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Chapter DCF 152

CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

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Note: Chapter DWD 43 was created as emergency rule effective October 1, 1998. **Chapter DWD 43 was renumbered to chapter DCF 152 under s. 13.92 (4) (b) 1., Stats., Register November 2008 No. 635.**

DCF 152.01 Authority and purpose. This chapter is promulgated under the authority of ss. 49.22 (2m) (d), 49.853 (1) (dm) and (2), 49.854 (17), 49.858 (2), and 767.70 (2), Stats., for the purpose of administering the child support program under s. 49.22, Stats.

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DCF 152.02 Applicability. This chapter applies to the department and county child support agencies under s. 59.53 (5), Stats., individuals participating in the child support program under s. 49.22, Stats., financial institutions doing business in the state, and persons subject to administrative subpoenas issued in accordance with s. 49.22 (2m) (b), Stats., or requests for information issued in accordance with s. 49.22 (2m) (a), Stats.

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99.

DCF 152.03 Definitions. In this chapter:

(1) "Account" has the meaning given in s. 49.853 (1) (a), Stats.

(2) "Administrative enforcement" means the department or a child support agency does any of the following:

(a) Puts child support liens into effect by placing them on the child support lien docket and electronically delivers the docket to the county registers of deeds.

(b) Receives proceeds from the sale of property when there is a child support lien against the property, and either the payer has transferred the property or the property has been seized and sold by an entity other than the department or a child support agency.

(c) Takes any administrative enforcement action.

(3) "Administrative enforcement action" means any of the following actions taken by the department or child support agency to enforce a lien:

(a) The intercept of lump−sum pension payments in accordance with s. 49.852, Stats.

(b) The seizure of accounts at financial institutions in accordance with s. 49.854 (5), Stats.

(c) The seizure of personal property in accordance with s. 49.854 (6), Stats.

(d) The seizure of real property in accordance with s. 49.854 (7), Stats.

(e) The intercept of judgments and settlements in accordance with s. 49.856, Stats.

(f) The denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses for failure to pay support in accordance with s. 49.857, Stats.

(4) "Alternative payment plan" or "plan" means a negotiated agreement between a child support agency and a payer, or an order set by the court, which establishes terms for the payment of the arrearage debt.

(5) "Arrearage debt" means the sum of child support arrears, maintenance arrears, family support arrears, missed payments on past support, missed payments on lying−in costs, and missed payments on other medical support including missed lump−sum payments for medical support in a case. The arrearage debt does not include interest on arrears or on missed payments.

(6) "Child support agency" or "agency" means the county child support agency under s. 59.53 (5), Stats.

(7) "Child support lien" or "lien" means an administrative lien that arises by operation of law under s. 49.854 (2), Stats., against the real and personal property in which the payer has a recorded ownership interest at the time of levy. A lien does not attach to the property title of a beneficial interest in a trust, member interest in a limited liability company, partner interest in a partnership, or shareholder interest in a corporation.

Note: According to s. 49.854 (2)(a), Stats., a child support lien is not effective against a good−faith purchaser of titled personal property unless the lien is recorded on the title.

(8) "Court order" means an order for child or family support, maintenance, medical expenses, or birth expenses issued by a court.

(9) "Department" means the Wisconsin department of children and families.

(10) "Equity" means the fair market value of the property minus the liens on that property with priority over the child support lien.

(11) "Failure to comply with an administrative subpoena or a request for information" means that the subpoena respondent did not provide the requested information within seven days after receiving the administrative subpoena or request for information, or that the subpoena respondent provided false or incomplete information.

(12) "Financial institution" or "institution" has the meaning given in s. 49.853 (1) (c), Stats.

(13) "Financial record review" means a financial records and court order review under s. 49.854 (3) (ag), Stats..

(14) "Gross income" has the meaning given in s. DCF 150.02 (13).

(15) "Lien−eligible amount" means the difference between the monthly charge and the arrearage debt in a case.

(16) "Monthly amount due" means the sum of court−ordered provisions for periodic payments, expressed as a fixed amount, due in one month in a case including periodic payments on arrearage debts.

