

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
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- Clearinghouse Rules ... CRule
- 97hr_JCR-AR_CRule_98-130
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- Committee Hearings ... CH
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-
- Miscellaneous ... Misc
-
- Record of Comm. Proceedings ... RCP
-

98-130 DWD 43-CHILD SUPPORT
ADM. ENFORCEMENT

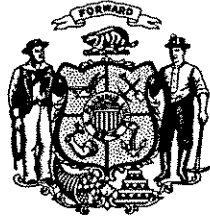
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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OCT 9 1998

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-130

AN ORDER to renumber chapters HSS 80 to 82; and to create chapter DWD 43, relating to child support administrative enforcement.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

09-01-98 RECEIVED BY LEGISLATIVE COUNCIL.

09-25-98 REPORT SENT TO AGENCY.

RNS:RJC:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

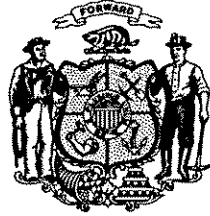
Comment Attached YES NO

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CLEARINGHOUSE RULE 98-130

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.]

I. Statutory Authority

a. SECTION 1 of the rule purports to renumber ch. HSS 82. However, that chapter relates to certified adult family homes pursuant to ch. 50, Stats., and is within the purview of the Department of Health and Family Services. Under what authority does the Department of Workforce Development seek to renumber ch. HSS 82?

b. According to s. DWD 43.07 (3), it appears that only if a payer submits a statement of alleged error, after making a written request for a financial records review, within a specified time frame, will the child support agency provide a written determination of the correctness of the lien amount. However, s. 49.854 (3) (ag), Stats., provides that if an obligor timely requests a review, the child support agency must conduct the review and issue a determination. The statute does not require the obligor to make a "statement of alleged error" as a condition of having a financial record review. Based on the clear statutory language, it appears that the rule's authority for requiring a statement of alleged error is questionable.

c. Generally, under current law, joint owners of property have an equal interest in the whole property for the duration of the tenancy, irrespective of unequal contributions at its creation. [See s. 700.17 (2), Stats.] Section DWD 43.08 (1) turns this maxim on its head when it requires the department and child support agencies, when seizing property subject to a child support lien, to presume that each owner of jointly owned property, has an equal pro rata share of the property. It can be argued that the Legislature was aware of the current state of the law (and s. 700.17 (2), Stats.) when it enacted 1997 Wisconsin Act 191, which allows for the seizure of property to satisfy a child support lien, and upon which the rule is based. In that Act, the

Legislature provided that joint owners of property could request a hearing to prove their contributions to the jointly held property when the department or child support agency took actions to seize the property to satisfy a child support debt. Given the existence of s. 700.17 (2), Stats., and the procedures in Act 191 to allow joint owners to protect their interests, one might argue that the Legislature intended that the department and child support agencies be able to seize the entire property of a child support obligor who is a joint owner of property, with the exception that other joint owners could take the initiative to protect their interests in the property. This would prevent a child support obligor from diluting his or her assets by simply titling all of his or her property jointly with a number of friends. Accordingly, s. DWD 43.08 (1) is arguably contrary to the Legislature's intent, which contemplated broader authority for the department and child support agencies, but balanced with a joint tenant's due process rights. In light of this comment, the provisions of sub. (1) should be reviewed.

d. Section 49.853 (2), Stats., requires the department to promulgate rules that provide for reimbursement of financial institutions for participating in the financial records matching program, in an amount not to exceed their actual costs of participation. Section DWD 43.16 (3) provides for reimbursement only for those institutions participating in a fully automated financial record matching program. The statute appears to require reimbursement of all financial institutions participating in the program. Under what authority are nonautomated financial institutions not reimbursed? Also, what is the procedure to ensure that the \$100 per quarter does not exceed the actual costs of participation, as required by the statute?

