agency may request evidence verifying adequate reason if there are repeated instances of failure to respond based on reasons in par. (a).

(6) AFFIDAVIT ATTESTING TO FULL COOPERATION. If a custodial parent has signed an affidavit attesting to full cooperation and there is no substantial independent evidence or verifiable information that suggests that the custodial parent is not cooperating, the child support agency shall conclude that an alleged failure to cooperate was, in fact, a case of cooperation.

(7) NONCOOPERATION NOTIFICATION. If a child support agency makes a determination of noncooperation under sub. (4), the child support agency shall promptly notify the individual and the W-2 agency of its decision and the basis for the decision. The notice to the individual shall be in writing. The W-2 agency shall apply sanctions pursuant to s. DCF 102.09 upon receipt of the noncooperation notification from the child support agency.

(8) REMEDYING NONCOOPERATION. An individual who wants to restore cooperative status after being determined noncooperative shall demonstrate cooperation by performing the act of cooperation in sub. (2) that the individual failed to perform and that became the basis of the noncooperation finding. The child support agency shall provide the individual who has been found noncooperative with the opportunity to resume cooperation within 30 days of contacting the child support agency to express an intent to cooperate. When a rescheduled court hearing cannot occur within 30 days, the child support agency shall either lift the noncooperation determination upon contact from the individual or make it possible for the individual to perform some other required activity within 30 days of the contact.

History: CR 02-039: cr. Register August 2002 No. 560, eff. 9-1-02; corrections in (3) (c) and (7) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DCF 102.04 Cooperation and good cause notice.

(1) The W-2 agency shall provide a written notice describing the cooperation requirement and the right to good cause as an exception to the cooperation requirement to all applicants and participants of Wisconsin works. The notice shall be provided to applicants when they apply for W-2 and to participants when a child is added to the W-2 group, when a parent leaves the W-2 group, at reapplication for continued benefits, and if a participant discloses to his or her W-2 financial and employment planner that the participant is experiencing circumstances that may meet the good cause criteria in s. DCF 102.05.

(2) The notice shall include all of the following information:

(a) The potential benefits the child may derive from establishing paternity and securing support.

(b) Cooperation with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which the parent may be responsible is a condi-

tion of eligibility for the Wisconsin works program, ss. 49.141 to 49.161, Stats., unless the parent has good cause for failing to cooperate.

(c) A failure to cooperate is allowed when the W-2 agency determines that one of the good cause criteria apply.

(d) The good cause criteria in s. DCF 102.05.

(e) A good cause claim form is available from the W-2 agency upon request. The good cause claim form provides additional details on the process for claiming good cause as an exception to the cooperation requirement.

(f) The good cause claim form may be submitted to the W-2 agency at any time.

(3) At the child support agency's initial meeting with the custodial parent, the agency shall ask the parent if a good cause notice has been received. If the custodial parent has not received a good cause notice, the child support agency shall provide one. A custodial parent who expresses intent to file a good cause claim shall be referred to the W-2 agency. If the custodial parent informs the child support agency of an intent to file a good cause claim, the child support agency shall cease further action for a minimum of 15 days to allow the custodial parent to file a good cause claim with the W-2 agency.

Note: A copy of the good cause notice may be obtained by contacting the Department of Children and Families, Division of Family and Economic Security, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI 53708-8916.

History: CR 02-039: cr. Register August 2002 No. 560, eff. 9-1-02; corrections in (1) and (2) (d) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DCF 102.05 Good cause criteria. A custodial or non-custodial parent is eligible for an exemption from the cooperation requirements in s. DCF 102.03 when the W-2 agency determines that any of the following criteria applies:

(1) Cooperation is reasonably anticipated to result in either physical or emotional harm to the child, including threats of domestic abuse or child kidnapping.

(2) Cooperation is reasonably anticipated to result in either physical or emotional harm to the parent, including domestic abuse.

(3) Cooperating with the child support agency would make it more difficult for the individual to escape domestic abuse or unfairly penalize the individual who is or has been victimized by such abuse, or the individual who is at risk of further domestic abuse.

(4) The child was conceived as a result of incest or sexual assault.

(5) The parent is considering whether to terminate parental rights and sought the assistance of a public or licensed private social services agency not more than 3 months ago.

(6) A petition for the adoption of the child has been filed with a court, except this does not apply as a good cause exemption from the responsibility to make payments under an existing court order.

History: CR 02-039: cr. Register August 2002 No. 560, eff. 9-1-02; correction in (intro.) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DCF 102.06 Good cause claim. (1) CLAIM FORM. The W-2 agency shall provide a written good cause claim form to any applicant or participant of Wisconsin works on request. The claim form shall describe the good cause criteria and appropriate documentation to corroborate a good cause claim.

