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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2001-02

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Children and Families (AC-CF)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

TO: Members of the Children and Families Committee
FROM: Representative Steve Kestell, Chair
DATE: May 29, 2002
RE: **Clearinghouse Rule 02-040**

On May 28, 2002 the following clearinghouse rule was referred to the Assembly Children and Families Committee:

Clearinghouse Rule 02-040, an order to create chapter DWD 19, relating to child support cooperation for food stamps.

The proposed rules specify the child support cooperation requirements and good cause exemptions for custodial parents or other individuals exercising parental control, non-custodial parents, and alleged fathers under the food stamp program, pursuant to s. 49.124 (1g), Stats. The rule has no significant fiscal effect.

The deadline for committee action on this rule is **June 27, 2002**. If you are interested in obtaining a hard copy of the rule or requesting a hearing, please do so prior to the deadline date. You may also access a copy of this rule in Folio under the Clearinghouse Rule section.

Steve Kestell
Chair

SK:drm

Scott McCallum
Governor

Jennifer Reinert
Secretary



OFFICE OF THE SECRETARY

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**State of Wisconsin
Department of Workforce Development**

May 22, 2002

President of the Senate
220 South, State Capitol
Madison, Wisconsin 53702

Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Notice of Administrative Rules in Final Draft Form

Clearinghouse rule number: 02-040

Rule number: DWD 19

Relating to: Child support cooperation for food stamps

Dear Senator Risser and Representative Jensen:

I have enclosed proposed rules in final draft form and a rule report as required by s. 227.19(3), Stats., for referral to the appropriate legislative standing committees. If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,


Jennifer Reinert
Secretary

Scott McCallum
Governor

Jennifer Reinert
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY

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Rule Analysis for Legislative Review

Proposed rules relating to child support cooperation for the food stamp program Chapter DWD 19 CR 02-040

Need for rules

The proposed rules specify the child support cooperation requirements and good cause exemptions for custodial parents or other individuals exercising parental control, noncustodial parents, and alleged fathers under the food stamp program, pursuant to s. 49.124(1g), Stats.

Public hearing response

A public hearing was held in Madison on May 1, 2002. A summary of the comments and the department's response is attached.

Response to Legislative Council staff recommendations

The department accepted all comments.

Final regulatory flexibility analysis

The proposed rule does not affect small business as defined in s. 227.114, Stats.

Fiscal effect

The proposed rule has no significant fiscal effect.

Department contacts

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Case Initiation/Establishment Unit
Bureau of Child Support
266-6859

Elaine Pridgen
Administrative Rules Coordinator
Office of Legal Counsel
267-9403

Richard Zynda, Director
Office of Nutrition Services and Program Integrity
266-9812

State of Wisconsin
Department of Workforce Development

Chapter DWD 19
CHILD SUPPORT COOPERATION FOR FOOD STAMPS

The Wisconsin Department of Workforce Development proposes an order to create chapter DWD 19, relating to child support cooperation for food stamps.

Analysis Prepared by the Department of Workforce Development

Statutory authority: ss. 49.124(1g), and 227.11, Stats.

Statute interpreted: s. 49.124(1g), Stats.

Relevant federal law: 7 USC 2015 (l), (m), and (n); 7 CFR 273.11 (o), (p), and (q)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allows states to require food stamp recipients to cooperate with child support services as a condition of food stamp eligibility and to disqualify individuals who are in arrears in court-ordered child support payments. Wisconsin adopted these federal options in 1997 Wisconsin Act 27. The federal Food and Nutrition Service announced the final rule affecting states who chose to adopt these options in the *Federal Register* on January 17, 2001, with a mandatory implementation date of October 1, 2001.

This proposed rule specifies the cooperation requirements and good cause exemptions for custodial parents or other individuals exercising parental control, noncustodial parents, and alleged fathers under the food stamp program in Wisconsin. A custodial parent or other individual exercising parental control must cooperate with efforts directed at identifying and locating the absent parent of the child, establishing paternity of a nonmarital child, establishing or enforcing a support order, and obtaining other payments or property to which that custodial parent, individual exercising parental control, or child may have rights. An alleged father or a noncustodial mother must cooperate with efforts directed at establishing the paternity of the child. A noncustodial parent must cooperate with efforts directed at providing or obtaining support for the child.

Acts of cooperation for an alleged father, noncustodial parent, and a custodial parent or other individual exercising parental control include providing verbal information, written information, or other evidence known to, possessed by, or reasonably obtainable by the individual subject to the cooperation requirements and appearing at hearings or other legal proceedings. In addition to these requirements, acts of cooperation for a custodial parent or other individual exercising parental control include attending interviews and responding to written requests for information by the child support agency, paying court-ordered child support received directly from the

noncustodial parent to the department or its designee, and providing information or signing an affidavit declaring a lack of information, subject to penalty of false swearing pursuant to s. 946.32, Stats.

Acts of cooperation for a custodial parent also include submitting to genetic tests pursuant to judicial or administrative order. Acts of cooperation for an alleged father include submitting to genetic tests pursuant to judicial order, and acts of cooperation for a noncustodial parent include paying court-ordered child support to the department or its designee pursuant to s. 767.29, Stats.

The child support agency determines if an individual is not cooperating with child support services. The child support agency may determine that a custodial parent or other exercising parental control is not cooperating if, without adequate reason, the individual misses two consecutive agency appointments, misses one agency appointment and fails to respond to a written communication from the agency within a 90-day period, or fails to appear for a hearing or other legal proceeding. In addition, the child support agency may determine that a custodial parent is not cooperating if the individual fails to appear for a genetic test. Adequate reason for failure to comply with these requirements includes personal or family illness or injury; family crisis; breakdown in transportation arrangements; inclement weather that causes a general breakdown in travel; 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; and other reasonable circumstances as determined by the child support agency or the department.

The child support agency may determine that a noncustodial parent or alleged father is not cooperating if the noncustodial parent or alleged father is the subject of a warrant relating to paternity or support, including 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. The child support agency may determine that a noncustodial parent is not cooperating if the individual is the subject of a criminal warrant for failure to support pursuant to s. 948.22, Stats.

The child support agency may also determine that a noncustodial parent is not cooperating if the noncustodial parent fails to pay court-ordered child support so that the delinquency balance is three months or more of the court-ordered payment amount unless the court or child support agency is allowing the parent to delay payments or the parent is in compliance with a payment plan approved by the child support agency. Under federal law, a parent who is obligated by court order to provide child support payments and is delinquent in that month is ineligible for food stamps unless a court or child support agency is allowing the individual to delay the child support payments or the individual is complying with a payment plan approved by a child support agency or court. 7 CFR 273.11(q)(2)(iii) allows states the option to determine that an individual has good cause for nonsupport. Under this rule and s. 49.124(1g)(e)1., Stats., a delinquency that equals less than 3 months of the court-ordered support payments will be automatically deemed good cause for nonsupport. This rule also adopts the federal option to limit arrears disqualification to noncustodial parents.

An alleged father, parent, or individual exercising parental control is eligible for an exemption from the cooperation requirements when the income maintenance agency determines that any of the following criteria applies:

- Cooperation is reasonably anticipated to result in either physical or emotional harm to the child, including threats of child kidnapping or domestic abuse.
- Cooperation is reasonably anticipated to result in either physical or emotional harm to the parent, including domestic abuse.
- 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.
- The child was conceived as a result of incest or sexual assault.
- 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.
- 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.
- A noncustodial parent's delinquency equaled less than 3 months of the court-ordered support payments during the previous month.
- Any other good cause criteria used in the W-2 program.

The income maintenance agency shall require an applicant or recipient who requests a good cause exemption to submit at least one document of corroborative evidence and the applicant's or recipient's statement specifying the circumstances that the applicant or recipient believes provide sufficient good cause for not cooperating. The applicant or recipient may submit corroborative evidence to the income maintenance agency within 20 days from the day the claim was made. If the good cause claim is based on domestic abuse and no corroborative evidence is currently available, the income maintenance agency may permit the applicant or participant to submit evidence to the income maintenance agency within 60 days from the date the claim was made.