2. Form, Style and Placement in Administrative Code

a. SECTIONS 1 and 2 of the rule should be reversed so that the affected rules are in alphabetical order.

b. In s. DWD 43.03 (2) (intro.), the phrase "does any of the following" should be inserted before the colon.

c. In s. DWD 43.03 (3), pars. (a) through (f) should be physically set off from each other as paragraphs. In addition, each paragraph should end with a period rather than a semicolon and the word "and" before par. (f) should be deleted. The first letter of each paragraph should be capitalized.

d. In s. DWD 43.03 (13), (18) and (19), the bracketed references to former sections of the Administrative Code are unnecessary and should be deleted.

e. Generally, titles to subunits of rules are not part of the substantive content of a rule. Titles should not be relied on to impart any legal meaning to the substantive provisions of a rule. Accordingly, all of the paragraphs in s. DWD 43.04 (3) should be revised to make it clear in the substantive provisions what each paragraph is referring to. For example, par. (a) could be rewritten as follows: "(a) License suspension and denial. For a license suspension and denial under s. _____, Stats, to obtain and use" This comment applies also to sub. (5).

f. In s. DWD 43.06 (4), either both pars. (a) and (b) should have titles, or neither should have a title. [See s. 1.05 (1), Manual.]

g. In s. DWD 43.06 (6) (a) (intro.), the phrase “do all of the following,” or a similar phrase, should be inserted before the colon. In the alternative, par. (a) (intro.) and subs. 1. and 2. could be combined into a single sentence.

h. In s. DWD 43.09, the word “said” should be replaced by the word “the.” [See s. 1.01 (9) (c), Manual.]

i. In ss. DWD 43.07 and 43.11 (8), “shall” should replace “must.”

j. In s. DWD 43.11 (5) (b) to (d), “may not” should replace “shall not.”

k. The numbering of ch. DWD 43 skips from s. DWD 43.11 to s. DWD 43.16. Was this intentional?

4. Adequacy of References to Related Statutes, Rules and Forms

a. A reference to s. 49.854 (2), Stats., should be included in the definition of “lien” in s. DWD 43.03 (7) since that is the law under which the lien arises.

b. In s. DWD 43.06 (6) (b), the term “par.” should be inserted before the term “(a).”

c. The reference to s. 767.25 (6), Stats., in s. DWD 43.06 (6) (c) seems to be incomplete. It would appear that, at a minimum, the provision should also contain a cross-reference to s. 767.51 (5p), Stats. Also, is s. 46.10 (14) (f), Stats., applicable as well?

d. The reference to s. 49.853 (3) (ag), Stats., in s. DWD 43.07 (1), should, it appears, be a reference to s. 49.854 (3) (ag), Stats.

e. Section DWD 43.10 (1) to (5) should all contain cross-references to the statutory actions they make reference to. For example, sub. (1) could be rewritten substantially as follows: “A child support agency may initiate license suspension under s. _____, Stats., if”

f. The references in s. DWD 43.11 (2) to s. 49.854 (5) (b), Stats, should instead be a reference to s. 49.854 (5) (d), Stats.

g. Section DWD 43.16 (1) (e) refers to a “standard format” prescribed by the department. Where is this format prescribed? In another rule? In the agreement? The rule should be clarified. Also, what are the “federal specifications for automated financial record matching”? Can a federal law or regulation be cited?

h. Section DWD 43.16 (2) should contain a statutory cross-reference to the financial record matching program under s. 49.853, Stats.

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

a. In s. DWD 43.03 (3) (intro.), “Department” should not be capitalized.

b. In s. DWD 43.03 (4), the phrase "or a plan set by the court" is not a helpful clarification of the meaning of the term "plan." Perhaps the word "plan" in the above phrase could be replaced by the term "order."

c. In s. DWD 43.03 (5), is interest on arrears included in "arrearage debt"? In addition, in sub. (5) and numerous other places throughout the rule, the phrase "court case" is used. Since it appears that "court case" refers to a special type of court case, i.e., one involving a child or family support related obligation, the rule should contain a definition of the term "court case."

d. In s. DWD 43.03 (8), "Department of Workforce Development" should not be capitalized.

e. In s. DWD 43.03 (9), the phrase "of property" should be inserted after the term "value."

f. In s. DWD 43.03 (10), the word "equals" should be changed to "means." In addition, the phrase "of the payer" should be inserted after the word "income" in the first sentence. Also, all of the material after the first sentence is substantive material and should not be in a definition but should be placed in a separate substantive provision. [See s. 1.01 (7) (b), Manual.] When the material in the second sentence is moved to a separate substantive provision, effort should be made to define or otherwise better identify the term "reconciliation" which, in the context of the rule, appears to be a term of art in the child support context.

g. In s. DWD 43.03 (15), (16) and (22), the word "is" after the defined terms should be replaced with "means." Similarly, in sub. (17), the phrase "is defined as" should be changed to "means."