(2) **FILING A CLAIM.** An applicant or participant may file a good cause claim with the W-2 agency at any time. The applicant or participant shall specify the circumstances that the applicant or participant believes provide sufficient good cause for not cooperating and shall indicate whether the applicant or participant requests that the child support agency proceed without his or her cooperation if good cause is granted, if that is possible. The applicant or participant shall swear or affirm under penalty of false swearing pursuant to s. 946.32, Stats., that the statements in the

claim are true and shall sign the claim form in the presence of a notary public. Upon receipt of the good cause claim, the W-2 agency shall notify the child support agency within 2 days that no further action may be taken until it is determined whether good cause exists.

(3) **SUBMITTING CORROBORATIVE EVIDENCE.** The W-2 agency shall encourage the applicant or participant to submit as many types of corroborative evidence as possible. The W-2 agency worker shall advise the applicant or participant that if assistance is needed in obtaining evidence, the worker will assist him or her. The applicant or participant may submit corroborative evidence to the W-2 agency within 20 days from the date the claim was signed. A W-2 worker may, with supervisory approval, determine that more time is needed due to difficulty in obtaining corroborative evidence. If the good cause claim is based on domestic abuse and no corroborative evidence is currently available, the W-2 agency may permit the applicant or participant to submit evidence to the W-2 agency within 60 days from the date the claim was signed.

(4) **TYPES OF CORROBORATIVE EVIDENCE.** A good cause claim may be corroborated with any of the following types of evidence:

(a) Court, medical, criminal, child protective services, social services, psychological, school, or law enforcement records regarding domestic abuse or physical or emotional harm to the parent or child.

(b) Medical records or written statements from a mental health professional that pertain to the emotional health history, present emotional health status, or prognosis of the parent or child.

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

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

(e) A written statement from a public or private social services agency that the parent is being assisted by the agency in deciding whether to terminate parental rights.

(f) Written and signed statements from others with knowledge of the circumstances on which the good cause claim is based, including, but not limited to, statements from neighbors, friends, family, or clergy.

(g) An identification by the screening process under s. DCF 101.15 as an individual or parent of a child who is or has been a victim of domestic abuse or is at risk of further domestic abuse and the alleged perpetrator is the other parent.

(h) Any other supporting or corroborative evidence.

Note: A copy of the good cause claim form may be obtained by contacting the Department of Children and Families, Division of Family and Economic Security, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI 53708-8916.

History: CR 02-039: cr. Register August 2002 No. 560, eff. 9-1-02; correction in (4) (g) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DCF 102.07 Approving or continuing benefits. If an individual is cooperating with the W-2 agency in furnishing evidence and information to be used in determining the good cause claim and other eligibility criteria are met, Wisconsin works benefits shall not be denied, delayed, reduced, or discontinued pending the determination of a good cause claim.

History: CR 02-039: cr. Register August 2002 No. 560, eff. 9-1-02.

DCF 102.08 Good cause determination. (1) EVALUATING A GOOD CAUSE CLAIM. (a) The W-2 agency shall require an applicant or participant who requests a good cause exemption to submit at least one document of corroborative evidence and the applicant's or participant's statement specifying the circumstances that the applicant or participant believes provide sufficient good cause for not cooperating. If an applicant or participant does not submit sufficient evidence to substantiate the good cause claim, the W-2 agency shall notify the individual that additional evidence is required and shall outline the types of evidence that

may be used as provided in s. DCF 102.06 (4). The W-2 agency shall make a reasonable effort to obtain specific documents or information that the individual is having difficulty obtaining.

(b) The W-2 agency shall investigate any good cause claim based on anticipated harm, including when the claim is credible without corroborative evidence and when corroborative evidence is not available. Good cause shall be found when the applicant's or participant's statement and the investigation satisfy the W-2 agency that good cause exists.

(c) The W-2 agency may investigate any good cause claim when the applicant's or participant's statement and corroborative evidence do not provide sufficient information to make a determination. The applicant or participant shall cooperate with the investigation by the W-2 agency.

(d) In the course of any investigation under par. (b) or (c), the W-2 agency may contact the child support agency, but may not contact the individual alleged to have committed acts that are the basis of a good cause claim based on criteria in s. DCF 102.05 (1) to (4).

(2) RECOMMENDATION OF THE CHILD SUPPORT AGENCY. The child support agency shall be given the opportunity to review and comment on the findings of the W-2 agency prior to the final determination on good cause by the W-2 agency. The W-2 agency shall consider any recommendations from the child support agency.