The income maintenance 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 recipient or more time is necessary for the income maintenance agency to obtain evidence. If the income maintenance agency allowed up to 60 days to submit evidence for a claim of domestic abuse, the agency must determine if good cause exists within 85 days from the date the claim was signed.

If the income maintenance agency determines that the applicant or recipient does have good cause for failing to cooperate, the income maintenance agency shall direct the child support agency to suspend all further case activities if the applicant or recipient did not request the child support agency to proceed without his or her cooperation. The income maintenance agency shall notify the child support agency that it may proceed with child support services without the cooperation of the applicant or recipient if the applicant or recipient did request that the child support agency proceed without his or her cooperation. The income maintenance agency shall promptly notify the applicant or recipient of the determination and the basis for the determination

in writing. If good cause was granted for criteria in s. DWD 19.05(1) to (4), the child support agency shall send a notice to the individual alleged to have committed acts that are the basis of the good cause claim that states that the agency is proceeding without the cooperation of the applicant or recipient.

A member of a food stamp household who refuses to cooperate without good cause shall be ineligible to participate in the food stamp program. Other individuals in that food stamp household who are cooperating or who do not have cooperation requirements are eligible to receive food stamps. A woman who is pregnant or a custodial parent with a child who is under 60 days old is exempt from sanction for failing to cooperate with requirements for any child. A minor parent is exempt from sanction for failing to comply with the cooperation requirements.

SECTION 1. Chapter DWD 19 is created to read:

Chapter DWD 19

CHILD SUPPORT COOPERATION FOR FOOD STAMPS

DWD 19.01 Authority and purpose. This chapter is adopted pursuant to s. 49.124(1g), Stats., for the purpose of administering the requirement of cooperation with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, and providing or obtaining support for the child as a condition of eligibility for the food stamp program, unless a good cause exemption applies.

DWD 19.02 Definitions.

(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 workforce development.

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

(a) Physical acts that result in pain, illness, or injury.

(b) 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.

(c) Threats of, or attempts at, physical or sexual abuse.

(d) Emotional or mental abuse.

(e) Verbal abuse.

(f) Deprivation or destruction of physical or economic resources.

(g) Neglect or deprivation of medical care.

(h) Forced isolation.

(i) Stalking or harassment.

(5) "Food stamp household" has the meaning given in 7 CFR 273.1.

(6) "Food stamp program" or "food stamps" means the federal food stamp program under 7 USC 2011 to 2036.

(7) "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."

(8) "Good cause" means the criteria set forth in s. DWD 19.05, which permit, without sanction, a custodial parent or other individual exercising parental control, noncustodial parent, or alleged father in a food stamp household to fail to cooperate with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, and providing or obtaining support for a child of the individual.

(9) "Income maintenance agency" means a county or tribal agency under contract with the department to administer the food stamp program.

(10) "Individual exercising parental control" means an individual who lives with and exercises parental control over a child who is under the age of 18 and who has an absent parent.

(11) "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.

(12) "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."

(13) "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:

1. A biological parent.
2. A person who has consented to the artificial insemination of his wife under s. 891.40.
3. A parent by adoption.

4. 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. 767.60.
5. A man who has signed and filed with the state registrar under s. 69.15(3)(b)3. a statement acknowledging paternity.”

(14) “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.”

DWD 19.03 Cooperation as a condition of eligibility. (1) COOPERATION

REQUIREMENTS. (a) Unless the income maintenance agency determines that a good cause exemption applies, an individual with one of following relationships to a child who is under the age of 18 and who has an absent parent shall cooperate in good faith in the following ways as a condition of eligibility for the food stamp program in that month:

1. A custodial parent or other individual exercising parental shall cooperate with efforts directed at all of the following:
 - a. Identifying and locating the absent parent of the child.
 - b. Establishing paternity of a child of the custodial parent.
 - c. Establishing or enforcing a support order.
 - d. Obtaining other payments or property to which that custodial parent, individual exercising parental control, or child may have rights.
 2. An alleged father shall cooperate with efforts directed at establishing the paternity of the child.
 3. A noncustodial mother shall cooperate with efforts directed at establishing the paternity of the child.
 4. A noncustodial parent shall cooperate with efforts directed at providing or obtaining support for the child.
- (b) If an individual is receiving W-2 or Medicaid and has already been determined to be cooperating with the child support agency or has been determined to have good cause for not cooperating, then the income maintenance agency shall determine the individual to be cooperating with requirements in par. (a) for food stamp purposes.

(c) A noncustodial parent who is obligated by court order to provide child support payments and is delinquent in that month shall be ineligible for food stamps unless any of the following applies:

1. The delinquency equals less than 3 months of the court-ordered support payments. This grace period is deemed good cause for nonsupport pursuant to 7 CFR 273.11(q)(2)(iii).

2. A court or child support agency is allowing the individual to delay the child support payments.

3. The individual is complying with a payment plan approved by a court or child support agency.

(2) ACTS OF COOPERATION. (a) Acts of cooperation for an alleged father, noncustodial parent, custodial parent or other individual exercising parental control include any action that is relevant to achieve the purposes in sub. (1), including the following:

1. Providing verbal information, written information, or other evidence known to, possessed by, or reasonably obtainable by the individual subject to the cooperation requirements.

2. Appearing at hearings or other legal proceedings.

(b) In addition to the requirements in par. (a), acts of cooperation for a custodial parent or other individual exercising parental control, include the following:

1. Attending interviews and responding to written requests for information by the child support agency.

2. Paying court-ordered child support received directly from the noncustodial parent to the department or its designee.

3. Providing information or signing an affidavit declaring a lack of information, subject to penalty of false swearing pursuant to s. 946.32, Stats.

(c) In addition to the requirements in par. (a) and (b), acts of cooperation for a custodial parent include submitting to genetic tests pursuant to judicial or administrative order.

(d) In addition to the requirements in par. (a), acts of cooperation for an alleged father include submitting to genetic tests pursuant to judicial order.

(e) In addition to the requirements in par. (a), acts of cooperation for a noncustodial parent include paying court-ordered child support to the department or its designee pursuant to s. 767.29, Stats.

(3) EXCLUSIONS. Acts of cooperation 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, 767.458, 767.48, or 767.62, Stats.

(d) A requirement to sign a stipulation for a child support, physical placement, or custody order.

(4) NONCOOPERATION. (a) The child support agency shall determine if an individual is not cooperating with the requirements in subs. (1) and (2).

(b) The child support agency may determine that a custodial parent or other individual exercising parental control is not cooperating if the individual 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 within a 90-day period.

3. Fails to appear for a hearing or other legal proceeding.

(c) In addition to par. (b), the child support agency may determine that a custodial parent is not cooperating if the individual fails to appear for a genetic test.

(d) The child support agency may determine that a noncustodial parent or alleged father is not cooperating if the individual is the subject of a warrant relating to paternity or support, including 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.

(e) The child support agency may determine that a noncustodial parent is not cooperating if the individual is the subject of a criminal warrant for failure to support pursuant to s. 948.22, Stats.

(f) In addition to pars. (d) and (e), the child support agency may determine that a noncustodial parent is not cooperating if the noncustodial parent fails to pay court-ordered child support so that the delinquency balance is three months or more of the court-ordered payment

amount, unless the court or child support agency is allowing the parent to delay payments or the parent is in compliance with a payment plan approved by the child support agency or court.

(5) ADEQUATE REASON. (a) Adequate reason for failure to respond to a written communication or failure to attend an appointment, hearing, or genetic test by a custodial parent or other individual exercising parental control 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 paragraph (a).

(6) AFFIDAVIT ATTESTING TO FULL COOPERATION. If a custodial parent or other individual exercising parental control has signed an affidavit attesting to full cooperation and there is no substantial independent evidence or verifiable information that suggests that the custodial parent or individual 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 income maintenance agency of its decision and the basis for the decision. The notice to the individual shall be in writing. The income maintenance agency shall apply sanctions pursuant to s. DWD 19.09 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 s. DWD 19.03(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.