h. In the second sentence of s. DWD 43.04 (2), how does an address become "verified" in order to avoid contacting the postmaster? What is to be included in the "contact" with the postmaster? Finally, the last sentence refers to "notice to the employer" being returned. It appears that the phrase should be "notice to the payer mailed to the payer's employer" or a similar phrase that conveys the idea that the notice is still being mailed to the payer, as required by the statutes.

i. The Note to s. DWD 43.04 (2) indicates that s. 767.263 (2), Stats., requires certain information to be provided to child support agencies. However, prior to October 1, 1999, or the date stated in the notice in the Administrative Register, the information must be provided to the clerk of court. The Note should provide a complete and accurate portrayal of the statutes.

j. In s. DWD 43.04 (4), the provision should be modified to make it clear that the notice is to be sent to the payer. In addition, what are the "local locate resources and interfaces" that the department or child support agencies are supposed to use?

k. Section DWD 43.05 provides for the administrative imposition of a forfeiture. However, the rule does not specify the hearing or appeal procedure that would appear to be necessary to satisfy due process requirements. The rule should identify these procedures. If they are set forth in other rules, those rules should be cross-referenced.

l. In the second sentence of s. DWD 43.05 (2), the rule should be clarified to provide that the insulation from liability from the administrative forfeiture applies also to a subpoena respondent who fails to comply with an administrative subpoena.

m. The provisions of s. DWD 43.06 (4) (b) 1., relating to calculating the monthly amount due, seem to conflict with the definition of "monthly amount due" in s. DWD 43.03 (15) in that the definition of "monthly amount due" specifically includes the sum of "all" court-ordered provisions for periodic payments. In contrast, s. DWD 43.06 (4) (b) 1. provides that percentage-expressed orders are excluded from the calculation. This apparent contradiction should be corrected or better clarified in the rule.

n. The clarity of the rule might be enhanced if a note were added explaining when it is "appropriate" to make the credits identified in s. DWD 43.06 (6) (d).

o. In s. DWD 43.07 (1), the parenthetical information should be deleted. If a "financial records and court order review" is to be called a "financial record review," then that fact should be made clear in a definition. In addition, sub. (1) should be revised to make it clear that the request for a review must be made in writing, as provided in s. 49.854 (3) (ag), Stats.

p. In s. DWD 43.08, "bound by" should replace "bound be."

q. In s. DWD 43.08 (2) (b), only funds in excess of \$500 "across all of a payer's accounts" may be seized. What does this mean? Does this mean that \$500 must be left to the payer in each account or that the payer must be left with a minimum of \$500 regardless of the number of accounts he or she maintains? The meaning of this provision should be clarified.

r. Section DWD 43.08 (3) provides that personal property cannot be seized unless the "lien exceeds \$500." However, this appears redundant in light of the directive in s. DWD 43.06 (4) (a) that the lien-eligible amount must be at least \$500. Perhaps the rule, in s. DWD 43.08 (3), intends to set the minimum value of the personal property that can be seized at \$500. This suggestion would appear to satisfy the department's duty in s. 49.854 (17), Stats., to prohibit a child support agency from seizing property under a certain value established by the department by rule. The rule should be clarified. Additionally, if the minimum value of the property to be seized is \$500, is that a cumulative total or a per item total? This should be clarified as well.

s. In s. DWD 43.08 (4), the parentheses should be replaced by commas. [See s. 1.02 (6), Manual.] Also, how is the "payer's proportionate share" of the property's equity to be determined? Finally, see comment 1. c. above.

t. Although the first sentence of s. DWD 43.08 (6) alludes to a property seizure, the sentence should be modified so that it is clear that the request for a hearing is tied to a property seizure. For example, the phrase "and is the subject of a seizure by the department or a child support agency under s. _____, Stats.," or a similar phrase, could be added after the phrase "is jointly held."

u. In s. DWD 43.09, the term "protective order" should be defined or better identified.

v. When the department takes administrative enforcement actions, is it not bound by the thresholds in s. DWD 43.10? As drafted, that section applies only to child support agencies.

