

Child Support Guidelines Advisory Panel Meeting Minutes

September 30, 2021

Virtual Meeting

Attendance

Connie Chesnik (DFES), Jill Mueller (DCF), Debra Barnes (BCS), Phyllis Fuller (BCS), Katie Marek (BCS), Nicole Price (BCS), Patti Reuter (BCS), Jenny Laufer (BCS), Alicia Breininger (BCS), Aviva Gellman (BCS), Mark Schmitt (DCF), Dan Meyer (IRP), Lisa Klein Vogel (IRP), Judith Bartfeld (IRP), Adrienne Gilbert Ramirez (Wisconsin Women's Network), Marylee Richmond (Walworth County), Kathleen Murphy (Milwaukee County), Christine Lidbury (Wisconsin Women's Council), Commissioner Mark Fremgen (WIFCCA), Karyn Youso (WI State Law Family Section Board), Dominic Anderson (Dads of Wisconsin), Steve Blake (Dads of Wisconsin), Lia Ocasio (End Domestic Abuse WI), Robert Held (Legal Action of WI), Honorable Thomas Walsh (WI Circuit Court Judge), Tony Bickel (WFCF), Jonathan Koch (WFCF), Leatha Stanley (Urban League), and Margaret Garsaw (Vilas County).

Welcome & Recap

Nicole Price, Bureau of Child Support Program and Policy Analyst-Advanced

Nicole Price, BCS, reminded all attendees that the meeting was being recorded for the purpose of taking meeting minutes and asked for any objections to be voiced at that time. None were voiced. Nicole Price, BCS, stated that the intent was to finalize decisions at this meeting.

Wrap up of September 14th Discussion (Imputing Wage and Equivalent Care)

Connie Chesnik, Division of Family and Economic Security Administrator
Jill Mueller, Department of Children and Families Attorney

DCF 150.03(3) Revised Option was displayed on the screen.

Jill Mueller, DCF, indicated that after the September 14, 2021 meeting, she made some edits to the previously shared draft of the rule based on feedback from the committee. Some of these edits included the following:

- The addition of examples under k. (Employment barriers)
- The addition of language regarding the cost of housing under o.
- The addition of language regarding being underemployed under q.
- The removal of the section that gave examples of when the court may choose not to impute (g., h., i., and m.), and the relocation of those factors into subsection three.
- The addition of w., a catch-all provision stating, "Any other factor the court deems relevant."

Jill Mueller, DCF, asked for feedback on r. through v. below to determine whether they should remain in the language or be removed.

- r. A parent is engaged in reasonable career or occupational training to establish basic skills or that is reasonably calculated to enhance earning capacity;
- s. 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
- t. A parent is the caretaker of a young child common to the parties and the cost of childcare is prohibitive.
- u. The parent's receipt of TANF cash assistance;
- v. The parent's receipt of SSI;

Dominic Anderson, Dads of Wisconsin, asked if a payee who chooses to go back to college rather than work could get additional child support under r.

Jill Mueller, DCF, responded that this would be very fact dependent and would include consideration of items such as whether the return to college would result in an enhanced earning capacity.

Kathleen Murphy, Milwaukee County, stated she believes r. may be confusing and could be included under w. "Any other factor the court deems relevant." She also requested the removal of t. because it may be a choice over which the parents disagree, and the removal of r.

Commissioner Fremgen, WIFCCA, stated support of r. as a factor that is considered in child support hearings, particularly in shared placement circumstances where a parent might be going to school. However, he stated it should be weighed against responsibility of both parents to provide financially for the child.

Robert Held, Legal Action of WI, stated agreement with Commissioner Fremgen in support of r. as an appropriate factor so long as it is not abused by parents. He further suggested removing the word "young" from t., particularly as summer childcare can be costly.

Christine Lidbury, Wisconsin Women's Council, expressed concerns regarding t. as it is a choice that parents make, and they are not always in agreement regarding whether it is an appropriate choice or which of them should provide the childcare.

Judge Walsh, WI Circuit Court Judge, advocated for keeping r. as well. He stated that r. comes up enough times that it is worth leaving in the rule. He stated he feels the same way about t. as it is something that comes up on a frequent basis as well.

Lia Ocasio, End Domestic Abuse WI, expressed concern regarding abuse of t., particularly by domestic abusers.

Dominic Anderson, Dads of Wisconsin, stated a preference for removing r. as he believes it could be used to shirk responsibility on both sides. He further requested t. be removed. He asked if v., the parent's receipt of SSI, would be an excuse for the payor not to pay or for the receiving parent not to work.

Jill Mueller, DCF, responded that this provision is about imputing income and could be applied to either parent.

Jill Mueller, DCF, then explained that under subsection four, she removed all the factors that were listed previously and took out the entirety of section five.

Kathleen Murphy, Milwaukee County, stated that in reference to subsection three, the word "shall" in "The court shall consider the following factors when imputing income based on earning capacity" should be changed to "may."