Note: For a court−ordered provision requiring the greater or lesser of either a percentage of income or a fixed amount, the monthly amount due is calculated using the fixed amount. A court−ordered provision expressed only as a percentage of income is not included in the monthly amount due when determining the lien threshold. However, when determining the threshold for administrative enforcement actions, the expected monthly amount due in s. DCF 152.10 is the fixed amount that is used to calculate the monthly amount due when a provision is expressed only as a percentage of income.

(17) "Monthly charge" means the sum of court−ordered provisions for periodic payments, expressed as a fixed amount, on child support, family support, maintenance, lying−in costs, past

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support, and other medical support due in one month in a case. The monthly charge does not include court−ordered provisions for periodic payments on arrearage debts.

Note: For a court−ordered provision requiring the greater or lesser of either a percentage of income or a fixed amount, the monthly charge is calculated using the fixed amount. A court−ordered provision expressed only as a percentage of income is not included in the calculation of the monthly charge.

(18) "Ownership interest" means any personal financial interest.

(19) "Payee" has the meaning given in s. DCF 150.02 (22).

(20) "Payer" has the meaning given in s. DCF 150.02 (23).

(21) "Property" has the meaning given in s. 49.854 (1) (e), Stats.

(22) "Protective order" means a temporary restraining order or injunction under s. 813.12, 813.122, 813.123, 813.125, or 813.127, Stats.

(23) "Reconciliation" means the procedure a child support agency uses to determine whether a payer has complied with the terms of a percentage expressed provision and, if the payer has not fulfilled the obligation, to establish an arrearage.

(24) "Subpoena respondent" means the person from whom information is requested in an administrative subpoena or request for information.

Note: "Person" has the meaning given in s. 990.01 (26), Stats.

(25) "Threshold" means an amount, expressed as either a percentage of the monthly amount due, a fixed dollar amount, or both, that the lien−eligible amount or lien amount must equal or exceed before administrative enforcement may be used to enforce a court order.

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99; **corrections in (9), (14), (19) and (20) made under s. 13.92 (4) (b) 6. and 7., Stats., Register November 2008 No. 635.**

DCF 152.04 Written notice of enforcement actions. (1) APPLICATION. This section applies to notices issued to the payer by the department under ss. 49.852 (2), 49.854 (3) (a) and (ag) 1., (5) (d), (6) (a), (d), and (e), or (7) (a), (d), and (e), 49.856 (3), and 49.857 (3) (a) and (am), Stats.

(2) USE OF MAIL. The department or child support agency may send notices related to the administrative enforcement of a child support order by regular mail to the last−known mailing address provided by the payer under s. 767.58 (2), Stats. If the last−known mailing address for a payer is unverified, or a written notice sent to a payer at his or her last−known verified mailing address is returned, the department or child support agency shall contact the postmaster of the zip code of the address. If the postmaster verifies the unverified mailing address or provides a new verified address, the department or county child support agency shall send written notice to the mailing address provided by the postmaster. If the postmaster is unable to verify the last−known mailing address, or to provide a new verified address, the department or child support agency shall send notice to payer using the current employer mailing address provided by the payer under s. 767.58 (2), Stats. If the notice to the payer mailed to the payer's employer is returned, or the payer has not provided a current employer mailing address, the department or child support agency shall use diligent effort to obtain a mailing address for the payer.

Note: Under s. 767.58 (2), Stats., each party to a child support order is required to provide the child support agency with his or her residential and mailing address and the address and telephone number of his or her employer. A party shall advise the child support agency of any change in such information within 10 business days after the change.

(3) DILIGENT EFFORT. Diligent effort includes the following:

(a) For each of the following administrative enforcement actions, the department or county child support agency shall obtain and use:

1. License suspension and denial. For license suspension and denial under s. 49.857, Stats., the payer's mailing address of record at a state licensing agency or authority to provide notice under ss. 49.857 (3) (a) and (am), Stats., if the address is verified.

2. Account seizure. For account seizure under s. 49.854 (5), Stats., the payer's mailing address of record at a financial institution to provide notice under s. 49.854 (5) (d), Stats., if the address is verified.

3. Personal property seizure. For personal property seizure under s. 49.854 (6), Stats., the payer's mailing address of record at a state agency that titles personal property to provide notice under ss. 49.854 (6) (a), (d), and (e), Stats., if the address is verified.

4. Real property seizure. For real property seizure under s. 49.854 (7), Stats., the payer's mailing address of record on the tax bill for the property subject to seizure to provide notice under ss. 49.854 (7) (a), (d), and (e), Stats., if the address is verified.