Since other provisions of the rule apply to the department as well as child support agencies, the applicability of the thresholds to the department should be clarified.

w. In s. DWD 43.10 (2), the word "an" should be inserted after the word "initiate."

x. In s. DWD 43.10 (5), the word "suspension" after the word "denial" should be deleted because it appears later in the sentence.

y. In s. DWD 43.11 (2), the phrase "court hearing on mistake of fact" is awkward and somewhat misleading. Act 191 provides that the payer may request a hearing and has the opportunity to establish that he or she does not owe the amount claimed to be owed. If the court finds that the payer does not owe the amount, or that the lien is not proper, because of a mistake of fact, the court may order an appropriate remedy. Perhaps, instead of trying to describe the hearing as a "mistake of fact" hearing, the rule could simply provide that the notice must inform the payer that he or she may request a hearing under the relevant statutory provisions.

Also, throughout s. DWD 43.11, the string of statutory references should be preceded by "s." rather than "ss." because of the use of the conjunction "or." In addition, "49.854" does not need to be repeated before each subsection number. For example, in s. DWD 43.11 (2) (a), the statutory references should be "s. 49.854 (5) (b), (6) (a) or (7) (a) or 49.857 (3) (a) or (am), Stats."

z. In s. DWD 43.11 (2) (c), the word "will" should be changed to "shall." Also, the clarity of the rule would be enhanced if instead of, or in addition to, the statutory reference to s. 767.30 (1), Stats., the phrase "in the amounts and at the times that it considers expedient" were added after the word "payments" in the last sentence.

aa. In s. DWD 43.11 (3), the phrase "review of mistake of fact" is difficult to understand. Should the phrase be "review of an alleged mistake of fact"?

ab. In s. DWD 43.11 (6) (b), the word "will" should be "shall."

ac. In s. DWD 43.11 (7), the terms "(2) (c)" and "(3)" should be preceded by the term "sub."

ad. Section DWD 43.11 (10) (a) 1. prohibits the periodic payment plan from decreasing the payer's gross income below a certain threshold. However, by its nature, gross income is what a payer has before support and other items like taxes are taken out. Thus, a negotiated payment plan will never reduce the payer's gross income. A payer's gross income will decrease if he or she is paid less. It appears that the intent of the rule is to provide that the negotiated payment plan, when subtracted from the payer's gross income, may not leave the payer below a certain threshold. If this is the case, the rule should be modified. In any event, it should be clarified. This comment applies also to par. (b).

ae. In s. DWD 43.11 (10) (b), the phrase "is not prohibited from negotiating" should be simplified to "may negotiate."

af. In s. DWD 43.11 (11), is the notice to the payer to be given in writing? The method of notification should be clarified.

ag. In s. DWD 43.11 (12) (intro.), the phrase "any of" should be inserted before the phrase "the following." Also, ", but is not limited to," is not necessary.

ah. Section DWD 43.11 (13) refers to a county initiating administrative enforcement actions. However, by definition, an administrative enforcement action is initiated by the department or child support agencies. Thus, it appears that the references to counties in sub. (13) should be a reference to child support agencies. Also, in par. (b), the phrase "property of" should be inserted after the word "against." Finally, the phrase "is not precluded from receiving" should be simplified to "may receive."

ai. In s. DWD 43.16 (1) (a) (intro.), what is an "automated financial institution"? The term should be defined. Also, "all of" should be inserted after "indicate."

State of Wisconsin
Department of Workforce Development

DWD 43

CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

The Wisconsin Department of Workforce Development proposes an order to renumber chs. HSS 80 to 82 as DWD 40 to 42, and to create ch. DWD 43, relating to child support administrative enforcement.

Analysis

Authority for rule. Secs. 49.22 (2m)(d), 49.853 (1)(dm) and (2), 49.854 (17), 49.858 (2), and 767.027 (2), Stats.

Statutes interpreted. Secs. 49.22, 49.853, 49.854, 49.858 and 767.027, Stats.

Summary. In compliance with the child support enforcement requirements in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), 1997 Wisconsin Act 191 became effective May 1, 1998. The Act expands the authority of the Department of Workforce Development and county child support agencies to establish and acknowledge paternity, and to enforce child support orders. The Act requires the promulgation of administrative rules before the Department may begin implementing several provisions in the Act. These are the proposed rules for the implementation of 1997 Wisconsin Act 191.