DWD 19.04 Cooperation and good cause notice. (1) The income maintenance agency shall issue a notice describing the cooperation requirements and the right to good cause as an exception to the cooperation requirements to all applicants and recipients of food stamps. The notice shall be provided to applicants when they apply for food stamps and to recipients when a child is added to the food stamp household, when a parent leaves the food stamp household, at reapplication for continued benefits, and if a participant discloses to his or her income maintenance worker circumstances that may meet the good cause criteria in s. DWD 19.05.

(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) Child support cooperation is a condition of eligibility for food stamps.

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

(d) The good cause criteria in s. DWD 19.05.

(e) A good cause claim form is available from the income maintenance 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 income maintenance agency at any time.

(3) At the child support agency's initial meeting with the custodial parent or individual exercising parental control, the agency shall ask the parent or other individual if a good cause notice has been received. If the custodial parent or individual exercising parental control has not received a good cause notice, the child support agency shall provide one. A custodial parent or individual exercising parental control who expresses intent to file a good cause claim shall be referred to the income maintenance agency. If the custodial parent or individual exercising parental control 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 or individual exercising parental control to file a good cause claim with the income maintenance agency.

Note: A copy of the good cause notice may be obtained by contacting the Department of Workforce Development, Division of Workforce Solutions, P.O. Box 7972, Madison, WI 53707-7972.

DWD 19.05 Good cause criteria An alleged father, parent, or individual exercising parental control is eligible for an exemption from the cooperation requirements in s. DWD 19.03 when the income maintenance agency determines that any of the following criteria applies:

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

(2) Cooperation is reasonably anticipated to result in either physical or emotional harm to the individual subject to the cooperation requirements, 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.

(7) A noncustodial parent's delinquency equaled less than 3 months of the court-ordered support payments during the previous month.

(8) Any other good cause criteria used in the W-2 program, as provided in chapter DWD 15.

DWD 19.06 Good cause claim (1) CLAIM FORM. The income maintenance agency shall provide a good cause claim form to any applicant or recipient of food stamps 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 recipient may file a good cause claim with the income maintenance agency at any time. The applicant or recipient shall specify the circumstances that the applicant or recipient believes provide sufficient good cause for not

cooperating and shall indicate whether the applicant or recipient requests that the child support agency proceed without his or her cooperation if good cause is granted, if that is possible. The applicant or recipient 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 an income maintenance agency worker or a notary public. Upon receipt of the good cause claim, the income maintenance 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 income maintenance agency shall encourage the applicant or recipient to submit as many types of evidence as possible. The income maintenance agency worker shall advise the applicant or recipient that if assistance is needed in obtaining evidence, the worker will assist him or her. The applicant or recipient may submit corroborative evidence to the income maintenance agency within 20 days from the day the claim was signed. An income maintenance 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 income maintenance agency may permit the applicant or recipient to submit evidence to the income maintenance 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 violence or physical or emotional harm to the applicant, recipient, 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 applicant, recipient, 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 applicant or recipient 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 W-2 screening process under s. DWD 12.15 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 Workforce Development, Division of Workforce Solutions, P.O. Box 7972, Madison, WI 53707-7972.

DWD 19.07 Approving or continuing benefits. If an applicant or recipient is cooperating with the income maintenance agency in furnishing evidence and information to be used in determining the good cause claim and other eligibility criteria are met, food stamp benefits shall not be denied, delayed, reduced, or discontinued pending the determination of a good cause claim.

DWD 19.08 Good cause determination. (1) EVALUATING A GOOD CAUSE CLAIM.

(a) The income maintenance agency shall require an applicant or recipient who requests a good cause exemption to submit at least one document of corroborative evidence and the applicant's or recipient's statement specifying the circumstances that the applicant or recipient believes provide sufficient good cause for not cooperating. If an applicant or recipient does not submit sufficient evidence to substantiate the good cause claim, the income maintenance 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. DWD 19.06(4). The income maintenance agency shall make a reasonable effort to obtain specific documents or information that the individual is having difficulty obtaining.

(b) The income maintenance 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 recipient's statement and the investigation satisfy the income maintenance agency that good cause exists.

(c) The income maintenance agency may investigate any good cause claim when the applicant or recipient's statement and corroborative evidence do not provide sufficient

information to make a determination. The applicant or recipient shall cooperate with the investigation by the income maintenance agency. The income maintenance agency may contact the child support agency in the course of the investigation, 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. DWD 19.05(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 income maintenance agency prior to the final determination on good cause by the income maintenance agency. The income maintenance agency shall consider any recommendations from the child support agency.

(3) DETERMINATION DEADLINE. The income maintenance 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 recipient who is claiming good cause or more time is necessary for the income maintenance agency to obtain evidence. If the income maintenance 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. If the income maintenance agency determines that the applicant or recipient does not have good cause for failing to cooperate with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, and providing or obtaining support for the child, the income maintenance agency shall notify the child support agency that it may proceed with child support services and require the cooperation of the applicant or recipient.

(a) The income maintenance agency shall immediately notify the applicant or recipient of the determination and the right to a review of the agency decision pursuant to s. DWD 19.10.

(b) The child support agency shall not proceed with child support services for 10 days from the date of the notice to the applicant or recipient to allow the applicant or recipient the opportunity to withdraw the application or request the case be closed, exclude allowable individuals from the food stamp household, or request a review of the agency decision pursuant to s. DWD 19.10.

(c) If the applicant or recipient requests a review of the agency decision, the income maintenance agency shall instruct the child support agency to suspend child support services during the review process.

(5) IF GOOD CAUSE DOES EXIST. (a) If the income maintenance agency determines that the applicant or recipient does have good cause for failing to cooperate with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, or providing or obtaining support for the child, the income maintenance agency shall:

1. Direct the child support agency to suspend all further case activities if the applicant or recipient did not request the child support agency to proceed without his or her cooperation.

2. Notify the child support agency that it shall proceed with child support services without the cooperation of the applicant or recipient if the applicant or recipient did request that the child support agency proceed without his or her cooperation. If good cause was granted for criteria in s. DWD 19.05(1) to (4), the child support agency shall send a notice to the individual alleged to have committed the acts that are the basis of the good cause claim that states that the agency is proceeding without the cooperation of the applicant or recipient.

3. Notify the applicant or recipient of the determination and the basis for the determination in writing.

(b) If the income maintenance agency determines that an alleged father or noncustodial parent is granted a good cause exemption, a child support agency's determination of noncooperation under s. DWD 19.03(4)(c) or (d) may not constitute a refusal to cooperate pursuant to 7 CFR 273.11(p)(2).

DWD 19.09. Sanction for refusal to cooperate. (1) A member of a food stamp household who is required to cooperate with efforts directed at establishing paternity, establishing or enforcing a support order, obtaining other payments or property to which an individual or child may have rights, or providing or obtaining support for the child and refuses to cooperate without good cause shall be ineligible to participate in the food stamp program. Other individuals in that food stamp household who are cooperating or who do not have cooperation requirements are eligible to receive food stamps.

(2) A woman who is pregnant or a custodial parent with a child who is under 60 days old is exempt from sanction for failing to cooperate with requirements in s. DWD 19.03 for any child.

(3) A minor parent is exempt from sanction for failing to cooperate with requirements in s. DWD 19.03.

DWD 19.10 Review of agency decisions (1) A food stamp applicant or recipient who is denied eligibility based on a determination that the individual has refused to cooperate or is denied a good cause exemption from the child support cooperation requirement may request a departmental review.

(2) A food stamp applicant or recipient who is denied eligibility based on a determination of noncooperation by the child support agency is encouraged, but not required, to file an administrative complaint with the child support agency to attempt to resolve the matter upon agreement of all parties.