5. Pension intercept. For pension intercept under s. 49.852, Stats., the payer's mailing address of record at the entity administering a pension plan to provide notice under s. 49.852 (2), Stats., if the address is verified.

6. Judgment and settlement intercept. For judgment and settlement intercept under s. 49.856, Stats., the payer's mailing address of record provided by the person ordered to pay the judgment or settlement to send notice under s. 49.856 (3), Stats., if the address is verified.

(b) If a verified mailing address cannot be identified under par. (a), the department or child support agency shall use all appropriate automated federal, state, and local locate resources and interfaces to ascertain a payer's current mailing address. If locate resources have been used for a period of 60 days and a verified mailing address has not been identified, the department or child support agency may proceed with the administrative enforcement action.

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99**; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DCF 152.05 Administrative forfeitures for noncompliance with administrative subpoenas and requests for information. (1) MAXIMUM ADMINISTRATIVE FORFEITURES. The department or a child support agency may require a subpoena respondent who fails to comply with an administrative subpoena issued in accordance with s. 49.22 (2m) (b), Stats., or a request for information made under s. 49.22 (2m) (a), Stats., to pay an administrative forfeiture of $25. If the failure to comply with an administrative subpoena or request for information is the result of intentional conduct by the subpoena respondent to hide information, falsify information, or provide incomplete information, the department or child support agency may require the subpoena respondent to pay an administrative forfeiture of $500.

Note: Subpoena respondents may use the procedure in s. 805.07 (3), Stats., to attempt to quash an administrative subpoena.

Note: The department or child support agency will collect a forfeiture in accordance with s. 778.01, Stats.

(2) WHEN IMPOSED. The department or a child support agency shall determine when it is appropriate to impose an administrative forfeiture for failure to comply with a request for information or an administrative subpoena. In accordance with s. 49.22 (2m) (a), Stats., a subpoena respondent who fails to comply with a request for information or an administrative subpoena may not be subject to administrative forfeiture if access to the requested information is prohibited or restricted by law, or if the subpoena respondent has good cause for refusing to cooperate with the request.

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99.

DCF 152.06 Liens. (1) LIEN DOCKET. (a) The department shall maintain a statewide support lien docket in accordance with s. 49.854 (2) (b) and (c), Stats. The department shall be responsible for periodically updating the lien docket and providing a copy of the lien docket to the register of deeds and the child support agency in each county.

(b) The department or the child support agency shall be responsible for responding to inquiries concerning information recorded on the lien docket. The county register of deeds may

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refer any person who has an inquiry about the lien docket to the department or the child support agency.

(2) WHEN ENTERED. The department shall place a payer on the lien docket when the lien−eligible amount in one or more of the payer's cases equals or exceeds the lien threshold. If an individual is a payer in more than one case, each case will be evaluated separately to determine whether the lien threshold has been met, and to determine the lien amount.

(3) DETERMINING WHETHER THE LIEN THRESHOLD HAS BEEN MET OR EXCEEDED. The department shall place a payer on the lien docket if the lien−eligible amount in a case equals or exceeds the monthly amount due or $500, whichever is greater.

(4) LIEN AMOUNT. The lien amount on the lien docket shall equal the sum of lien−eligible amounts from the cases in which the lien−eligible amount meets or exceeds the lien threshold. The lien amount may include court−ordered liens made pursuant to s. 767.77, Stats.

(5) PAYMENT OF LIEN. (a) Any payment toward the lien amount shall indicate that the payment is a lien payment, and specify the case or cases from which the lien arose.

(b) A payment to satisfy a lien shall meet the conditions specified in par. (a) and be in an amount equal to the lien amount on the child support lien docket.

(c) The child support agency shall distribute any support payment made that does not meet the conditions in par. (a) or (b) in accordance with s. 767.511 (6) or 767.531, Stats.

(d) Payments toward a court−ordered lien under s. 767.77, Stats., shall be credited toward the child support lien, if appropriate. Payments toward the child support lien shall be credited toward a court−ordered lien under s. 767.77, Stats., if appropriate.

Note: A payment will be credited toward a child support lien and a court−ordered lien if the arrearages that the liens are based on are the same. A payment toward a child support lien must be credited to a court−ordered lien if the property specified in the court−ordered lien is the property that is transferred.

