Chapter HSS 80

CHILD SUPPORT PERCENTAGE OF INCOME STANDARD

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PREFACE

Section 46.25 (9) (a), Stats., requires the department to adopt and publish a standard to be used by courts in determining child support obligations. The standard is to be based on a percentage of the gross income and assets of either or both parents.

The percentage standard established in this chapter is based on an analysis of national studies, including a study done by Jacques Van der Gaag as part of the Child Support Project of the Institute for Research on Poverty, University of Wisconsin, Madison, entitled "On Measuring the Cost of Children," which disclose the amount of income and disposable assets that parents use to raise their children. The standard is based on the principle that a child's standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together. It determines the percentage of a parent's income and potential income from assets that parents should contribute toward the support of children if the family does not remain together. The standard determines the minimum amount each parent is expected to contribute to the support of their children. It expects that the custodial parent shares his or her income directly with their children. It also presumes that the basic needs of the children are being met. This latter presumption may be rebutted by clear and convincing evidence that the needs of the children are not being met.

The rules also prescribe procedures for determining equitable child support obligations under a variety of financial and family circumstances.

HSS 80.01 Introduction. (1) AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of s. 46.25 (9) (a), Stats., for the purpose of establishing a standard to be used in determining child support under ss. 767.02, 767.08, 767.10, 767.23, 767.25, 767.32 and 767.51, Stats.

(2) APPLICABILITY. This chapter applies to any petition for a temporary or final order for child support of a marital or nonmarital child in an action affecting a family under s. 767.02, Stats., any stipulated child support settlement under s. 767.10, Stats., or any revision of judgment under s. 767.32, Stats.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. (2) (b) to (d), Register, August, 1987, No. 380, eff. 9-1-87; am. (1), r. and recr. (2), Register, February, 1995, No. 470, eff. 3-1-95.

HSS 80.02 Definitions. In this chapter:

(1) "Acknowledgement of paternity" means both the mother and the father voluntarily signed and filed a form under s. 69.15 (3) (b) 1 or 3, Stats., with the state registrar.

(2) "Adjusted base" means the monthly income at which the child support obligation is determined for serial family payers, which is the payer's base less the amount of any existing legal obligation for child support.

(3) "Assets available for imputing income" means all real or personal property over which a payer can exercise ownership or control, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker's compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the payer has an ownership interest sufficient to individually exercise control and when the cash or corporate income is not included as gross income under s. HSS 80.02 (13).

(4) "Base" means the monthly income at which the child support obligation is determined, which is calculated by adding together the payer's gross income and the payer's imputed income for child support, and dividing by 12.

(5) "Child" means the natural or adopted child of the payer.

(6) "Child support" or "child support obligation" means an obligation to support a marital child either in an intact family or as a result of a court order, an obligation to support the payer's nonmarital child as a result of a court order, or an obligation to support the payer's nonmarital child in an intact family as a result of adoption, maternity or an acknowledgement of paternity.

(7) "Court" means a circuit court judge or family court commissioner.

(8) "Current 6-month treasury bill rate" means the yield of a U.S. government security with a term of 6 months.

(9) "Department" means the Wisconsin department of health and social services.

(10) "Dependent household member" means a person for whom a taxpayer is entitled to an exemption for the taxable year under 26 USC 151.

(11) "Family support" means an amount which a person is legally obligated to pay pursuant to an order under s. 767.261, Stats., as a substitute for child support under s. 767.25, Stats., and maintenance payments under s. 767.26, Stats.

(12) "Federal dependency exemption" means the deduction allowed in computing taxable income pursuant to 26 USC 151 for a child of the taxpayer who has not attained the age of 19 or who is a student.

(13) "Gross income" means:

(a) All income considered federal gross income under 26 CFR 1.61-1;

(b) Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income;

(c) Unemployment compensation;

(d) Income continuation benefits;

(e) Voluntary deferred compensation, employe contributions to any employe benefit plan or profit-sharing, and voluntary employe contributions to any pension or retirement account whether or not the account provides for tax deferral or avoidance;

(f) Military allowances and veterans benefits;

(g) Undistributed income of a corporation, including a closely-held corporation, or any partnership, including a limited or limited liability partnership, in which the payer has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset under sub. (3);

Note: Income considered under this subsection is subject to the adjustments under s. HSS 80.03 (2).

(h) Any income imputed to the payer under s. HSS 80.05; and

(i) All other income, whether taxable or not, except that gross income does not include public assistance or child support received from previous marriages or from paternity adjudications.