(3) The child support agency shall be given reasonable notice and may participate in any hearing resulting from a good cause investigation or good cause determination.

DWD 19.11 Review of good cause exemptions. The income maintenance agency shall review good cause exemptions that are based on circumstances subject to change at each redetermination of eligibility and report any change in good cause status to the child support agency. If the income maintenance agency determines that good cause for noncooperation no longer exists, the recipient shall be allowed 10 days before cooperation requirements are imposed to request that the case be closed, exclude allowable individuals from the food stamp household, or request a review of the agency decision.

EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Summary of Public Hearing

Proposed rules relating to Child Support Cooperation for Food Stamps

Chapter DWD 19 CR 02-40

A public hearing was held in Madison on May 1, 2002. The record remained open until May 8 for receipt of written comments.

Comments were received from:

1. Mary Lauby, Executive Director
Wisconsin Coalition Against Domestic Violence (WCADV)
Madison
2. Pat DeLessio, Attorney at Law
Legal Action of Wisconsin, Inc. (LAW)
Milwaukee
3. Carol Medaris, Project Attorney
Wisconsin Council on Children and Families (WCCF)
Madison
4. Susan Dreyfus, Administrator
Division of Children and Family Services
Department of Health and Family Services (DHFS/DCFS)
Madison

The following individuals observed the hearing for information only:

1. Patti Seeger, Wisconsin Coalition Against Domestic Violence, Madison
2. Jacquelyn Boggess, Center on Fathers, Families, and Public Policy, Madison
3. Allison Lipscomb, Center on Fathers, Families, and Public Policy, Madison
4. Kim Waldman, Madison

Copies of the written comments are attached.

Comments	Department response	Name of organization commenting
<p>Statutory change</p> <p>a. Urge department to work with legislature to repeal cooperation requirement for food stamps. It is a state option under federal law. There is a clear relationship between cash assistance and child support but not food stamps and child support. The purpose of food stamps is safeguarding health and well-being through nutrition. Reducing food stamps for families when one household member comes into conflict with cooperation requirements seems an unwarranted punishment.</p> <p>b. Many custodial parents are also receiving medical assistance and already have cooperation requirements. Noncustodial parents are generally receiving food stamps because they are disabled and unable to work or because they cannot find employment. Also able-bodied recipients are required to participate in the food stamp work program so denying them food stamps because they cannot pay their child support is counterproductive.</p> <p>c. Very few states have adopted the federal option to require child support cooperation for food stamps and there is little to be gained from this initiative. There are few custodial parents receiving food stamps who are not already involved with the IV-D child support system. And because Wisconsin has not adopted the Family Violence Option, we have done relatively little to address domestic violence among W-2 and food stamp recipients. The welfare, food stamp, and child support systems are not in a position to fully accommodate the needs of domestic violence victims. The W-2 program is in the process of adopting a rule to require domestic abuse training for W-2 workers but there is no required training for workers in the food stamp or child support programs.</p>		<p>a. WCCF</p> <p>b. LAW</p> <p>c. WCADV</p>
<p>General comment</p> <p>From the child welfare standpoint, child support cooperation is critical because it opens up potential placement opportunities on the father's side, gives us access to medical information on both parents, and helps the financial situation in the household, which can be a big reason why the mother has difficulty keeping her kids in the home or having them returned.</p>	<p>Department agrees.</p>	<p>DHFS/DCFS</p>

Comments	Department response	Name of organization commenting
<p>General treatment of domestic abuse We appreciate the treatment you have given domestic abuse in these rules, subject to some comments that we believe will further enhance the rules.</p>		WCADV
<p>DWD 19.02(4)(a) Definition of domestic abuse DWD 19.02(4)(a) should be amended to read "physical acts that result in <u>pain</u>, injury, or <u>illness</u>." This change will make this domestic abuse definition consistent with the statutory definition of domestic abuse for purposes of mandatory arrest and a restraining order.</p>	Department agrees.	WCADV WCCF
<p>DWD 19.03(1)(c), 19.03(4), 19.05(7) Arrears and good cause Rule tracks state statute, which conflicts with federal law. The federal regulation has a broader exception for individuals who the state agency determines have good cause for nonsupport.</p>	Federal law provides that an individual is ineligible for food stamps in any month in which the individual is delinquent and provides that the state agency determines good cause for nonsupport. The department has interpreted the federal regulation on good cause for nonsupport to coincide with the state statute that allows a delinquency less than 3 months. If an individual is unable to afford court-ordered child support payments, the appropriate remedy is to get the order modified or arrange an alternative payment plan through the child support agency.	LAW WCCF
<p>DWD 19.03(1)(c)3. Arrears payment plan Federal regulation provides that the payment plan may be approved by the child support agency <u>or court</u>.</p>	Department agrees.	LAW

Comments	Department response	Name of organization commenting
<p>DWD 19.03(2)(b)2. Custodial parent cooperating by paying court-ordered child support to the department or designee Why is this here? To my knowledge there is no assignment of support rights required to receive food stamps.</p>	<p>No change. It is correct that there is no assignment of child support required under the food stamp program. Section 767.29, Stats., requires that all noncustodial parents' payments be processed through the centralized receipt and disbursement system so there is documentation that payment has been made. The custodial parent receives the full payment after receipt is documented. This documentation also protects the noncustodial parent's food stamp eligibility.</p>	<p>WCCF</p>
<p>DWD 19.03(2)(b)3 Cooperating by signing affidavit alleging lack of knowledge under penalty of false swearing Current law requiring that a simple affidavit be signed under penalty of perjury should be maintained.</p>	<p>No change. The change is a technical correction. The "perjury" language that has been in the AFDC rule since the mid-1970s was based on a federal regulation and is not the proper reference in Wisconsin. Under state law, false swearing penalties apply to written statements under s. 946.32, Stats., and perjury penalties apply to oral statements under s. 946.31, Stats. The department believes it is only fair to inform the parent of the significance of signing an affidavit. It is possible that she will later be asked to testify in a related legal proceeding and should be aware of the importance of providing consistent and truthful statements under oath.</p> <p>The opportunity to sign an affidavit attesting to full cooperation, as currently applied in Wisconsin, is a policy based on case law. In <i>Duffy v. Duffy</i>, (N.D. Illinois, 1988), a 7th Circuit case which applied directly to Wisconsin, the court based its ruling on the applicant's right to attest to completeness and accuracy, and indicated that the state's policy (in Illinois) must require workers to have substantial independent evidence to overcome this attestation. The Ninth District US Court of Appeals upheld the right to attest in a similar case.</p>	<p>WCCF</p>

Comments	Department response	Name of organization commenting
<p>DWD 19.03(4) Noncooperation by noncustodial parents for provisions other than delinquent payments The federal regulation provides that a refusal to cooperate must be an unwillingness and not an inability to cooperate. This should be added to the proposed rule.</p>	<p>The department incorporated this provision in determining the noncooperation standards and in allowing good cause exemptions. The noncooperation standard for alleged fathers and noncustodial parents is the issuance of a warrant for noncompliance with a court order or criminal failure to support. The issuance of a warrant means that the alleged father or noncustodial parent has already failed to respond to the child support agency and failed to appear for a legal proceeding in response to a summons or court order. If a judge determines that the has good cause for not complying, a warrant would not be issued and there would not be a noncooperation finding. A warrant for criminal failure to support is issued for intentional failure to support that is not an inability to support.</p> <p>The department is also offering good cause exemptions, including domestic abuse and physical or emotional harm, under this provision. The rule provides that if the income maintenance agency determines that an alleged father or noncustodial parent meets the good cause criteria it is considered an inability to cooperate. Federal law does not offer good cause exemptions to alleged fathers or noncustodial parents.</p>	<p>LAW WCCF</p>
<p>DWD 19.03(4)(d) Noncooperation by noncustodial parents who are subjects of certain warrants The notice to subjects of these warrants should inform them that they may cure their noncooperation by contacting the child support office. They often don't know these warrants exist and may be unsure how to respond if they do know.</p>	<p>Department agrees. The notice should inform the participant that he or she is being terminated for noncooperation with the child support agency and should contact the child support agency.</p>	<p>WCCF</p>
<p>DWD 19.03(5)(a)5. Mail problems as adequate reason The actual "adequate reason" for a parent not responding is failure to receive notices or requests. The provision should be written more broadly and include mail problem as an example as well as other reasons, such as address change, a person being out of town or in the hospital, or other cause.</p>	<p>Department agrees.</p>	<p>WCCF</p>