(e) The department or child support agency shall record the satisfaction of a lien on the child support lien docket.

(6) FILING DATE. The filing date on the lien docket is the date that a lien is first docketed and delivered to the register of deeds. The filing date is the effective date of the lien. The effective date does not change if the lien amount is adjusted up or down within 5 years after the date that the lien is first docketed.

(7) LIEN PRIORITY. The child support lien shall have priority over all other liens on property except tax and special assessment liens, purchase money mortgages, construction liens, environmental liens, liens that are filed or recorded before the child support lien becomes effective, and any other lien given priority under the law.

(8) RENEWING A LIEN. (a) At the end of the 5 year effective period of a lien, the department or a child support agency may renew the lien if the lien−eligible amount equals or exceeds the lien threshold. When a lien is renewed, the date on which the lien is renewed shall become the effective date of the lien, and a new five−year period shall commence.

Note: Under s. 49.854 (12) (a), Stats., a child support lien is effective for a period of five years from the effective date.

(b) When a lien is renewed, the department or the child support agency shall send the payer a notice that the lien has been renewed.

Note: Upon receiving notice, the payer has the opportunity to request a financial records review and a court review under s. 49.854 (3) (ag), Stats., or a direct appeal for a court review under s. 49.854 (3) (ar), Stats.

(9) LIEN PROCEDURES. The department shall develop procedures for releasing a lien and releasing specific property from a lien.

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99; corrections in (5) (c) made under s. 13.93 (2m) (b) 7., Stats., Register January 2003 No. 565; **corrections in (4), (5) (c) and (d) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DCF 152.07 Financial record review. (1) In accordance with s. 49.854 (3) (ag), Stats., a payer may request a financial record review within 10 business days of the date of the notice of lien. The request shall be made in writing to the child support agency. The purpose of the financial record review is to determine the correctness of the financial records in a case. The financial record review shall cover only the period of time after the last judicial review or other account review.

Note: The procedure for a financial records and court order review is specified in s. 49.854(3)(ag), Stats.

(2) Upon receiving a request for a financial record review, the child support agency shall provide the payer with the relevant financial records and any other financial records requested in writing by the payer. Financial records include the account history report and any county child support account records from the period prior to the implementation of the statewide automated child support enforcement system. The child support agency shall also provide the payer with information explaining how to interpret the records and a form the payer may use to identify any alleged errors in the records.

Note: Under s. 49.854 (3) (ag), Stats., the department shall conduct the financial records and court order review at no charge to the payer.

Note: The account history report is a document generated by the statewide automated child support enforcement system. The report includes a payment history which lists the date payments were received, the source of payments (except tax intercepts), the amount of payments, the debt to which the payment was applied, and any adjustments made to the payment. The report also includes the court order obligations in a case as well as a list of debts owed in a case and the current balance of each debt.

(3) Within 20 days after receiving the relevant financial records, the payer may request a meeting with the child support agency to review the financial records and to discuss any alleged errors. If the payer requests a meeting, the payer shall use the form provided by the child support agency in sub. (2). After reviewing the financial records and any alleged error, the child support agency shall issue a determination as to whether the lien against the payer is in the correct amount.

(4) If the payer provides a statement of alleged error on the document provided by the department or child support agency in sub. (2) within 20 days after receiving the financial records and does not request a meeting with the child support agency, the child support agency shall review the records to determine whether the alleged error is correct and provide a written determination as to whether the lien against the payer is in the correct amount.

(5) The child support agency shall provide the written determination in subs. (3) and (4) within 60 days after the date the payer's request for a financial record review is received under sub. (2).

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99.

DCF 152.08 Seizure of property. (1) FREEZING FINANCIAL ACCOUNTS. (a) The department or a child support agency may not issue a notice of levy under s. 49.854 (5) (b), Stats., unless the sum of the funds in all of the payer's financial accounts, minus the $5 levy fee under s. 49.854 (11) (a), Stats., and any early withdrawal penalty under s. 49.854 (5) (e), Stats., exceeds $500.

(b) The notice of levy under s. 49.854 (5) (b), Stats., shall instruct the financial institution of the following:

1. The maximum amount frozen in an account at the time the notice of levy is received may not exceed the amount specified by the department or child support agency in the notice.