According to the Act, past-due support constitutes a lien against all of a child support payer's real and personal property. Child support liens will be placed on the child support lien docket and electronically delivered to the county registers of deeds. The rule describes the threshold that arrears in a court case must equal or exceed before a payer is placed on the child support lien docket, the calculation of the lien amount, the filing date of the lien, and lien payments.

To enforce a lien, the Department or child support agency may use administrative enforcement actions authorized in Act 191. These administrative remedies include suspending and denying professional, occupational, recreational, and driver licenses; seizing real and personal property, including financial accounts; and intercepting judgments, settlements, and lump-sum pension payments. The Department or child support agency may initiate these administrative remedies if arrears owed by a payer in a court case equal or exceed a threshold. For each administrative enforcement action, the rule defines the threshold that arrears in a court case must equal or exceed before the Department or child support agency may initiate that action. Generally, that

threshold for license suspension and account seizure is 300% of the monthly amount due, and the threshold for real and personal property seizure is 600% of the monthly amount due.

In addition to considering the arrears in a court case, when considering property seizure as an administrative remedy, the Department or child support agency must determine whether property identified for seizure has sufficient value before initiating any seizure process. The rule specifies the factors that must be considered when determining the value of the property, and the amount that the property value must exceed before seizure may be initiated. In general, the funds in a financial account must exceed \$500, the payer's equity in personal property must exceed \$500, and the payer's equity in real property must exceed 20 percent of the payer's proportionate share of the property's fair market value, before the Department or child support agency may seize the property.

Child support payers have an opportunity to negotiate alternative payment plans to suspend the execution of administrative enforcement actions. The rule outlines the process for negotiating payment plans, the factors that must be considered when establishing payment plans, and the possible terms and conditions of payment plans. The rule also defines noncompliance with a payment plan, and provides payers with an opportunity to renegotiate payment plans.

Notice of lien and administrative enforcement actions may be provided by regular mail to the last-known address of a child support payer. According to Act 191, notice requirements are met if notice of lien or administrative enforcement action has been sent to the last-known address provided by the payer, and a diligent effort has been made to ascertain the location of the payer. The rule outlines the process the department and child support agency will use to verify and obtain an address from a postmaster, and the diligent efforts that will be taken to obtain the current address of a payer.

The rule describes the circumstances in which a payee will be notified that an administrative enforcement action has been initiated against the payer. In general, these are circumstances in which the Department or the child support agency is aware that the payer is subject to a protective order or there is otherwise reason to believe that a payee or child may be harmed physically or emotionally by the payer.

The Department and the child support agencies have the authority to request from any person information that they determine necessary for administering the child support program. Act 191 gives the Department and child support agencies additional authority to issue administrative subpoenas to obtain financial information and other documentation necessary for child support administration. Under the Act, the Department or child support agency may require individuals or entities to pay an administrative forfeiture for failure to comply with an administrative subpoena or a request for information. The rule specifies the administrative forfeiture that may be imposed for failure to comply with an administrative subpoena or a request for information, and when the administrative forfeiture may be imposed. Generally, an administrative forfeiture for a failure to comply will not exceed \$25, but if the failure to comply is the result of intentional conduct by the subpoena respondent to hide information, falsify information, or provide incomplete information, the administrative forfeiture will equal \$500.

Act 191 requires the Department and financial institutions operating in the state to enter into agreements to perform quarterly record matching, using automation to the extent feasible, to determine whether a delinquent child support payer has an ownership interest in a financial account. The rule outlines the procedures DWD will use to enter into agreements with financial institutions and requires DWD to reimburse financial institutions for participating in the data match program. In general, financial institutions will be reimbursed \$100 per quarter for performing an automated data match with the department.

The Department's goal is to begin implementation of these provisions in 1999.

SECTION 1. Chs. HSS 80 to 82 are renumbered chs. DWD 40 to 42. *— certain data matching provisions*

SECTION 2. Chapter DWD 43 is created to read: *← reverse actions*

DWD 43 CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

DWD 43.01 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 767.027 (2), Stats., for the purpose of administering the child support program under s. 49.22, Stats.

DWD 43.02 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 operating within 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.

DWD 43.03 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.