Commissioner Fremgen, WIFCCA, stated agreement with the request to change the word "shall" to "may." He noted that leaving the word "shall" in the rule would require a court to go through factors a. through w. when making every child support order.

Dominic Anderson, Dads of Wisconsin, also expressed support for changing "shall" to "may."

Jill Mueller, DCF, asked for votes on the current rule language to be placed in the chat. She asked committee members to either state their agreement with the rule as it was presented or to note specific objections in the chat as well.

The following responses were placed in the chat:

Karyn Youso: agree

Dominic Anderson: Object to R & T. Format looks good. Object to "Shall" consider and would change that to Court "May" consider.

(Judge) Thomas Walsh: I agree

Christine Lidbury: agreeable generally to new structure with the following: section (3) change "shall" to "may" and remove "t"

(Commissioner) Mark Fremgen: I approve the general change to the rule and the proposal at it stands (with the caveat that the word "shall" is changed to "may" before the factors in sub (3)

Robert Held: I agree

Attorney Marylee Richmond: In intro-both should be MAY- Factors R&T should be REMOVED-MDR

(Kathleen) Katie Murphy: I agree and appreciate the new structure. I object to shall and would prefer to remove R&T

Robert Held: I would add SSDI to the SSI provision

Lia Ocasio (she/her): agreeable to general change (& changing "shall" to "may" & removing R&T)

Leatha Stanley: yes

Adrienne Ramirez: I agree but question the addition of "cost of housing" in O which was added after residence.

Steve: Dads of WI will defer to and agree with Atty. Dominic Anderson.

Jill Mueller, DCF, transitioned into the discussion regarding equivalent care, and stated that an example will be added to the rule, as well as a note underneath the definition of equivalent care to make it clear that equivalent care is not to be granted if there has already been an overnight within the same 24 hour period.

Health Insurance Discussion

Connie Chesnik, Division of Family and Economic Security Administrator

Jill Mueller, Department of Children and Families Attorney

Phyllis Fuller, BCS, introduced Connie Chesnik, DCF, to lead the discussion on medical support.

Connie Chesnik, DCF, stated that last time the committee met, there were a number of changes made to the rule related to medical support, including changing the measure of reasonable cost from 5% to 10% and applying it to the full cost of a policy, not just the incremental cost of adding a child.

She noted that many younger employees are not purchasing insurance for themselves, so they are facing not only the cost of adding a child, but the cost of purchasing the underlying policy itself.

The contribution from the other parent should not exceed the total cost to add the children.

Connie Chesnik, DCF, noted that right now, the current language in the rule provides that the cost of insurance is considered reasonable if it is available within a geographic area without large out of pocket deductibles or co-payments, but it does not go into any greater detail to identify what would be considered a large out of pocket deductible or a large co-payment.

She asked for input regarding any clarity that could be provided in the rule that would make it easier to assess whether the cost of insurance was reasonable.

Connie Chesnik, DCF, presented examples of when cost might not be reasonable and asked for thoughts regarding how to define what constitutes reasonable.

Karyn Youso, WI State Law Family Section Board, asked for clarification regarding who has the discretion and authority to make that reasonableness determination, and what counts as the premium (i.e., health, dental, vision, etc.).

Phyllis Fuller, BCS, addressed the matter of dental and vision expenses and suggested that if either is available at a reasonable cost to the family, it should be included.

Kathleen Murphy, Milwaukee County, stated that employers are trying to follow the rules by adding insurance. However, in cases where adding insurance is, in fact, unreasonable, individuals are having to file court actions that are costing them significant amounts of money in order to correct the issue. Further, by the time the court hears the action, these individuals have already spent a significant amount of money on insurance.

Phyllis Fuller, BCS, suggested employer training, which was offered prior to COVID-19. She stated that new information and guidance for employers could also be included on the DCF website.

Connie Chesnik, DCF, suggested creating a new definition for reasonable in the rule that would allow CSAs to send a letter to employers advising them of instances where it would not be reasonable to add insurance. She asked for definitional input regarding reasonable costs.

Kathleen Murphy, Milwaukee County, suggested adding “totality of the circumstances” language.

Marylee Richmond, Walworth County, stated that she liked Phyllis’s suggestion that the determination be left up to employers.

Connie Chesnik, DCF, acknowledged both suggested approaches and stated that it is probably a policy decision to determine whether or not an agency would be responding to requests from employers but asked if there were suggested changes to the guidelines.

Commissioner Fremgen, WIFCCA, noted that he does not see this issue arise very often and stated that most of the orders he sees are based upon stipulated agreements. He thinks the current version of the rule is very well drafted.

Judge Walsh, WI Circuit Court Judge, agreed with Commissioner Fremgen’s position and suggested either deciding to leave the rule as is, or to give attention to creating a more substantial revision. His stated preference would be to leave it as is. He further stated that he thought it was a good idea to give the CSAs the authority to send out letters to employers.

