

**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**

EMERGENCY RULE

The Wisconsin Department of Children and Families amends 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.

These emergency rules were approved by the governor on November 1, 2018.

The statement of scope for these rules, SS 106-18, was approved by the governor on July 27, 2018, published in Register 753A2, on September 10, 2018, and approved by Secretary Eloise Anderson on October 5, 2018.

Finding of Emergency

An emergency rule is needed because a significant number of cases involving parents who receive SSDI are impacted by a drafting error in recent changes to ch. DCF 150. Without an emergency rule, the credit against a parent's child support obligation intended by the rule change will not be available.

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 Rule

Rule Revisions Effective July 1, 2018

Changes to 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 developed in response to recommendations from the Child Support Guidelines Advisory Committee established to provide guidance to the Department on revisions to the state policy regarding 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 intended 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.

Emergency Rule

The emergency rule corrects 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 rule corrects this language to provide 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 does 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 rule revision applies 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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Place Where Comments are to be Submitted

Comments may be submitted to Elaine Pridgen, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or dcfpublichearing@wisconsin.gov.

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 on November 8, 2018, under s. 227.27

(1) (c), Stats.