(3) DETERMINATION DEADLINE. The W-2 agency shall determine if good cause exists within 45 days from the date the claim was signed, unless an extension to submit evidence was granted to the applicant or participant who is claiming good cause or more time is necessary for the W-2 agency to obtain evidence. If the W-2 agency allowed up to 60 days to submit evidence for a claim of domestic abuse, the agency shall determine if good cause exists within 85 days from the date the claim was signed.

(4) IF GOOD CAUSE DOES NOT EXIST. (a) If the W-2 agency determines that the applicant or participant does not have good cause for failing to cooperate with efforts directed at establishing paternity and obtaining support payments, the W-2 agency shall notify the child support agency that it may proceed with child support services and require the cooperation of the applicant or participant.

(b) The W-2 agency shall promptly notify the applicant or participant of the determination and the right to a review of the agency decision under s. DCF 102.10.

(c) The child support agency may not proceed with child support services for 10 days from the date of the notice to the applicant or participant to allow the individual the opportunity to withdraw the application, request the case be closed, or request a review of the agency decision pursuant to s. DCF 102.10.

(d) If the applicant or participant requests a review of the agency decision, the W-2 agency shall instruct the child support agency to suspend child support services during the review process.

(5) IF GOOD CAUSE DOES EXIST. If the W-2 agency determines that the applicant or participant does have good cause for failing to cooperate with efforts directed at establishing paternity and obtaining support payments, the W-2 agency shall:

(a) Direct the child support agency to suspend all further case activities if the applicant or participant did not request the child support agency to proceed without his or her cooperation.

(b) Notify the child support agency that it may proceed with child support services without the cooperation of the applicant or participant if the applicant or participant did request that the child support agency proceed without his or her cooperation. If good

cause is granted for criteria in s. DCF 102.05 (1) to (4), the child support agency shall send a notice to the individual alleged to have caused harm that states that the agency is proceeding without the cooperation of the applicant or participant.

(c) Promptly notify the applicant or participant of the determination and the basis for the determination in writing.

History: CR 02-039: cr. Register August 2002 No. 560, eff. 9-1-02; corrections in (1) (a), (d), (4) (b), (c) and (5) (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DCF 102.09 Sanction for failure to cooperate. (1) A Wisconsin works group that includes an applicant or participant who fails to cooperate with the child support agency without good cause is ineligible to receive Wisconsin works until cooperation with the child support agency occurs.

(2) An individual who is a member of a W-2 group that fails 3 times to meet the cooperation requirements in s. DCF 102.03 without good cause remains ineligible until all of the members of the W-2 group cooperate or for a period of 6 months, whichever is later.

(3) A custodial parent with a child under 60 days old is exempt from sanction for refusing to cooperate with requirements in s. DCF 102.03 for that child.

History: CR 02-039: cr. Register August 2002 No. 560, eff. 9-1-02; corrections in (2) and (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DCF 102.10 Review of agency decisions. (1) REVIEW OF GOOD CAUSE DETERMINATIONS OR OTHER W-2 AGENCY DECISIONS. A Wisconsin works applicant or participant who is denied a good cause exemption from the requirement of cooperation with the child support agency or who disputes any decision by the W-2 agency may petition the Wisconsin works agency for a review of the agency decision pursuant to s. DCF 101.22.

(2) REVIEW OF NONCOOPERATION DETERMINATIONS. Noncooperation determinations shall be reviewed by the child support agency. An individual who has been determined noncooperative by a child support agency may petition the child support agency for review of the agency decision. The procedures of s. DCF 101.22 apply to the review, except that the applicant or participant may submit a request for review to the child support agency, the child support agency will conduct the fact-finding procedure, and the applicant or participant or a representative may appear for the fact-finding via telephone conference if the child support agency is in a different county than the applicant's or participant's current residence.

(3) PARTICIPATION OF THE CHILD SUPPORT AGENCY. The child support agency shall be given reasonable notice and may participate in any fact-finding or hearing resulting from a good cause investigation or good cause determination.

(4) HEARING DECISION IS CONTROLLING. If a Wisconsin works review pursuant to s. DCF 101.22 and a fair hearing are based on the same issues and facts, the fair hearing decision shall be controlling in the Wisconsin works review.

History: CR 02-039: cr. Register August 2002 No. 560, eff. 9-1-02; corrections in (1), (2) and (4) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DCF 102.11 Review of good cause exemptions. The W-2 agency shall review good cause exemptions that are based on circumstances subject to change at each redetermination of eligibility or upon new evidence. Good cause determinations based on permanent circumstances need not be reviewed. If the W-2 agency determines that good cause for noncooperation no longer exists, the parent shall be allowed 10 days before cooperation requirements are imposed to request that the case be closed or request an agency review.

History: CR 02-039: cr. Register August 2002 No. 560, eff. 9-1-02.