Jill Mueller, DCF, solicited feedback regarding whether dental and vision should be included in the 10%.

Karyn Youso, WI State Law Family Section Board, noted that she has used it as a way of meeting the 10% threshold.

Percentage Standard Discussion

Connie Chesnik, Division of Family and Economic Security Administrator

Jill Mueller, Department of Children and Families Attorney

Jill Mueller, DCF, led the discussion on percentage standard and opened by noting that at a previous meeting, the question of how to calculate support for subsequent children in serial payer cases was raised.

She then shared proposed language change to DCF 150.04(1)(b)3.a. and noted that this language change would relieve a burden on the courts.

The new language would require the courts to count existing orders at the value that would be ordered if they were set in the present.

Marylee Richmond, Walworth County, expressed support for this change.

Jill Mueller, DCF, asked all committee members to state in the chat whether they were agreeable to this change.

The following responses were placed in the chat:

Dominic Anderson: OK

(Kathleen) Katie Murphy: I agree to the change

Mark Fremgen: I am OKAY with the change.

(Judge) Thomas Walsh: I am good with this

Adrienne Ramirez: I agree with the change.

Marylee Richmond: totally support the change/ mdr

Robert Held: I agree with the change

Lia Ocasio: agree

Christine Lidbury: I agree with the change

Jill Mueller, DCF, asked if there were any objections to leaving the language as is without specifying which guidelines are being referenced.

The following positions were stated in the chat:

Leotha Stanley to Everyone: agree

Marylee Richmond to Everyone: i think the difference will always be negligible. and there is the perception of fairness.

(Commissioner) Mark Fremgen: no objection

Christine Lidbury: yes

Jill Mueller, DCF, stated that the reference to subsection two in the passage below will also be removed because it is no longer needed. It is referencing the shared placement calculation.

“3. Determine the first child support obligation as follows:

a. If the parent is subject to an existing support order for that legal obligation, except a shared-placement order under s. DCF 150.04 (2), the support for that obligation is the monthly amount of that order.

b. If the parent is in an intact family or is subject to a shared-placement order under s. DCF 150.04 (2), the support is determined by multiplying the appropriate percentage under s. DCF 150.03 (1) for that number of children by the parent's monthly income available for child support or, if applicable, determine support under sub. (2), (3), (4), or (5)."

Phyllis Fuller, BCS, then introduced two additional items that needed further discussion.

1. The federal rule provides that incarceration may not be considered voluntary unemployment when determining support. DCF plans to seek language changes in DCF 150 to include that provision.
2. DCF intends to repeal the language in DCF 150.05(1)(a), which specifically excludes Badgercare and public insurances.

Commissioner Fremgen, WIFCCA, pointed out that when the topic of not considering incarceration voluntary unemployment was raised in the legislative counsel committee previously the legislators on the committee were not open to considering the idea of treating inmates with special treatment.

Connie Chesnik, DCF, noted that she believes we are required to address it in our guidelines. She stated this will be reviewed prior to pursuing any changes.

Jill Mueller, DCF, provided the citation to the final federal rule and stated that the final rule provides that state guidelines under 45 CFR 302.56(c)(3) may not treat incarceration as "voluntary unemployment" in establishing or modifying child support orders.

Final Recommendation Discussion

Connie Chesnik, Division of Family and Economic Security Administrator
Jill Mueller, Department of Children and Families Attorney

Phyllis Fuller, BCS, introduced Deb Barnes, DCF, who thanked all present for the work that was done on the Guidelines Committee and stated that the ideas and opinions of committee members matter to DCF. She invited them to reach out to the Bureau of Child Support with additional ideas or comments. Deb Barnes, BCS, then turned the meeting over to Connie Chesnik, DCF, to close.

Connie Chesnik, DCF, outlined next steps, which were the following:

1. DCF will prepare a final report based on the work of the committee.
2. A draft will be sent out for review and an opportunity to submit concerns, questions, and comments.
3. The report will then be sent to the Federal Office of Child Support Enforcement to comply with quadrennial review requirement.
4. The process will then shift into administrative rule making, which is approximately a year-long process that includes the following:
 - a. Submit statement of scope to Governor's Office
 - b. Draft rule language

- c. Hold public hearing(s)
- d. Make revisions
- e. Rule submitted to legislative counsel for review
- f. Assigned to committees in both the Senate and the Assembly

Connie Chesnik, DCF, thanked all for their attendance and participation in the committee meetings.

Phyllis Fuller, BCS, requested contact information be posted in the chat and Mark Schmitt, DCF, posted the following email address: BCSINFO@Wisconsin.gov.

Adjourn

Nicole Price, BCS, thanked all for their participation in the meeting and adjourned.

Minutes prepared by Alicia Breininger, BCS, with contributing edits from other BCS staff.