*data 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.; and (f) the denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses for failure to pay support in accordance with s. 49.858, Stats.

format

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

include interest

(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 court case.

include interest

need list of this

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

(7) "Child support lien" or "lien" means an administrative lien that arises by operation of law against all of a payer's real and personal property when he or she owes an arrearage debt. *49.054(2) - Stat cross ref that exceeds the other stat*

(8) "Department" means the Wisconsin Department of Workforce Development. *not property*

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

(10) "Expected monthly amount due," for a court-ordered provision expressed only as a percentage of income, ^{mean} equals the identified monthly income multiplied by the percentage ordered for the provision. To determine a payer's identified monthly income, a 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, income information reported by the payer's employer under s. 767.265(3h), Stats., information provided verbally or in writing to the child support agency by the payer, or tax returns or records. *what*

(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) "Gross income" has the meaning given in s. DWD 40.02 (13) [formerly HSS 80.02

(13)].

(14) "Lien-eligible amount" means the amount in a court case that is eligible to be placed on the lien docket.

(15) "Monthly amount due" ^{means} ~~is~~ the sum of all court-ordered provisions for periodic payments due in one month in a court case including arrearage debts.

(16) "Monthly charge" ^{means} ~~is~~ the sum of court-ordered provisions for monthly payments on child support, family support, maintenance, lying-in costs, past support, and other medical support in a court case. The monthly charge does not include court-ordered provisions for periodic payments on arrearage debts.

(17) "Ownership interest" ^{means} ~~is defined as~~ any personal financial interest.

NOTE: This definition applies to the financial record matching program under sec. 49.853(3) and (4), Stats.

(18) "Payee" has the meaning given in s. DWD 40.02 (22) [formerly HSS 80.02 (22)].

(19) "Payer" has the meaning given in s. DWD 40.02 (23) [formerly HSS 80.02 (23)].

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

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

(22) "Threshold" ^{is} ~~is~~ 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 in a court case.

DWD 43.04 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), 49.854 (5)(d), 49.854 (6)(a), (d), and (e), ^{and} 49.854 (7)(a), (d), and (e), 49.856 (3), and 49.857 (3)(a), (am), and (b), 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. 767.263 (2), Stats. If the last-known mailing address for a payer is unverified, ^{by whom?} 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 provide a new verified address, the department or child support agency shall send notice to the current employer mailing address provided by the payer under s. 767.263 (2), Stats. If notice to the 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 sec. 767.263 (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 means the following for each administrative enforcement action:

(a) License suspension and denial. To obtain and use the payer's address of record at a state licensing agency to provide notice under ss. 49.857 (3)(a), (am), and (b), Stats.

(b) Account seizure. To obtain and use the payer's address of record at a financial institution to provide notice under s. 49.854 (5) (d), Stats.

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(c) Personal property seizure. To obtain and use the payer's 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 personal property subject to seizure is titled.

(d) Real property seizure. To obtain and use the payer's 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.

(e) Pension intercept. To obtain and use the payer's address of record at the entity administering a pension plan to provide notice under s. 49.852 (2), Stats.

(f) Judgment and settlement intercept. To obtain and use the payer's address of record with the judgment debtor to provide notice under s. 49.856 (3), Stats.

(4) LOCATE RESOURCES. When the department or a child support agency sends a notice and the notice is returned, the department or a child support agency shall use all appropriate automated federal, state, and local locate resources and interfaces to ascertain a payer's current mailing address.

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(5) NOTICE TO JOINT-PROPERTY HOLDERS. The department or child support agency shall provide notice related to the seizure of property to any joint-property holder as follows:

(a) Account seizure. Notice under s. 49.854 (5)(d), Stats., shall be sent to the address of record at the financial institution.

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(b) Personal property seizure. Notice under s. 49.854 (6)(a), Stats., shall be sent to the address of record at a state agency that titles personal property if the personal property subject to seizure is titled.

(c) Real property seizure. Notice under ss. 49.854 (7)(a) and (e), Stats., shall be sent to the address of record on the tax bill for the property subject to seizure.

NOTE: Pursuant to s. 49.854 (5)(d), (6)(a), and (7)(a) and (e), Stats., the department or child support agency is required to provide a notice to any person with an ownership interest in a property subject to seizure. The joint-property holder has 20 business days after the date of the notice to request a hearing to protect the portion of the property that is attributable to his or her net contributions to the property.

DWD 43.05 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 not to exceed \$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.

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(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 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.

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DWD 43.06 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 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 court cases equals or exceeds the lien threshold. If an individual is a payer in more than one court case, each court case will be evaluated separately to determine whether the lien threshold has been met, and to determine the lien amount.

