

DCF 150.03(3) Options for Discussion

2015 Proposal from Committee:

(3) Determining income imputed based on earning capacity. In situations where the income of a parent is less than the parent's earning capacity or is unknown, and in the absence of credible evidence to the contrary, the court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community. If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court may impute to the parent the income that a person would earn by working 10 to 35 hours per week, based on the availability of work in or near the parent's community for individuals in similar circumstances of the parent, for the higher of the federal minimum hourly wage under 29 USC 206 (a) (1) or the state minimum wage in s. DWD 272.03. If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

2021 Option:

This option breaks out imputation of income into three categories: imputing income based on earning capacity when information is known; imputing income when no information is known; and when to not impute income. Various factors are listed for each to try and capture relevant background factors in the case, so that orders are more reasonably tied to ability to earn. Some of the listed factors in (3) will not apply in (4) because that information is not known in a situation appropriate for (4). *All factors listed are for discussion purposes and are not necessarily endorsed by the Department.

“(3) Determining income imputed based on earning capacity. In situations where the income of a parent is less than the parent's earning capacity and in the absence of credible evidence to the contrary, the court may impute income to the parent at an amount that the court determines represents the parent's ability to earn. The court shall consider the following factors when imputing income based on earning capacity:

- a. The parent's age;
- b. The parent's education;
- c. The parent's training and recent work experience;
- d. The parent's job skills;
- e. Earnings during previous periods of employment;
- f. Current physical or mental health;
- g. History of child care responsibilities as the parent with primary physical placement;
- h. Availability of work in or near the parent's community;
- i. Prevailing wages in the parent's community;
- j. The parent's history of incarceration and criminal history;

- k. Employment barriers [should examples be provided];
- l. Record of seeking work;
- m. Employers willing to hire NCP;
- n. The parent's assets;
- o. The parent's residence;
- p. Vocational evaluation, if available;
- q. If the parent is unemployed, whether the unemployment is due to the parent's own voluntary conduct or misconduct on the job.

If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

(4) Determining income imputed when no information is known.

In situations where the income of a parent is unknown and evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court may impute to the parent the income that a person would earn by working 10 to 35 hours per week, based on the availability of work in or near the parent's community for individuals in similar circumstances of the parent, for the higher of the federal minimum hourly wage under [29 USC 206](#) (a) (1) or the state minimum wage in s. [DWD 272.03](#). The court shall consider the following factors when imputing income in the absence of information on the parent's actual income or ability to earn:

- a. The parent's age;
- b. The parent's education;
- c. The parent's training and recent work experience;
- d. The parent's job skills;
- e. Earnings during previous periods of employment;
- f. Current physical or mental health;
- g. History of child care responsibilities as the parent with primary physical placement;
- h. Availability of work in or near the parent's community;
- i. Prevailing wages in the parent's community;
- j. The parent's history of incarceration and criminal history;
- k. Employment barriers [should examples be provided];
- l. Record of seeking work;
- m. Employers willing to hire NCP;
- n. The parent's assets;
- o. The parent's residence;
- p. Vocational evaluation, if available.

(5) When income may not be imputed.

The court may decline to impute income to either parent. Examples of cases in which it is inappropriate to impute income include, but are not limited to, the following:

- a. A parent is incarcerated [for 180 days or more];
- b. A parent is physically or mentally disabled [as evidenced by receipt of SSI];
- c. A parent is receiving TANF cash assistance;

- d. A parent is engaged in reasonable career or occupational training to establish basic skills or that is reasonably calculated to enhance earning capacity;
- e. Unusual emotional or physical needs of a natural or adopted child common to the parties if that child requires that parent's presence in the home; or
- f. A parent is the caretaker of a young child common to the parties and the cost of childcare is prohibitive."