(14) "Gross income available for child support" means the amount of gross income after adding wages paid to dependent household members and subtracting business expenses which the court determines are reasonably necessary for the production of that income or operation of the business and which may differ from the determination of allowable business expenses for tax purposes.

(15) "Imputed income for child support" means the amount of income ascribed to assets which are unproductive or to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child or children at the economic level they would enjoy if they were living with both parents, and which exceeds the actual earnings of the assets.

(16) "Intact family" means a family in which the child or children and the payer reside in the same household and the payer shares his or her income directly with the child or children and has a legal obligation to support the child or children.

(17) "Legal obligation for child support" has the meaning prescribed for "child support" or "child support obligation" in sub. (6).

(18) "Marital child" means a child determined to be a marital child under s. 767.60, Stats.

(19) "Parent" means the natural or adoptive parent of the child.

(20) "Parent with less time" means the parent having physical placement of the child less than 182 days a year.

(21) "Parent with more time" means the parent having physical placement of the child more than 183 days a year.

(22) "Payee" means the parent who is the recipient of child support as a result of a court order.

(23) "Payer" means the parent who incurs a legal obligation for child support as a result of a court order.

(24) "Serial family payer" means a payer with an existing legal obligation for child support who incurs an additional legal obligation for child support in a subsequent family as a result of a court order.

(25) "Shared-time payer" means a payer who provides overnight child care or equivalent care beyond the threshold and assumes all variable child care costs in proportion to the number of days he or she cares for the child under the shared-time arrangement.

Note: There are physical placement arrangements in which the payer provides child care beyond the threshold and incurs additional cost in proportion to the time he or she provides care, but because of the physical placement arrangement he or she does not provide overnight care (e.g., payer provides day care while the payee is working). Upon request of one of the parties the court may determine that the physical placement arrangement other than overnight care is the equivalent of overnight care.

(26) "Split custody payer" means a payer who has 2 or more children and who has physical placement of one or more but not all of the children.

(27) "Standard" or "percentage standard" means the percentage of income standard under s. HSS 80.03 (1) which, multiplied by the payer's base or adjusted base, results in the payer's child support obligation.

Note: The standard is based on national studies of the percentage of income used to support a child or children, with adjustment downward of those percentages to reflect costs incurred by the payer for what used to be called visitation under Wisconsin law and is now called physical placement and to maintain health insurance for the child or children.

(28) "Threshold" means 30% of a year or 109.5 out of every 365 days.

Note: The threshold was derived by taking 30% of a 365 day year.

(29) "Total annual income for child support" means gross income available for child support plus imputed income for child support.

(30) "Variable costs" means costs that include but are not limited to payment for food, clothing, school, extracurricular activities, recreation and day care.

(31) "Worksheet" means the department's percentage standard worksheet, printed as Appendix B to this chapter.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. (2) (b) to (d), r. and recr. (12) to (14), renum. (26) to (28) to be (27) to (29) and am. (29), cr. (26), Register, August, 1987, No. 380, eff. 9-1-87; r. and recr., Register, February, 1995, No. 470, eff. 3-1-95.

HSS 80.03 Support orders. (1) DETERMINING CHILD SUPPORT USING THE PERCENTAGE STANDARD. The payer's base shall be determined by adding together the payer's gross income available for child support under sub. (2), if appropriate, and the payer's imputed income for child support and dividing by 12. This may be done by completing the worksheet in Appendix B, although use of the worksheet for this purpose is not required. The percentage of the payer's base or adjusted base that constitutes the child support obligation shall be:

(a) 17% for one child;

(b) 25% for 2 children;

(c) 29% for 3 children;

(d) 31% for 4 children; and

(e) 34% for 5 or more children.

Note: See Appendix A which indicates the amount of child support at various levels of income using the percentage standard.

(2) GROSS INCOME AVAILABLE FOR CHILD SUPPORT. In determining the payer's base under sub. (1), the court may adjust the gross income by adding wages paid to dependent household members and by reducing gross income by the business expenses which the court determines are reasonably necessary for the production of that income or operation of the business and which may differ from the determination of allowable business expenses for tax purposes.