Comments	Department response	Name of organization commenting
<p>DWD 19.03(5)(a)6. Adequate reason by department The other reasonable circumstances should read "as determined by the child support agency <u>or the department.</u>"</p>	<p>Department agrees.</p>	<p>LAW</p>
<p>DWD 19.03(5)(b) Verifying adequate reason DWD 19.03(5) allows a parent to provide "adequate reason" for missing a appointment or other obligation. DWD 19.03(6)(b) provides that if the custodial parent has repeatedly missed appointments or other obligations the child support agency may require verification of the adequate reason or find noncooperation if the parent is unable to provide verification.</p> <p>a. We believe workers should evaluate each situation individually before making a finding of noncooperation because victims of domestic abuse may have little they can do to control the level and amount of crisis in their lives that is created by their abusers rather than by them.</p> <p>b. This provision should be eliminated. Low-income households have family crises all the time. The agency is always entitled to require verification if there is doubt about the reason and the parent has the ability to produce the verification requested.</p>	<p>The department will be offering domestic abuse training to workers in child support agencies to assist them evaluate adequate reason for not complying with cooperation requirements with sensitivity to domestic abuse issues.</p> <p>This section has been rewritten to state that "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)."</p>	<p>a. WCADV</p> <p>b. WCCF</p>
<p>DWD 19.03(6) Affidavits attesting to full cooperation This is a good provision. Parents should be told about this possibility and offered an affidavit whenever there is a dispute with the child support agency. This will help narrow the issues should a hearing become necessary on the issue of cooperation and ensure this provision is not an empty right.</p>	<p>Department agrees. Information instructing child support workers to offer the affidavit is contained in the <i>Wisconsin Child Support Procedures Manual</i>. The department will also be clarifying and strengthening the information on the affidavit in the <i>Wisconsin Child Support Policy and Program Administration Manual</i>.</p>	<p>WCCF</p>

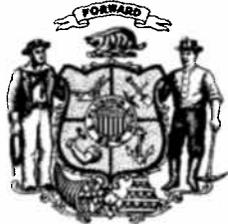
Comments	Department response	Name of organization commenting
<p>DWD 19.03(8) Remedying noncooperation The proposed language that requires a person to demonstrate cooperation by “performing the action required for the agency to proceed with the case” sets far too high a burden on the parent. The parent may have missed a meeting but “what the agency need to proceed with the case” may be the full name and address of the alleged father, which the custodial parent may not be able to provide. Remedying cooperation should simply be performing any of the actions in DWD 19.03(2) that the person failed to perform, and which then became the basis for the noncooperation finding.</p>	<p>Department agrees.</p>	<p>WCCF</p>
<p>DWD 19.04 Cooperation and good cause notice In addition to the proposed times, the notice should provided when the person is referred to the child support agency.</p>	<p>The department added “when a parent leaves the food stamp household” to the times when a notice must be provided. Other events causing a referral to the child support agency are already included.</p>	<p>WCCF</p>
<p>The good cause notice should either contain the good cause criteria or include a good cause claim form to ensure parents understand the protections offered by the rule.</p>	<p>Department agrees.</p>	<p>WCADV WCCF</p>
<p>DWD 19.05 Good cause criteria The first sentence doesn’t make any sense.</p>	<p>Department agrees. The sentence has been rewritten.</p>	<p>WCCF</p>
<p>Where domestic abuse is mentioned in s. DWD 19.05, there should be a reference to the definition in s. DWD 19.02(4).</p>	<p>No change. This is not proper rule writing style.</p>	<p>LAW</p>
<p>DWD 19.06(2) Requiring good cause claims to be submitted under penalty of false swearing The proposed rule requires an applicant or participant’s claim be sworn to be true under penalty of false swearing.</p> <p>a. The false swearing reference discourages good cause claims. We suggest a simple affidavit sworn before a notary.</p> <p>b. The requirements and reference to the false swearing statute should be removed.</p>	<p>The change was made as a technical correction. Under state law, false swearing penalties apply to written statements under s. 946.32, Stats., and perjury penalties apply to oral statements under s. 946.31, Stats. The department believes it is only fair to inform the parent of the significance of signing an affidavit. It is possible that he or she will later be asked to testify in a related legal proceeding and should be aware of the importance of providing consistent and truthful statements under oath.</p>	<p>a. WCCF b. LAW</p>

Comments	Department response	Name of organization commenting
<p>DWD 19.06(3) Corroborative evidence This section should require the income maintenance worker to advise applicants and participants that if they need assistance in obtaining evidence, the worker will assist them. The worker should also be required to provide assistance, without the need for a request by the individual, if the individual has difficulty understanding what is needed or obtaining the necessary documentation because of a disability or emotional distress due to the domestic abuse.</p>	<p>The department agrees that the income maintenance worker should advise applicants and participants that the worker will help them obtain evidence them if they request assistance.</p> <p>The income maintenance workers are not domestic abuse experts and will not always know that an individual needs assistance when no request is made. Since an investigation is required when a claim is based on anticipated harm, assistance in obtaining evidence will be available.</p>	LAW
<p>DWD 19.06(4) Corroborative evidence submitted by a third party. The proposed rule provides that these statements be submitted as affidavits that are subject to penalties for false swearing.</p> <p>a. The false swearing reference discourages good cause claims. We suggest a simple affidavit sworn before a notary.</p> <p>b. The requirements and reference to the false swearing statute should be removed.</p>	<p>Department agrees. A signed, written statement from a third party is adequate.</p>	<p>a. WCCF</p> <p>b. LAW</p>
<p>DWD 19.08(1) Investigation. The proposed rule should provide for an investigation when the parent is unable to provide any corroborative evidence. The language from the current s. DWD 15.03(10) should be incorporated into the proposed rule and extended to all types of anticipated harm.</p>	<p>Department agrees.</p>	WCCF
<p>DWD 19.08 Best evidence. This section should be amended to include a statement requiring the agency to accept the best evidence available, whatever that may be.</p>	<p>The best evidence rule for the food stamp program requires that the local agency must accept any reasonable documentary evidence provided and must be primarily concerned with how adequately the verification proves the statements in the application. This general rule is followed in the good cause corroboration provision for W-2 and food stamps. There is no specific document that is required for verification; the primary concern is how adequately the statements are verified.</p>	LAW

Comments	Department response	Name of organization commenting
<p>DWD 19.08(5)(b) Good cause as inability to cooperate</p> <p>I don't understand what this means.</p>	<p>There is no specific provision in federal law or state statute that gives noncustodial parents or alleged fathers in the food stamp program the right to claim a good cause exemption from the general cooperation requirements. This right is provided to noncustodial parents under the W-2 program by state statute. The department is providing noncustodial parents and alleged fathers in the food stamp program with the right to a good cause exemption under the authority of the federal regulation that provides that an inability to cooperate cannot be considered a refusal to cooperate. This proposed rule provision says that a determination of good cause is considered an inability to cooperate.</p>	<p>WCCF</p>
<p>DWD 19.10(2) Optional review of noncooperation decisions by child support agency</p> <p>There is no statutory authority for a formal review process in addition to the fair hearing process. It is likely to be confusing to recipients. And a new administrative procedure does not make sense from a policy or cost point of view.</p>	<p>The administrative review process is optional. The department will advise local agencies to instruct recipients on their hearing appeal rights. The review does encourage recipients to discuss the noncooperation determination with the agency that made the finding. Federal law requires that the child support agencies determine whether a food stamp recipient is cooperating with the child support agency(42 USC 654(29); Section 454(29) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996). Federal child support regulations that became effective in December 2000 require child support agencies to have an administrative complaint procedure so offering this optional review does not impose a new procedural burden on the agencies.</p>	<p>WCCF</p>