2. The maximum amount frozen in an account at the time the levy notice is received may not exceed the payer's ownership interest.

Note: According to s. 224.40 (3) (c), Stats., a financial institution is not liable for encumbering or surrendering any assets held by the financial institution in response to instructions from the department or a county child support agency for the purpose of enforcing a child support order.

(c) The department, child support agency, and financial institution shall presume that a payer's ownership interest in an

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account is an equal pro−rata share of the account based on the number of individuals with a recorded ownership interest in the account.

(2) SEIZURE OF PERSONAL PROPERTY OTHER THAN FINANCIAL ACCOUNTS. (a) The department or a child support agency may not seize personal property under s. 49.854 (6), Stats., unless the payer's equity in the property, minus expected levy fees, exceeds $500 per item total.

(b) The department and child support agency shall presume that a payer's equity in the property is an equal pro−rata share of the equity based on the number of individuals with a recorded ownership interest in the property.

(3) SEIZURE OF REAL PROPERTY. (a) The department or child support agency may not seize real property under s. 49.854 (7), Stats., unless both of the following conditions are met:

1. The payer's equity in the property, minus expected levy fees, exceeds 10% of the property's fair market value.

2. The lien exceeds $5,000.

(b) The department or child support agency shall presume that a payer's equity in the property is an equal pro−rata share of the equity based on the number of individuals with a recorded ownership interest in the property.

(4) INTERCEPT OF LUMP−SUM PENSION PAYMENTS, JUDGMENTS AND SETTLEMENTS. (a) When initiating the intercept of lump−sum pension payments under s. 49.852, Stats., the department or child support agency shall specify in the notice provided under s. 49.852 (1m), Stats., that the amount withheld from the lump−sum pension payment may not exceed the payer's ownership interest in the lump−sum pension payment

(b) When initiating the intercept of judgments and settlements under s. 49.856, Stats., the department or child support agency shall specify in the notice provided under s. 49.856 (2), Stats., that the amount withheld from the judgment or settlement payment may not exceed the payer's ownership interest in the judgment or settlement payment.

(c) The department or child support agency shall presume that the payer's ownership interest in the property is an equal pro−rata share of the equity based on the number of individuals with a recorded ownership in the property.

(5) NOTICE TO INDIVIDUALS OTHER THAN THE PAYER WITH A RECORDED OWNERSHIP INTEREST IN PROPERTY. The department or child support agency shall provide notice related to the seizure of property to any individual other than the payer with a recorded ownership interest in property subject to seizure under s. 49.854 (5), (6), or (7), or 49.856, Stats., as follows:

(a) *Account seizure.* For account seizure under s. 49.854 (5), Stats., notice shall be sent to the mailing address of record at the financial institution.

(b) *Personal property seizure.* For personal property seizure under s. 49.854 (6), Stats., notice shall be sent to the mailing address of record at a state agency that titles personal property.

(c) *Real property seizure.* For real property seizure under s. 49.854 (7), Stats., notice shall be sent to the mailing address of record on the tax bill for the property subject to seizure.

(d) *Judgment and settlement intercept.* For judgment and settlement intercept under s. 49.856, Stats., notice shall be sent using the mailing address or addresses of record provided by the person ordered to pay the judgment or settlement.

Note: Pursuant to s. 49.854 (5) (d), (6) (a) and (e), and (7) (a) and (e), Stats., the department or child support agency is required to provide a notice to any individual with a recorded ownership interest in a property subject to seizure. Individuals other than the payer who have a recorded ownership interest in the property subject to seizure have 20 business days after the date of the notice to request a hearing to protect the portion of the property that is attributable to their net contributions to the property.

(6) PRESUMPTION OF PAYER'S OWNERSHIP INTEREST. (a) If an individual other than the payer has a recorded ownership interest in property subject to seizure under s. 49.852, 49.854 (5), (6), or (7), or 49.856, Stats., the individual may request a hearing under s. 49.854 (7m), Stats., for a determination of the proportion of the value of the property that is attributable to his or her net contribution to the property in any county that initiated property seizure.