(3) **DETERMINING THE LIEN-ELIGIBLE AMOUNT.** (a) The lien-eligible amount equals the difference between the monthly charge and the arrearage debt in a court case.

(b) A court-ordered provision expressed only as a percentage of income shall not be included in the calculation of the monthly charge.

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

(b) Determining the monthly amount due. 1. A court-ordered provision expressed only as a percentage of income shall not be included in the calculation of the monthly amount due.

2. For a court-ordered provision requiring only a fixed sum, the monthly amount due shall be calculated using the fixed sum amount.

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3. For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed sum, the monthly amount due shall be the calculated using the fixed sum amount.

(5) LIEN AMOUNT The lien amount on the lien docket shall equal the sum of lien-eligible amounts from the court 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. 767.30, Stats.

(6) PAYMENT OF LIEN. (a) Any payment toward the lien amount shall:

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- 1. Indicate that the payment is a lien payment.
- 2. Specify the court case or cases in which the lien arose.

(b) A payment to satisfy a lien shall meet the conditions specified in (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. 767.25(6), Stats.

§ 767.25(6) (other cases released)

(d) Payments toward a court-ordered lien under s. 767.30, 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. 767.30, Stats., if appropriate.

} other cases released

(7) FILING DATE. The filing date on the lien docket is the date that a lien amount was first recorded on the docket for a payer. The filing date does not change if the lien amount is adjusted up or down within five years after the filing date.

(8) REFILING A LIEN. (a) At the end of the five year effective period of a lien,

the department or a child support agency may refile the lien if the lien-eligible amount equals or exceeds the lien threshold. When a lien is refiled, the date on which the lien is refiled shall become the date of filing on the lien docket, and a new five-year period shall commence.

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

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

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

DWD 43.07 Financial record review. (1) In accordance with s. 49.854(3)(ag),

Stats., a payer may request a financial records and court order review (financial record review) within 10 business days of the date of the notice of lien. The financial record review will determine the correctness of the financial records in a court case and will 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 sec. 49.854(3)(ag), Stats.

(2) Upon receiving a request for a financial record review, the child support agency shall provide the relevant financial records and information explaining how to interpret the records to the payer.

NOTE: Under sec. 49.854(3)(ag), Stats., the department or child support agency may not charge the payer for providing the payment records or for performing the financial record review.

(3) Within 20 business days after receiving the relevant financial records, the payer shall provide a statement of any alleged error to the child support agency. If the payer provides a

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statement of alleged error within the time frame, the child support agency shall provide a written determination as to whether the lien against the payer is in the correct amount. The child support agency must provide the written determination within 60 days after the date of the payer's request for a financial record review.

DWD 43.08 Seizure of property. (1) DEPARTMENT'S INITIAL ASSUMPTION AS TO JOINTLY OWNED PROPERTY. When the department or a child support agency acts under s. 49.854, Stats., ^{the levy part} the department or the child support agency shall initially assume that a payer's ownership interest in property that is jointly owned with one or more other persons is an equal pro rata share based on the number of joint owners. The department or child support agency shall proceed on this basis unless a person requests a hearing under s. 49.854(7m), Stats., in which case the department or child support agency shall be bound by the decision of the family court commissioner or the reviewing court.

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(2) SEIZURE OF FINANCIAL ACCOUNTS. (a) Minimum for seizure. The department or a child support agency may not seize an account under s. 49.854 (5), 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 at the time of seizure.

(b) Amount to be seized. The department or a child support agency may only seize funds in excess of \$500 [?] across all of a payer's accounts. If accounts are jointly-held, and the joint-account holder has requested a hearing under s. 49.854 (7m), Stats., the department or child support agency may not seize any amount that the court determines is attributable to the contributions of the joint-account holder.

(3) SEIZURE OF PERSONAL PROPERTY OTHER THAN FINANCIAL

ACCOUNTS. The department or a child support agency may not seize personal property under s. 49.854(6), Stats., unless the lien exceeds \$500 - *49.854(6) lien exceeds \$500*

(4) VALUATION OF JOINTLY-HELD REAL AND PERSONAL PROPERTY. For the purpose of determining whether jointly-held property (other than financial accounts) that is subject to lien has sufficient value to be seized, the department or child support agency shall assume that the payer's equity in the property is the payer's proportionate share of the property's equity. *49.854(6)*

(5) SEIZURE OF REAL PROPERTY. 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:

- (a) The payer's equity in the property, minus expected levy fees, exceeds 10 percent of the payer's proportionate share of the property's fair market value.
- (b) The lien exceeds \$5,000.