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-040

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. The plain language analysis of this rule is over five pages long, making it difficult to readily grasp the content of the rule. Section 1.02 (2) (b), Manual, notes that the analysis is not intended to be an exhaustive discussion of the rule, but rather should contain sufficient detail to enable the reader to understand the content of the rule and the changes made, if any, in existing rules. It is suggested that the analysis be rewritten to accomplish this goal.

b. In s. DWD 19.03 (1) (b), the acronym "W-2" is used to refer to the Wisconsin Works program. Subsequently, the full name of the program is used in ss. DWD 19.05 (8) and 19.06 (4) (g). It is suggested that the term "W-2" be defined in s. DWD 19.02 and thereafter the acronym "W-2" may be used throughout the rule.

c. In s. DWD 19.03, the subsections beginning with sub. (4) are numbered improperly. Subsection (4) should be sub. (3), with the remaining subsections renumbered accordingly. Cross-references to the subsections would also have to be changed.

d. In s. DWD 19.03 (9), "shall" should replace "must."

e. Section 1.03 (8), Manual, notes that introductory material which precedes subunits of a rule is always followed by a colon and should lead into the subunits. In s. DWD 19.03 (5) (as currently numbered), the introductory sentence should end with a phrase such as "as follows:". In s. DWD 19.03 (5), the language before par. (a) is not worded as an introductory clause. It should be labeled par. (a) and the remaining paragraphs should be relettered (b) through (d).

In s. DWD 19.08 (6), the introductory material preceding the colon should be in a par. (a) and end with the phrase “, the agency shall” and the phrase “The income maintenance agency shall” should be deleted from the beginning of pars. (a) through (c), which should be renumbered as subs. 1. to 3. The material currently found in par. (d) does not flow from the introductory material and should be placed in a par. (b).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the rule analysis, and in various sections of the rule, a lengthy phrase is used to describe individuals other than custodial parents who live with and exercise parental control over a child under age 18 who has an absent parent, noncustodial parent or alleged father in the food stamp program in Wisconsin. In the analysis, the phrase occurs in the first and second sentences of the second paragraph. In the rule text, it occurs, among other places, in ss. DWD 19.02 (8) and 19.03 (1) (a) 1. To eliminate the necessity of repeating this lengthy phrase, it is suggested that the term “other individual exercising parental control” be defined in s. DWD 19.02 as an individual other than a custodial parent who lives with and exercises parental control over a child under age 18 who has an absent parent, noncustodial parent or alleged father under the food stamp program in Wisconsin. The defined phrase can then be substituted for the wordier version that currently occurs in the analysis and throughout the rule.

b. In s. DWD 19.02 (10), the word “it” on line 2 should be changed to “is.”

c. In s. DWD 19.03 (2) (c) and (d), the word “attending” could be changed to “submitting to.”

d. In s. DWD 19.03 (5) (intro.) (as currently numbered), what is meant by the phrase “not cooperating with child support services” on line 2? Also, in sub. (5) (e), on line 1, the abbreviation “par.” should be “pars.” and a comma should be inserted on line 3 after the word “amount.”

e. In s. DWD 19.04 (1), the second “and” on line 2 should be changed to “an.”

f. Section DWD 19.05 (1) refers to threats of *illegal* child kidnapping or domestic abuse. Are these activities ever legal?

g. In s. DWD 19.08 (1) (a), the word “When” on line 3 should be changed to “If.” The same comment pertains to the word “when” on line 1 of par. (b). Also, in par. (a), “applicant’s” should replace “applicant” at the beginning of line 3.

h. In s. DWD 19.08 (5) (intro.), the word “and” on line 4 should be changed to “or.” Also, in sub. (5) (a), the word “a” should be inserted after the first “to” on line 2.

i. Section DWD 19.08 (6) (c) requires the income maintenance agency to “promptly” notify the applicant or recipient of the determination. Within what time period must the agency act?





May 3, 2002

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946

Re: Proposed Chapter DWD 19: Child Support Cooperation for Food Stamps

Dear Ms. Pridgen,

This letter constitutes my comments on the proposed rule governing child support cooperation requirements for food stamp participants. I will be commenting on the cooperation requirements for Wisconsin Works (W-2) participants in a separate letter, although many of my comments apply similarly to both rules.

As an initial matter, however, I would urge the Department to work with the legislature to repeal s.49.124(1g), Stats., the statute which introduces a child support cooperation requirement into Wisconsin's food stamp program. As you know, this is a state option under PRWORA, when the child support connection to the cash welfare system was extended to food stamps. But the relationship between child support and cash assistance has always been clear: cash assistance essentially supplements family income when child support and custodial parent earnings are insufficient. Furthermore, in most states, and in Wisconsin until very recently, child support payments were used to reimburse cash assistance paid to families. It therefore makes sense to base eligibility for cash assistance (AFDC and then W-2) upon cooperation with the child support office.

There is simply not the same connection between child support and food stamps. The purpose of the food stamp program is to "promote the general welfare and to safeguard the health and well being of the Nation's population by raising the levels of nutrition among low-income households. 7 CFR 271.1 It is a food support program. By reducing food stamps for families when one household member comes into conflict with child support cooperation requirements the family's food security is threatened. That seems an unwarranted punishment.

DWD 19.02(4)(a) Definition of "domestic abuse"

This section should be changed to read "Physical acts that result in pain, injury, or illness. That is more consistent with the domestic abuse definition in s. 813.12(1)(a), Stats.

DWD 19.03(1) Cooperation Requirements

DWD 19.03(1)(c) Exceptions for noncustodial parents

In addition to the general statements in section (1), the federal law statement at 7 CFR 273.11(p)(2) should be added: "Refusal to cooperate is when an individual has demonstrated an unwillingness to cooperate as opposed to an inability to cooperate." This is needed to make very clear that a non-custodial parent may not be penalized upon a failure to do an act that he or she is unable to perform.

Then at 19.03(1)(c), an additional exception should be added to the general disqualification for child support arrears: that the individual has good cause for non-support. This is required by the language in 7 CFR 273.11(q)(2)(iii). It is simply not enough to define this as being less than three months in arrears, as the Department appears to be proposing. Only if there is a requirement to determine whether the parent has good cause can this requirement be made consistent with the provision at 7 CFR 273.11(p)(2) – that the person may only be penalized if he or she is able, but unwilling, to comply with cooperation requirements.

DWD 19.03(2)(b)2 Cooperating by paying court-ordered child support to the department after an assignment

Why is this here? To my knowledge, there is not a requirement that a custodial parent assign child support rights to the Department in order to receive food stamps, so there should not be any requirement that payments received directly from the noncustodial parent be paid to the Department.

DWD 19.03(2)(b)3 Cooperating by signing an affidavit under penalty of false swearing

Current law governing child support cooperation in DWD 15.03(1)(b)3, requiring that a simple affidavit be signed under penalty of perjury alleging a lack of knowledge should be maintained. Requiring that an affidavit be signed under penalty of false swearing pursuant to s. 946.32, Stats., seems to go much farther than necessary to get a truthful statement from a parent. Low-income parents often lack literacy skills, are likely to be legally unsophisticated, and will most often be unrepresented at this stage. On the other side, these affidavits will likely be drafted by prosecutors in the child support office, whose interests are opposed to the parent alleging a lack of knowledge, and who may be upset with the parent,

as well. To subject participants to such a process and place them in jeopardy of a felony conviction seems unfair, out of balance, and unnecessary, and may have a chilling effect on legitimate requests for food stamp benefits. Has there been a gross abuse of the current process requiring simple affidavits in such cases?

