

WISCONSIN DEPARTMENT OF CHILDREN AND FAMILIES
Division of Family and Economic Security
Bureau of Child Support

**To: Child Support Directors
Child Support Supervisors or Lead Workers
Child Support Attorneys**

**From: André Small, Director
Bureau of Child Support**

**CHILD SUPPORT
BULLETIN**

No.: 18-08

Date: July 13, 2018

Subject: Birth Cost Guidelines

Purpose

This bulletin updates policy due to changes in Administrative Code Chapter DCF 150, Child Support Percentage of Income Standard, which are effective July 1, 2018. All relevant policies related to the establishment and setting of birth cost orders are included in this bulletin. This bulletin obsoletes CSB 08-07R.

Specifically, this bulletin informs child support agencies about policy for determining judgment amounts for birth costs paid by Wisconsin Medical Assistance (MA). Birth costs include the reasonable expenses of the mother's pregnancy and the child's birth.

Background

On February 6, 2007, the federal Office of Child Support Enforcement (OCSE) issued PIQ 07-01, which provided a federal policy interpretation specifying when states may use federal income tax intercept refunds to recover birth expenses owed to a state. PIQ 07-01 specifies that medical support is a subset of child support and must be established using guidelines which at a minimum:

- Take into consideration all earnings and income of the non-custodial parent (NCP);
- Must be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and
- Provide for the child(ren)'s health care needs through health insurance or other means in accordance with 45 CFR 302.56 (Child Support Guidelines).

PIQ 07-01 further explains that, in seeking judgments or awards for retroactive medical support, including birth costs, the IV-D agency must use the child support guidelines and take into consideration the obligated parent's ability to pay, or justify the deviation from the application of the guidelines.

During a telephone call with OCSE on March 17, 2008, the Bureau of Child Support (BCS) was advised that the state must stop setting orders for repayment of birth costs until its policy was changed and policies were developed that take into consideration the father's ability to pay. Guidelines for setting birth cost are published in the Administrative Code, Chapter DCF 150.

Under DCF 150.05 Medical Support. (1) Responsibility for Health Expenses. In addition to ordering child support for a child under this chapter, the court shall specifically assign responsibility for and direct the manner of payment for the child's health care expenses under Wis. Stats. §767.513.

Wisconsin Statute §767.89(3)(e) provides that the court must make a finding based on the father's ability to pay before *setting a periodic payment* on birth costs. OCSE's interpretation of federal regulations, as communicated in PIQ 07-01, provides that the *judgment amount* must be set according to guidelines that take into consideration the obligor's ability to pay. These guidelines are now provided under DCF 150.05.

Policy

Guidelines for Setting Birth Costs Judgment Amounts

Federal regulations at 45 CFR 303.31(a)(3) define reasonable costs for cash medical support or health insurance as, "the cost to the obligated parent does not exceed 5% of his or her gross income..." Similarly, 5% is used in determining a payer's contribution toward birth costs.

The Child Support Agency (CSA) may not seek a judgment amount for birth costs that exceeds 5% of the payer's income over a three-year period. This amount is further restricted by Wis. Stat. § 767.89(3)(e) which specifies that the judgment amount for birth costs may not exceed one-half of the actual and reasonable cost of pregnancy and the child's birth.

The process for calculating one-half of the actual and reasonable costs has not changed. Medicaid uses (Health Maintenance Organizations (HMOs) to provide maternity services in most counties. Therefore, BCS defines "actual and reasonable cost" as one-half the Kick Payment or regional HMO average. The Maternity Kick Payment (birth cost regional) averages are provided to CSAs annually.

At county option, the CSA may obtain actual birth costs amounts from the Department of Health Services (DHS) and calculate one-half of the actual birth cost amount. Under BCS policy, if the CSA uses actual birth costs the judgment amount may not exceed the full Kick Payment or regional average amount.

Under the new policy, the CSA may not seek a judgment for birth costs that exceeds 5% of the payer's income over a three-year period **or** one-half of the actual and reasonable cost of pregnancy and the child's birth as determined under current policy, **whichever is lower**.

CSA's must not seek a judgment amount for birth costs in cases where the alleged father is a member of an intact family that includes the mother and the subject child at the time paternity or support is established, and the father's income, if any, contributes to the support of the child. If the father lives in the home, it is assumed that his income contributes to the support of the child. If there is a question about whether the father is a member of an intact family, the CSA may require verification that the parties are living together. The CSA may adopt policies for what is acceptable verification of the current address. Examples:

- A driver's license; utility bill; posted mail with participant name and address, a lease agreement, bank statement, or other forms of verification as determined by the CSA.

CSA's must not seek a judgment amount for birth costs in cases where the mother is eligible for health care services from the Purchased/Referred Care Program, formerly known as, Indian Health Service (IHS).