(3) SUPPORT OBLIGATION BASED ON EARNING CAPACITY. In situations where the income of the parent obligated to pay child support in accordance with the standard under sub. (1) is less than that parent's earning capacity, or in situations where both parents incomes are considered under s. HSS 80.04 (2) (c) and the income of one parent is less than that parent's earning capacity, the court may establish support by applying the percentage standard to:

(a) An amount determined by the court to represent the payer's ability to earn, based on the payer's education, training and work experience, and the availability of work in or near the payer's community; or

(b) The income a person would earn by working 40 hours per week for the federal minimum hourly wage under 29 USC 206 (a) (1).

(4) CALCULATION OF FAMILY SUPPORT. When the standard under sub. (1) is used to calculate support under s. 767.261, Stats., the amount determined shall be increased by the amount necessary to provide a net family support payment, after state and federal income taxes are paid, of at least the amount of a child support payment under the standard.

(5) EXPRESSION OF ORDERED SUPPORT. In temporary, final or revised support orders, the ordered support may be expressed either as a percentage of the base or adjusted base, or as a fixed sum, or as a combination of both as permitted under ss. 767.23 (1), 767.25 (1), 767.32 and 767.51 (4), Stats.

(6) DEPENDENCY EXEMPTION. The court may order the payee to waive the federal dependency exemption provided that the payee's execution of the exemption waiver is made contingent on the receipt of child support payments.

(7) DEVIATION FROM THE PERCENTAGE STANDARD. (a) Upon request by a party, the court may modify the amount of child support payments determined under sub. (1) if, after considering the factors in s. 767.25 (1m) or 767.51 (5), Stats., as applicable, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties.

(b) If the court under par. (a) modifies the amount of child support payment determined under sub. (1), the court shall state in writing or on the record the amount of support that would be required by using the percentage standard under sub. (1), the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification as provided under ss. 767.25 (1n) (b) and 767.51 (5d) (b), Stats.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1) (intro.), Register, August, 1987, No. 380, eff. 9-1-87; am. (1) (intro.), renum. (2) to (4) to be (4) to (6) and am. (5), cr. (2), (3), (7), Register, February, 1995, No. 470, eff. 3-1-95.

HSS 80.04 Determining the child support obligation in special circumstances. Child support may be determined under special circumstances as follows:

(1) DETERMINING THE CHILD SUPPORT OBLIGATION OF A SERIAL-FAMILY PAYER. (a) *Applicability.* This subsection applies only if the additional child support obligation incurred by a payer is the result of a court order and the support obligation being calculated is for children from a subsequent family or subsequent paternity judgment or acknowledgment. A payer may not use the provisions of this subsection as a basis for seeking modification of an existing order based on a subsequently incurred legal obligation for child support.

(b) *Determination.* For a serial-family payer the child support obligation incurred for a marital or nonmarital child in a subsequent family as a result of a court order may be determined as follows:

1. Determine the payer's base under s. HSS 80.03 (1) (intro.);

2. Determine the order of the payer's legal obligations for child support by listing them according to the date each obligation is incurred. For a marital child, the legal obligation for child support is incurred on the child's date of birth. For a nonmarital child, the legal obligation for child support is incurred on the date of the court order. For a nonmarital child in an intact family, it is incurred on the date of adoption or the date of the filing of an acknowledgement of paternity. For a nonmarital maternal child in an intact family, it is incurred on the child's date of birth;

3. Determine the first child support obligation as follows:

a. If the payer is subject to an existing support order for that legal obligation, the support for that obligation is the monthly amount of that order; or

b. If the payer is not subject to an existing support order for that legal obligation, the support is determined by multiplying the appropriate percentage under s. HSS 80.03 (1) for that number of children by the payer's base;

4. Adjust the base by subtracting the support for the first legal obligation under subd. 3 from the payer's base under subd. 1;

5. Determine the second child support obligation as follows:

a. If the payer is subject to an existing support order for that legal obligation, the support for that obligation is the monthly amount of that order; or

b. If the payer is not subject to an existing support order for that legal obligation, the support is determined by multiplying the appropriate percentage under s. HSS 80.03 (1) for that number of children by the payer's base;

6. Adjust the base a second time by subtracting the support for the second legal obligation determined under subd. 5 from the first adjusted base determined under subd. 4;

7. Repeat the procedure under subds. 5 and 6 for each additional legal obligation for child support the serial family payer has incurred;

8. Multiply the appropriate percentage under s. HSS 80.03 (1) for the number of children subject to the new order by the final adjusted base determined in either subd. 6 or 7 to determine the new child support obligation.

Note: The following example shows how the child support obligation is determined for a serial-family payer whose additional child support obligation has been incurred for a subsequent family.