DWD 19.03(2)(e) Cooperating by paying court-ordered support

This requirement should be modified by adding, "if within the noncustodial parents ability to pay." Cooperation requirements may not exceed an individual's ability to comply, 7 CFR 11(p) (2), and there will be times when a court-ordered support amount is beyond the noncustodial parent's ability to pay. See discussion above at DWD 19.03(1) and (1)(c).

DWD 19.03(5)(c) Noncooperation by noncustodial parents who are subjects of certain warrants

This provision should be modified to provide notice to subjects of these warrants that they may cure their noncooperation by contacting the child support office. According to advocates who work with low-income, noncustodial parents, in many cases these parents do not even know warrants exist. They also may be unsure how to respond to the knowledge that an outstanding warrant exists against them.

Once they are apprised of the warrant through the denial of food stamps, they should be immediately instructed about how to take care of the warrants. That serves the court system as well as the purposes of the food stamp program.

DWD 19.03(6)(a)5 Mail problems as an adequate reason for failure to respond to communications

This should be broadened to clarify that the provision doesn't simply mean a problem with the postal delivery service. The reason here is the failure to receive the notices or requests, which may be shown by a "demonstrable mail problem," an address change, a person being out of town or in the hospital, or other cause. That is how this should be stated.

DWD 19.03(6)(b) Noncooperation for repeated instances of failure to respond based upon adequate reasons

This should be eliminated. As long as a person has an "adequate reason," there should not be a penalty. Low-income households have family crises all the time, often lack transportation, and are less likely to be under a regular doctor's care when they sustain an illness or injury. The agency is always entitled to require verification if there is doubt about the reason and the parent has the ability to produce the verification requested.

DWD 19.03(7) Affidavits attesting to full cooperation

This is a good provision. However, parents should be told about this possibility and offered an affidavit attesting to full cooperation whenever there is a dispute with the child support agency. This will help narrow the issues should a hearing become necessary on the issue of cooperation. And, otherwise the provision is an empty right.

DWD 19.03(9) Remediating noncooperation

Requiring that a person may only demonstrate cooperation by "performing the action required for the agency to proceed with the case," sets far too high a burden on the parent. A parent with the best will in the world may be totally unable to perform such an action. For example, a parent may have failed to cooperate by missing meetings. However, performance of "the action required by the agency to proceed" may be giving the child support office the putative father's full name, or providing an address, either of which may be totally beyond the capacity of the custodial parent to perform. Remediating noncooperation should simply be performing any of the actions in DWD 19.03(2) which the person failed to perform, and which then became the basis for the finding of noncooperation.

DWD 19.04(1) Cooperation and good cause notice

In addition to the proposed times when the notice must be provided, the point where the person is referred to the child support agency should be included, as well. This would make sure that when the referral doesn't take place simultaneously with the parent's application, it would be brought to the parent's attention at the most logical point: when the paternity and child support process is beginning.

DWD 19.04(2) Contents of the cooperation and good cause notice

In addition to the items listed, the good cause notice should also contain an explanation of what good cause is – either by simply including a good cause claim form or restating the criteria in DWD 19.05 in the notice itself. Otherwise the notice fails to adequately inform the parent of the rights embodied in the good cause claim process. A parent who has a good cause claim may not pursue the claim, to the parent or a child's ultimate harm, because of a lack of understanding of the types of protections afforded by the rule.

DWD 19.05 Good cause criteria

This first sentence doesn't make sense. It states that the "parent may request a good cause exemption . . . when the W-2 agency determines that it is in the best interest of the child or parent." It cannot be intended that the agency is to make a

determination of best interest before an exemption is even requested

DWD 19.06(2) and (4)(f) Requiring claims and evidence submitted under penalty of false swearing

These two provisions require that a parent claiming good cause and any witness to the harm sign affidavits under penalty of false swearing pursuant to s. 946.32, Stats., a felony. If the intent here is to discourage claiming good cause, and discouraging witnesses to support claimants, then this provision is likely to be effective. However, the good claim process is intended for the protection of parents and their children, and should not be drafted so as to chill the assertion of such protections by parents. Furthermore, as was pointed out in response to an earlier proposed section, low-income parents often lack literacy skills, are likely to be legally unsophisticated, and will most often be unrepresented at this stage. On the other side, these affidavits will likely be drafted by those with legal training, whose interests may be opposed to the parent alleging good cause. To subject participants to such a process and place them in jeopardy of a felony conviction offends the purposes of the good cause claim process. Regarding the witness requirement, those who would ordinarily be glad to help a friend or neighbor protect herself may well be intimidated by seeing such language on the affidavit. As with the similar requirement for claiming a lack of knowledge, I would ask if there has been a gross abuse of the current process requiring simple affidavits, sworn before a notary, in these cases.

DWD 19.08(1)(a) Corroborative evidence

The rule should always provide for the investigation of claims when the parent asserting the claim is unable to provide any corroborative evidence. Proposed DWD 19.08, does not appear to do so. Cases of domestic abuse and child sexual abuse are the classic types of cases presenting difficulties of proof. No such case should be denied out of hand without an investigation by the W-2 agency. The current administrative rule governing good cause for cash assistance provides that the "agency shall conduct an investigation of any good cause claim based on anticipated physical harm, both when the claim is credible without corroborative evidence and when corroborative evidence is not available.

Good cause shall be found when both the parent or other caretaker relative's statement and the investigation satisfy the income maintenance agency that he or she has good cause." (Current DWD 15.03[10]) That language should be incorporated into the proposed rule and extended to all types of anticipated harm as set forth in DWD 19.05.

DWD 19.08(6)(d) Determination of noncooperation when good cause has been found

I am not sure what is meant by this provision. It would seem clear that whenever good cause has been found, then the parent could not subsequently be found to

have not cooperated.

DWD 19.10(2) Review of noncooperation by the child support agency

The rule proposes to allow a parent to request an administrative review by the child support agency upon a finding of noncooperation. However, there is no statutory authority for such a formal review process in addition to the fair hearing process. Furthermore, providing an additional review process is likely to be confusing to participants who may not understand the relationship between this review process and a fair hearing. As a result, they may rely on the administrative review and forgo a fair hearing when it would be to their advantage to request one.

Finally it is unnecessary. The child support agency may always review a decision of a worker when a parent indicates dissatisfaction with a decision or upon the filing a fair hearing request. It is unnecessary to impose another formal review process in addition to that already available and working well.

On beyond the legal requirements, local child support agencies are not set up to provide for fact-finding reviews and to require them to set up a new administrative procedure does not seem to make sense from either a policy or cost point of view.

Respectfully submitted,



Carol W. Medaris
Project attorney



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**Re: Child Support Cooperation for Food Stamps
Proposed Rules - Chapter DWD 19**

Dear Ms. Pridgen:

These comments are submitted in response to the proposed rules regarding child support cooperation for food stamps.

The federal law requirement of cooperation with child support is a state option. Because the food stamp program is primarily a nutrition program and the cooperation requirements may result in low-income households losing food stamp benefits, we believe that adopting this option is unwise and should be reconsidered.

For custodial parents receiving food stamps many, if not most, also receive medical assistance. As a result, they are already required to satisfy child support requirements; for these recipients the rules are redundant. As a general rule, non-custodial parents receive food stamps because they are disabled and unable to work, or because they cannot find employment. These parents will be penalized for a requirement they simply cannot satisfy. Moreover, able-bodied recipients are required to participate in the food stamp work program - a program designed to help secure employment. If they are denied food stamps because they cannot pay child support, their participation in the food stamp work program will also end. This program may be their only means to securing and maintaining employment. Instead of increasing the likelihood of support, the proposed rules may, in fact, decrease many parents' ability to make child support payments.

Recognizing that statutory authorization for the rules exists, we have the following comments:

- (1) Section 19.03 (1)(c) - relating to delinquent payments. The proposed rule provides that if a non-custodial parent who is obligated to make payments fails to do so, he or she is ineligible for benefits unless the delinquency equals less than 3 months of the court ordered support, a court or child support agency is allowing him or her to delay payments, or he or she is complying with a payment plan approved by a child support agency. This provision conflicts with federal law. 7 C.F.R. §273.12(q)(2)(iii) contains a broader exception - "the state agency determines the individual has good cause for non-support." DWD cannot limit good cause to those cases in which support is delinquent for less than three months. Such a limit violates federal rule.