Determining Gross Income Under DCF 150

In seeking judgment amounts for birth costs, the CSA must determine the father's income under DCF 150 Child Support Percentage of Income Standard, which takes into consideration all earnings, and income of the non-custodial parent.

DCF 150.03 establishes the method for determining a parent's gross income available for child support. To calculate the maximum birth cost judgment amount, compute the father's monthly gross income available for child support under DCF 150.03. Multiply the monthly gross income times 5% (or the low-income percentage) then multiply that amount times 36 months. Compare the result to one-half of the actual and reasonable amount under current BCS policy. The lesser amount should be used in seeking the judgment amount.

High Income Example: Monthly income \$4,000.00 X 5% X 36 months = \$7,200.00. This is the amount the father has the ability to pay under the formula.

For this example, we will use the Kick Payment for Ashland Co to determine the judgment amount. In Region 1, the average Kick Payment amount is \$7,005.44. One-half of the Kick Payment is \$3,502.72. The maximum judgment amount the CSA may seek for birth cost is \$3,502.72 because it is the lesser amount.

Low Income Payers Under DCF 150.04(4)

Under DCF150.04(4), the court may determine that the parent's total economic circumstances limit their ability to support the child at the full percentage level. Under Chapter DCF 150, Appendix C (Child Support Obligation of Low-Income Payers), the reduced support amount is a graduated scale that sets support amounts below the percentage standard for individuals with income at 75% of FPL to the full percentage amount for individuals at or above 150% of FPL. The FPL in Appendix C is updated every year per guideline requirements, most recently for 2018.

For cases where Appendix C is used to set child support for payers with income between 75% and 150% of FPL, the new chart Maximum Birth Cost Judgment Amounts of Low-Income Payers must be used for setting birth cost judgment amounts for low-income payers. This schedule uses the same scale to gradually increase the percentage to a maximum of 5% for payer with monthly gross income at or above 150% of FPL. The reduced percentage (between 3.30% and 5% on the schedule) is multiplied by the payer's gross income, times 36 months to compute the judgment amount.

Low-Income Payer Example: Monthly income is \$759.00 X 3.30% X 36 months = \$902.00

Use the Maximum Birth Costs Judgment Amounts for Low-Income Payers Appendix D to determine the amount the father has the ability to pay under the formula. The chart was used to determine the percentage (3.30%) of income to be used in determining the amount the father has the ability to pay.

For this example we will use the Kick Payment regional birth cost amount for Region 5; \$5,660.49. One-half of the regional average is \$2,830.24. The maximum birth cost judgment amount the CSA may seek is \$902.00 because it is the lesser amount.

Limitation on the Use of Federal Tax Intercept

These guidelines do not prevent a court from setting a different amount under Wis. Stat. §767.89(3)(e). However, if the court sets a judgment amount that **exceeds** the amount that would be determined under this policy, the birth costs must not be submitted for federal tax offset.

To prevent a LYIN ASGNA debt from being submitted for federal tax offset, workers must change the IRS indicator to "N" on the Update Financial Obligation (FOG) screen (PATH 05, 04 IV-D case #, F9, F16, choose debt, F9). Refer to the Tax Intercept Fact Sheet for instructions.

Setting Periodic Payment Amounts on Birth Cost Judgment Amounts

Under this policy, the CSA must determine that the father has a current ability to pay *before* seeking a judgment amount. If a judgment amount is set under this policy, a determination has been made that the father has the ability to pay so a periodic payment must be set. If there is no current ability to pay, the CSA may not seek a judgment amount.

Although the judgment amount is determined based on a 36 month period, the periodic payment should be based on the father's full economic circumstances. There is no set time period for repaying the judgment amount.

Summary

When seeking repayment of birth costs paid by Medicaid, CSAs must use the child support guidelines under DCF 150 to determine the payer's income, and take into account the payer's ability to pay by limiting the judgment amount to not more than 5% of the payer's monthly income times 36 months. Further, the judgment amount may not exceed one-half of the actual and reasonable cost of pregnancy and the child's birth, as provided under Wis. Stat. § 767.89(3)(e).

If the court sets a judgment amount that **exceeds** the amount that would be determined under this policy, the CSA must ensure that the birth costs are not submitted for federal tax offset.

Resources

Appendix C – Child Support Obligation Low-Income Payers

Appendix D – Maximum Birth Cost Judgment Amounts of Low-Income Payers

[PIQ 07-01](#)

Tax Intercept Fact Sheet

The regional birth cost average used for 2018 are found at:

<https://share.dcf.wisconsin.gov/cs/factsheets/bc-kickpmts.pdf>

The 2018 poverty guidelines can be found at: <https://aspe.hhs.gov/poverty-guidelines>

Questions regarding this bulletin should be sent to BCS via a KIDPOL.

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