(b) When seizing property, the department or child support agency shall proceed based on the presumption under sub. (1) (c), (2) (b), (3) (b), or (4) (c) unless an individual other than a payer with a recorded ownership interest in the property requests a hearing under s. 49.854 (7m), Stats., within 20 business days of the date of notice that seizure has been initiated under s. 49.854 (5), (6), or (7), or 49.856, Stats.

Note: According to s. 49.854 (7m), Stats., if the court determines that a portion of the property is attributable to the contributions of an individual other than the payer with an ownership interest in the property, the court shall direct the department or child support agency to pay the individual, from the net balance of the account or the net proceeds of the sale of the real or personal property, the proportion of the gross value of the account or real or personal property that is attributable to that person's interest.

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99; **correction in (4) (a) made under s. 13.92 (4) (b), Stats., Register November 2008 No. 635.**

DCF 152.09 Notice to the payee of enforcement proceedings. (1) If the child support agency is aware that a payer is subject to a protective order with respect to a payee or child in his or her case, the child support agency has reason to believe that a payee or child in a payer's case may be harmed physically or emotionally by the payer or the payee made a written request to be notified of all administrative enforcement actions, the department or the child support agency shall provide written notice to the payee when an administrative enforcement action has been initiated against the payer. The notice to the payee shall be sent at the same time notice is sent to the payer in accordance with s. 49.852 (2), 49.854 (5) (b), (6) (a), or (7) (a), 49.856 (2), or 49.857 (3) (a), Stats.

(2) The department or child support agency shall provide a notice of hearing to the payee when the payer requests a hearing under s. 49.852 (2) (b), 49.854 (3) (ag) 2. or (ar), (5) (d) 6., (6) (b) 3. or (7) (b) 1. c., 49.856 (3) (b), or 49.857 (3) (a) 5. or (am) 5., Stats., and the hearing has been scheduled.

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99.

DCF 152.10 Thresholds for administrative enforcement actions. (1) LICENSE SUSPENSION. The department or child support agency may initiate license suspension under s. 49.857, Stats., if there is a lien against a payer, and the lien amount in the payer's case equals or exceeds 300% of the monthly amount due in the court order.

(2) ACCOUNT SEIZURE. The department or child support agency may initiate an account seizure under s. 49.854 (5), Stats., if there is a lien against a payer, and the lien amount in the payer's case equals or exceeds 300% of the monthly amount due in the court order or $1,000, whichever is greater.

(3) REAL AND PERSONAL PROPERTY SEIZURE. The department or child support agency may initiate personal property seizure under s. 49.854 (6), Stats., or real property seizure under s. 49.854 (7), Stats., if there is a lien against a payer, and the lien amount in the payer's case equals or exceeds 600% of the monthly amount due in the court order.

(4) INTERCEPT OF LUMP−SUM PENSION PAYMENTS, JUDGMENTS, AND SETTLEMENTS. The department or child support agency may initiate the intercept of lump−sum pension payments under s. 49.852, Stats., or the intercept of judgments and settlements under s. 49.856, Stats., when a payer has been placed on the child support lien docket.

(5) DETERMINING THE MONTHLY AMOUNT DUE FOR COURT−ORDERED PROVISIONS EXPRESSED ONLY AS A PERCENTAGE OF INCOME. For a court−ordered provision expressed only as a percentage of income, the monthly amount due shall be calculated using the expected monthly amount due as the fixed amount.

(a) The expected monthly amount due means the identified monthly income of the payer multiplied by the percentage ordered for the provision

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(b) To determine a payer's identified monthly income, the department or child support agency shall use the best available information which includes, but is not limited to, the income of the payer during the period of the most recent reconciliation, the most current income information reported by the payer's employer under s. 767.75 (3h), Stats., information provided verbally or in writing to the child support agency by the payer, or tax returns or records.

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99; **correction in (5) (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DCF 152.11 Alternative payment plans. (1) APPLICABILITY OF ALTERNATIVE PAYMENT PLANS. When the department or a child support agency enforces a lien through seizure of real property or personal property, seizure of financial accounts, or denial, nonrenewal, restriction, or suspension of licenses, the payer may negotiate an alternative payment plan with the child support agency.