In addition, the federal rule exception for payment plans applies to plans approved by a court or the child support agency. The state's proposed rule is limited to plans approved by a child support agency and should be amended accordingly.

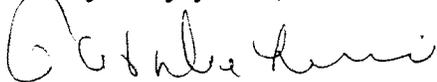
- (2) Section 19.03(5)(e) - relating to non-cooperation for failure to make payments - same comments as above.
- (3) Section 19.03(5) - relating to non-cooperation in general. The federal regulation, 7 C.F.R. §273.12(p)(2) contains a provision applicable to non-custodial parents which provides that "refusal to cooperate is when an individual has demonstrated an unwillingness to cooperate as opposed to an inability to cooperate." This provision is omitted from the proposed rule and should be added. (Note that this addition would address the situation in which the participant is disabled and unable to work or cannot find employment.)
- (4) DWD 19.03(6)(a) - relating to failure to respond to a written communication, appointment or other request. This section provides that the failure is excused for "other reasonable circumstances as determined by the child support agency." Since the department has the ability to reverse adverse actions a phrase should be added "or the department."
- (5) DWD 19.05 - relating to good cause criteria. For subsections (1), (2), (3) a provision should be added to the reference to domestic abuse to provide "as

defined in §19.02(4)” to make it clear what is included in the term.

- (6) Section 19.05(7) - relating to good cause for non-custodial parents' ability to pay support - same comments as above.
- (7) Section 19.06(2) - relating to good cause claims. The requirement that the applicant or recipient shall swear or affirm under a penalty of false swearing pursuant to §946.32 should be deleted. For individuals who are victims of domestic abuse, documenting the precise details of the abuse may be difficult and painful. Mistakes, such as dates of occurrences, may be made. They should not be under the threat of a criminal penalty. A notarized statement, which is the current practice, should be sufficient.
- (8) Section 19.06(3) - relating to the submission of corroborative evidence. This section should be amended to require the income maintenance worker to advise applicants and recipients that if they need assistance in obtaining evidence, the worker will assist them. The worker should also be required to provide assistance, without the need for a request by the individual, if the individual has difficulty understanding what is needed or obtaining the necessary documentation because of a disability or emotional distress due to the domestic abuse.
- (9) Section 19.06(4) - relating to types of corroborative evidence and written statements. As noted above, the reference to §946.32 should be removed.
- (10) Section 19.08(7)(a) - relating to evaluating a good cause claim. To conform with general food stamp requirements a statement should be added to require the agency to accept the best evidence available.

Your attention to, and consideration of, the above comments is appreciated.

Very truly yours,



Patricia DeLessio
Attorney at Law

PDL/eca



May 6, 2002

MEMO

TO: Department of Workforce Development

FROM: Mary R. Lauby, Executive Director, Wisconsin Coalition Against Domestic Violence (WCADV)

RE: Testimony Regarding Proposed Rule Changes to Chapters DWD 15 and 19
Child Support Cooperation for W2 and Food Stamps

I am providing comments on behalf of the Wisconsin Coalition Against Domestic Violence (WCADV). Since 1978 WCADV has been the statewide membership organization representing domestic violence programs, battered women and their children, and citizens concerned with ending domestic violence. I am pleased to be able to offer you my testimony today regarding proposed rule changes that will guide child support cooperation in the W2 and Food Stamps programs on behalf of WCADV and our membership.

Thank you for the treatment you have given the issue of domestic violence in the development of these rules. While not all victims want or request good cause exemptions from cooperation with child support, for those whose lives may be endangered by domestic violence, these rules may provide critical support and protection. While overall these rules address domestic violence as a good cause factor within the W2 and food stamp systems, I do have some comments that I believe will further enhance these rules.

First, I am concerned about the adoption of child support cooperation rules within the food stamp program. I realize that this decision was made at an earlier time via legislation. However, very few states have elected to adopt this particular option. I believe there is little to be gained through this initiative. There are very few custodial parents receiving food stamps that are not already involved with the VI-D child support system. Additionally, in order to pursue cases where domestic violence may be a factor, the state should have well-developed protective protocols in place. Wisconsin has failed to adopt the Family Violence Option (FVO) and therefore, has done relatively little to address domestic violence among W2 and food stamp recipients. I believe that the welfare, food stamp and/or child support systems are not in a position to fully address or accommodate the needs of domestic violence victims. I also recognize that DWD is in the process of adopting a rule to provide training of W2 workers regarding the screening and identification of domestic abuse victims. This training is required for W2 employees, but is not required for those working in either the food stamp or the child support programs.



307 S. Paterson Street, Suite 1, Madison, WI 53703 Phone: 608/255-0539 Fax: 608/255-3560

The definitions of domestic violence (DWD 15.02 and DWD 19.02) are sufficiently broad and inclusive of a wide range of abusive behaviors, however are not consistent between these two rules. I suggest that the definitions found in both rules be written consistently in order to reduce any confusion. The key differences are found in DWD 19.02(4)(b) and (d). WCADV supports the definitions as written in these sections and would like DWD 15.02 (4)(b) and (d) to reflect the same. Additionally, (a) in both rules defines domestic abuse as "physical acts that result in injury". I suggest that you make this section consistent with other definitions of domestic abuse as found in Wisconsin statutes 813.12(1)(a) and 968.075(1)(a)(1.). This section could read as follows: "physical acts that result in pain, injury or illness".

Many individuals living in poverty, including those who are enrolled in W2 or the food stamp program, may have numerous factors that contribute to inability to respond to requests for information or responses to the department regarding child support compliance. For victims of domestic violence, there may be little they can do to control the level and amount of crisis that can arise in their lives as the crisis is created by their abusers rather than by them. Therefore, we are somewhat concerned with DWD 15.03(5)(b), which addresses adequate reasons for failure to respond. This section indicates that "repeated instances of failure may result in a finding of non-cooperation". While sometimes it is inconceivable that a person may generate multiple reasons for failing to comply, it is not at all out of the realm of possibility for victims of abuse. Their abusers are often likely to repeatedly sabotage the victims' best efforts to comply as a means to continue to exert control. We believe this section of the proposed rule should be removed. W2 and food stamp workers should evaluate each situation individually before making a determination of "non-cooperation".

DWD 15.04 addresses cooperation and the good cause written notice that is distributed to all W2 and food stamp recipients. While it is good practice to provide all recipients with a written notice about the availability of good cause, the current written notice does not include an explanation of what "good cause" is. We suggest that you include an explanation defining good cause on this written notice. The good cause criteria defined in DWD 15.05 (1-6) provides an excellent working definition and could easily be printed on the written notice that is provided to W2 and food stamp recipients.

Finally, domestic violence is a private and personal crime. Many victims are ashamed of the abuse and do not disclose the violence in their lives to anyone. Therefore, many victims do not have the ability to produce evidence that corroborates the abuse. While the list of types of corroborative evidence listed in DWD 15.06(4) provides a wide range of potential sources of verification, we continue to be concerned that some victims may yet be unable to produce evidence. A common source of verification may come from others (friends, family) that the victim has told about the violence. While this potential source of corroboration is outlined in DWD 15.06(4)(f), this proposed rule makes clear that these statements must be sworn to be true under penalty of *false swearing* (a felony). While we encourage everyone to be truthful in these matters, this potential penalty may prove very intimidating to many potential witnesses. We suggest that the potential for

penalty be minimized as much as possible in order to reduce intimidation and encourage potential witnesses to the violence to come forward with statements.

Again, on behalf of WCADV and our membership, thank you for allowing me to offer this testimony and suggested changes to the proposed rule. Should you have further questions regarding these suggestions, you are welcome to call me at 608/255-0539.