Assumptions:

Parent A's current base is $3000.

Parent A and Parent B were married, had a child in 1980 and divorced in 1989. Parent A is subject to an existing support order of $450 per month.

Parent A remarries and has two children, one born in 1991 and the other in 1992, and remains an intact family.

Parent A was adjudicated the father in 1993 for a child born in 1990. Child support needs to be established for this child.

Order of parent A's legal obligation for child support

First legal obligation:	one child (1980) (divorce)
Second legal obligation:	2 children (1991 and 1992) (intact family)
Third legal obligation:	one child (1993) (paternity)

Calculation:

Parent A's current base	$3000
The first legal obligation is subject to an existing monthly support order (divorce)	$ 450
Adjust the base	$3000 - 450
First adjusted base	$2550
Determine support for the second legal obligation (intact family)	$2550 x .25 $637.50
Adjust the first adjusted base	$2550 - 637.50
Second adjusted base	$1912.50
Determine support for the third legal obligation (paternity)	$1912.50 x .17 $ 325.12

(2) DETERMINING THE CHILD SUPPORT OBLIGATION OF A SHARED-TIME PAYER. The child support obligation in cases where both parents provide overnight child care beyond the threshold may be determined as follows:

(a) Determine the number of overnights, or the equivalent as determined by the court in accordance with s. HSS 80.02 (25), each parent has the child per year. If the parent with less time has the child at least 110 overnights but not more than 146 overnights, follow the procedure in par. (b). If each parent has the child for at least 147 overnights but for not more than 218 overnights, follow the procedure in par. (c).

(b) In cases where the parent with less time has the child for at least 110 overnights, or the equivalent as determined by the court in accordance with s. HSS 80.02 (25), per year but not more than 146 per year, determine the child support as follows:

1. Determine the child support obligation under s. HSS 80.03 (1) of the parent with less time;

2. Divide by 365 the number of overnights the parent with less time has physical placement of the child to determine the percentage of the year that the parent with less time provides overnight care;

3. If the percentage under subd. 2 is over 30% but not more than 40%, reduce the child support obligation under subd. 1 in accordance with Table 80.04 (2) (b);

TABLE 80.04 (2) (b)

REDUCTION OF SUPPORT OBLIGATION FOR 31% TO 40% TIME WITH CHILD

COLUMN A % of time with child	COLUMN B % of original child support obligation
30	100%
31	96.67%
32	93.34%
33	90.01%
34	86.68%
35	83.35%
36	80.02%
37	76.69%
38	73.36%
39	70.03%
40	66.70%

4. Multiply the child support obligation under subd. 1 by the appropriate percentage from Column B of Table 80.04 (2) (b) to determine the amount of child support due; and

5. Express the amount of child support due identified in subd. 4 either as a percentage or as a fixed sum.

Note: The following example shows how to calculate the amount of child support for a shared-time payer who has physical placement of the child more than 30% of the year but not more than 40% of the year.

Assumptions:

Number of children: One

Parent with less time: $2,000 gross income/month
Assumes child-caring responsibility for 138 days

Parent with more time: $1,500 gross income/month
Assumes child-caring responsibility for 227 days

Calculation:

The child support obligations of the parent with less time = $2,000 × 17% = $340/month.

Percentage of the year that the parent with less time provides overnight care = 138 days ÷ 365 days = .378 or 38%.

The percentage of the original child support obligation for the parent with less time using Table 80.04 (2) (b) = 73.36%.

The child support owed by the parent with less time = $340 × 73.36% = $249.42.

The percentage of income of the parent with less time = $249.42 ÷ $2,000 = .1247 or 12.5%.

(c) In cases where each parent has the child for at least 147 overnights per year, or the equivalent as determined by the court in accordance with s. HSS 80.02 (25), but not more than 218 overnights per year, determine the child support as follows:

1. Determine the child support obligation under s. HSS 80.03 (1) of each parent as if a payer;

2. For each parent, divide the number of overnights that the parent has physical placement of the child by 365 to determine the percentage of the year that the parent provides overnight care;

3. If for a parent the percentage under subd. 2 is over 40% but not more than 59%, reduce the child support obligation for that parent in accordance with Table 80.04 (2) (c), and then do the same for the other parent:

TABLE 80.04 (2) (c)