(2) NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER RECEIVING NOTICE OF AN ADMINISTRATIVE ENFORCEMENT ACTION. (a) The notices issued under s. 49.854 (5) (d), (6) (a), or (7) (a), or 49.857 (3) (a) or (am), Stats., shall inform the payer of the opportunity to negotiate an alternative payment plan, and shall notify the payer of the circumstances under which the payer may request a court hearing under s. 49.854 (5) (f), (6) (c), or (7) (c), or 49.857 (3) (ac) or (ar), Stats.

Note: Under ss. 49.854 (5) (d), (6) (b), and (7) (b), and 49.857 (3) (a) and (am), Stats. notices must inform the payer of his or her opportunity to request a hearing within 20 business days after the date of the notice.

(b) A payer may submit a written request to the child support agency to negotiate an alternative payment plan within 10 business days after the date of notice under s. 49.854 (5) (d), (6) (a), or (7) (a), or 49.857 (3) (a) or (am), Stats. The payer may submit a written request for a court hearing on the reasonableness of the plan within 20 business days after the date of notice under s. 49.854 (5) (d), (6) (a), or (7) (a), or 49.857 (3) (a) or (am), Stats.

(c) If the child support agency and the payer are unable to reach agreement on the terms of a plan, and the payer requested a court hearing within 20 business days after the date of notice under s. 49.854 (5) (d), (6) (a), or (7) (a), or 49.857 (3) (a) or (am), Stats., a hearing shall be conducted. If the court determines that the plan is not reasonable, it may order a plan by setting payments pursuant to s. 767.77 (1), Stats., in the amounts and at the times it considers expedient.

(3) NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER COURT DETERMINATION OF MISTAKE OF FACT. If a court determines that a payer owes arrears as a result of a review of alleged mistake of fact under s. 49.854 (5) (f), (6) (c), or (7) (c), or 49.857 (3) (ac) or (ar), Stats., and the payer did not attempt to negotiate a plan prior to the court review, the payer may, within 10 business days of the court determination, submit a written request to the child support agency to negotiate a plan.

(4) NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER THE RESTRICTION, LIMITATION, SUSPENSION OR REFUSAL OF A LICENSE. Pursuant to s. 49.857 (3) (d) 1., Stats., a payer may negotiate a plan with the department or child support agency to have a license issued or renewed after it has been restricted, limited, suspended or refused.

(5) STAYING ADMINISTRATIVE ENFORCEMENT ACTIONS. Administrative enforcement actions shall be stayed by the child support agency that initiated an action while the payer and the agency are negotiating a plan, or, if a court review of the reasonableness of the plan is requested, until the court determination has been made. To stay an administrative enforcement action means the following:

(a) *License suspension and denial.* The payer may not be certified to state licensing agencies or authorities for denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses.

(b) *Account seizure.* Any financial accounts frozen under s. 49.854 (5) (b), Stats., shall remain frozen and may not be seized.

(c) *Personal property seizure.* Personal property that has been seized under s. 49.854 (6), Stats., shall be held by the department or the sheriff and may not be sold.

(d) *Real property seizure.* Real property may not be seized and sold.

(6) SUSPENSION OF ADMINISTRATIVE ENFORCEMENT ACTIONS. (a) When a plan has been negotiated between the payer and the child support agency, or the court has determined that a plan is reasonable or has ordered a plan pursuant to s. 767.77 (1), Stats., the child support agency in the county in which the plan is set shall suspend administrative enforcement actions as long as the payer complies with the plan.

(b) If a payer makes a full arrearage debt payment, prior to the completion of the administrative enforcement action, the action shall be suspended.

(7) PROCEEDING WITH ADMINISTRATIVE ENFORCEMENT ACTIONS. If the court determines under sub. (2) (c) that a plan is not reasonable and does not set a plan, or the payer and child support agency are unable to negotiate a plan under sub. (3), the child support agency may continue with the administrative enforcement action.

(8) DISCLOSURE OF INCOME AND ASSETS. The request to negotiate a plan shall include an agreement by the payer to provide the child support agency with a full disclosure of income and assets available. The payer shall provide complete income and assets information to the child support agency within 5 business days of the request to negotiate a payment plan.

(9) CASE−BY−CASE BASIS. A child support agency shall negotiate a plan with a payer only on cases venued in its county.

(10) TERMS OF AN ALTERNATIVE PAYMENT PLAN. (a) An alternative payment plan may include a lump−sum payment, or periodic payments on the arrearage debt, or both, subject to the following standards:

1. The sum of any periodic payment established under the plan and any other court−ordered payment of support, when subtracted from the payer's gross income, may not leave the payer below 100% of the poverty line established under 42 USC 9902 (2) unless the payer agrees otherwise.

2. When establishing an alternative payment plan, the child support agency shall consider the factors used by the court in determining whether the use of the percentage standard is unfair to the child or any of the parties, as specified in s. 46.10 (14), 767.511, or 767.89, Stats.

(b) In a case in which the conditions in par. (a) 1. cannot be met, the child support agency may negotiate a lump−sum payment with the payer, or may elect to suspend administrative enforcement action.

(c) Upon agreement by the payer, periodic payments under the plan may be made through income withholding in amounts in addition to the amount ordered under s. 767.75 (1) (b), Stats.

(11) DEFAULT ON AN ALTERNATIVE PAYMENT PLAN. In the event that the payer defaults on the plan by failure either to make the full lump−sum payment within one month of the date that the payment is due, or to pay an amount equal to the amount due in one month under the plan, the child support agency shall notify the payer in writing that an administrative enforcement action shall be implemented unless the lien is paid in full.

(12) RENEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN. After the entry of an alternative payment plan, the plan may be renegotiated upon the written request of the payer or child support agency if the requesting party can show a substantial change in circumstances. A substantial change in circumstances includes any of the following:

(a) A change in the payer's income or assets, including the sale or purchase of real or personal property.

May not be current adm. code. For current adm. code see: http://docs.legis.wisconsin.gov/code/prefaces/toc.

(b) A change in the payer's earning capacity.

(c) Any other factor that the child support agency determines is relevant.

(13) PAYERS WITH CASES IN MULTIPLE COUNTIES. (a) When multiple county child support agencies initiate administrative enforcement actions against the same payer, and the payer negotiates an alternative payment plan with one of the agencies, the plan does not preclude any other child support agency from proceeding with its administrative enforcement action.

(b) If a child support agency which has a lien against property of a payer negotiates an alternative payment plan with the payer, the agency may receive proceeds from the sale of the payer's real or personal property under the lien including, but not limited to, proceeds from administrative enforcement actions taken by other child support agencies.

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99; correction in (10) (a) 2. made under s. 13.93 (2m) (b) 7., Stats., Register January 2003 No. 565; **corrections in (2) (c), (6) (a) and (10) (a) 2. made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DCF 152.12 Agreements with financial institutions.

(1) PROCESS FOR ENTERING INTO AGREEMENTS WITH FINANCIAL INSTITUTIONS. (a) The department shall enter into agreements with financial institutions to operate a financial record matching program using an automated data exchange to the extent feasible to identify the accounts of delinquent payers. In the agreement, the financial institution shall agree to provide information on the accounts maintained at the institution in a standard format prescribed by the department, and shall indicate all of the following:

1. The financial institution matching option in s. 49.853 (3), Stats., or the state matching option in s. 49.853 (4), Stats., as the method for participating in the financial record matching program.

2. The media for transmitting data to the department or receiving data from the department.

Note: The standard format for record matching will be based on specifications provided by the U.S. department of health and human services.

(b) The financial institution shall sign the agreement and return the agreement to the department within 20 business days of receipt of the agreement.

(c) When a financial institution returns to the department an agreement that has met the conditions in par. (a), the department shall sign the agreement and provide the financial institution with a copy of the agreement.

(d) In order for a financial institution to change the conditions specified in par. (a), it shall contact the department at least 60 days prior to the beginning of the next quarterly record match.

Note: The department and financial institutions are subject to the confidentiality provisions in s. 49.853 (3) (c) and (4) (c) and (d), Stats.

(2) REIMBURSEMENT FOR PARTICIPATION IN THE FINANCIAL RECORD MATCHING PROGRAM. In accordance with s. 49.853 (2), Stats., the department shall reimburse a financial institution $250 per quarter for participating in the financial record matching program in accordance with s. 49.853 (3) or (4), Stats., and the terms of the agreement under sub. (1).

Note: The reimbursement to financial institutions for participating in the financial record matching program is $125. Section 49.853 (2), Stats., was amended in 2001 Wisconsin Act 16 to decrease the reimbursement amount.

History: Cr. Register, July, 1999, No. 523, eff. 8−1−99.