REDUCTION OF SUPPORT OBLIGATION FOR 41% TO 59% TIME WITH CHILD

COLUMN A	COLUMN B
% of time with child	% of original child support obligation
41	63.37%
42	60.04%
43	56.71%
44	53.38%
45	50.05%
46	46.72%
47	43.39%
48	40.06%
49	36.73%
50	33.40%
51	30.07%
52	26.74%
53	23.41%
54	20.08%
55	16.75%
56	13.42%
57	10.09%
58	6.76%
59	3.43%
60	0.00%

4. For each parent, multiply the child support obligation for that parent under subd. 1 by the appropriate percentage from Column B of Table 80.04 (2) (c) to determine the amount of child support due from that parent;

5. Subtract the lesser child support obligation under subd. 4 from the greater child support obligation under subd. 4 to determine the final amount of child support due, and the payer. The resulting payer may be either parent.

6. Express the amount of child support due either as a percentage or as a fixed sum.

Note: The following example shows how to calculate the amount of child support for a shared-time payer who has physical placement of the child for more than 40% but less than 60% of the year.

Assumptions:

Number of children: One

Parent A: $2,000 gross income/month
Assumes child-caring responsibility for 160 days

Parent B: $1,500 gross income/month
Assumes child-caring responsibility for 205 days

Calculation:

Parent A's child support obligation = $2,000 × 17% = $340/month.

Parent B's child support obligation = $1,500×17% = $255/month.

The percentage of the year that parent A provides overnight care = 160 days ÷ 365 days = .438 or 44%.

The percentage of the year that parent B provides overnight care = 205 days ÷ 365 days = .561 or 56%.

Using Table 80.04 (2) (c): Parent A's percentage of the original child support obligation = 53.38%.

Using Table 80.04 (2) (c): Parent B's percentage of the original child support obligation = 13.42%.

The amount of child support parent A owes = $340 × 53.38% = $181.49.

The amount of child support parent B owes = $255 × 13.42% = $34.22.

The payer and the final amount of child support owed = $181.49 − $34.22 = $147.27 owed by parent A.

The percentage of parent A's income owed as child support = $147.27 ÷ $2,000 = .0736 or 7.36%.

(3) DETERMINING THE CHILD SUPPORT OBLIGATION OF A SPLIT-CUSTODY PAYER. (intro.) For a split-custody payer, the child support obligation may be determined as follows:

(a) Determine the payer's base in accordance with s. HSS 80.03 (1) (intro.) for calculating the amount of child support.

(b) Multiply the payer's base established under par. (a) by the appropriate percentage under s. HSS 80.03 (1) for the number of children in the payee's custody to determine the payer's child support obligation in dollars.

(c) Determine the payee's base in accordance with s. HSS 80.03 (1) (intro.) for calculating the amount of child support.

(d) Multiply the payee's base established under par. (c) by the appropriate percentage under s. HSS 80.03 (1) for the number of children in the payer's custody to determine the payee's child support obligation.

(e) Subtract the smaller child support obligation from the larger to determine the reduced amount of child support owed by the parent with the larger child support obligation.

Note: The following example shows how to calculate the amount of child support for a split-custody payer:

Assumptions:

The payer is divorced and has 3 children;

The payer has custody of one child;

The payer's monthly gross income is $3,000;

The payee has custody of 2 children; and

The payee's monthly gross income is $1,500.

Calculation:

The payer's base $3,000	
The payer's original child support obligation (25% x $3,000)	750
The payee's base	1,500
The payee's original child support obligation (17% x $1500)	255
The payer owes the payee (750 - 255)	$495

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1) (a), (b) (intro.) and 1., (3) (intro.), (a) and (c), r. and recr. (2), Register, August, 1987, No. 380, eff. 9-1-87; r. and recr. (1), (2), Register, February, 1995, No. 470, eff. 3-1-95.

HSS 80.05 Determining imputed income for child support. For a payer with assets, a reasonable earning potential may be attributed to the assets as follows:

(1) Determine the payer's gross income;

(2) If the court finds that the payer has underproductive assets or has diverted income into assets to avoid paying child support or that income from the payer's assets is necessary to maintain the child or children at the economic level they would have enjoyed if they and their parents had been living together, identify those assets and then impute income to them by multiplying the total net value of the assets by the current 6-month treasury bill rate or any other rate that the court determines is reasonable; and

(3) Subtract the actual earnings of the assets from the imputed income from the assets to determine the imputed income for child support.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. and recr. Register, August, 1987, No. 380, eff. 9-1-87; am. (2), Register, February, 1995, eff. 3-1-95.