(6) JOINTLY-HELD PROPERTY AND COURT HEARINGS. If a financial account, personal property, or real property is jointly held, a person other than the payer 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, and may make the request in any county that initiated property seizure. If the joint-property holder does not request a hearing, the department or child support agency shall seize the payer's proportionate share of the property. *49.854(7m)*

DWD 43.09 Notice to the payee of enforcement proceedings. 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 court case, or the child support agency has reason to believe that a payee or child in a payer's court cases may be harmed physically or emotionally by the payer, the department or the child support agency shall provide written notice to said payee when an administrative enforcement action has been initiated against the payer. The notice to the payee must be provided within 5 business days of the date of the notice sent to the payer in accordance with s. 49.852(2), 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), 49.856(2), or 49.857(3)(a), Stats.

DWD 43.10 Thresholds for administrative enforcement actions. (1) LICENSE SUSPENSION. A child support agency may initiate license suspension if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 300 percent of the monthly amount due in the court case. X

(2) ACCOUNT SEIZURE. A child support agency may initiate ^{an} account seizure if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 300 percent of the monthly amount due in the court case or \$1,000, whichever is greater.

(3) REAL AND PERSONAL PROPERTY SEIZURE. A child support agency may initiate real or personal property seizure if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 600 percent of the monthly amount due in the court case.

(4) INTERCEPT OF LUMP-SUM PENSION PAYMENTS, JUDGMENTS, AND SETTLEMENTS. A child support agency may initiate the intercept of lump-sum pension

payments, judgments, and settlements when a payer has been placed on the child support lien docket.

(5) DETERMINING THE MONTHLY AMOUNT DUE. (a) 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.

(b) For a court-ordered provision requiring only a fixed sum, the monthly amount due shall be calculated using the fixed sum amount.

(c) For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed sum, the monthly amount due shall be the calculated using the fixed sum amount.

DWD 43.11 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, suspension, 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 ss. 49.854(5)(b), 49.854(6)(a), 49.854(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 on mistake of fact and on the reasonableness of the plan.

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

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(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 ss. 49.854(5)(b), 49.854(6)(a), 49.854(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 ss. 49.854(5)(b), 49.854(6)(a), 49.854(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 ss. 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), or 49.857(3)(a) or (am), Stats., a hearing will be conducted. If the court determines that the plan is not reasonable, it may establish a plan by setting payments pursuant to s. 767.30 (1), Stats.

(3) NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER COURT DETERMINATION ON MISTAKE OF FACT. If a court determines that a payer owes arrears as a result of a review of mistake of fact under ss. 49.854(5)(f), 49.854(6)(c), 49.854(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 shall not be certified to state licensing agencies for denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses. *— court order to stay*

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

(d) Real property seizure. Real property shall 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 established a plan pursuant to s. 767.30 (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 will be suspended. *shall*

(7) PROCEEDING WITH ADMINISTRATIVE ENFORCEMENT ACTIONS. If the court determines under (2)(c) that a plan is not reasonable and does not set a plan, or the payer *sub*

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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 must 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. Any periodic payment established under the plan, when combined with any other court-ordered payment of support, may not decrease the payer's gross income to an amount below 100% of the poverty line established under 42 U.S.C. 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), 767.25, or 767.51, Stats.

(b) In a case in which it is not possible to establish a periodic payment plan without reducing a payer's gross income to below the poverty line, the child support agency ~~is not~~ ^{may} ~~prohibited from~~ negotiating a lump-sum payment with the payer, and 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. 767.265 (1).

(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 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, but is not limited to, the following:

- (a) A change in the payer's income or assets, including the sale or purchase of real or personal property.
- (b) A change in the payer's earning capacity.
- (c) Any other factor that the child support agency determines is relevant.

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

(b) If a county which has a lien against a payer negotiates an alternative payment plan with the payer, the county is not precluded from receiving 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 counties.

DWD 43.16 Agreements with financial institutions. (1) AUTOMATED

FINANCIAL INSTITUTIONS. (a) The department shall enter into agreements with

automated financial institutions to operate an automated financial record matching program. In the agreement, the automated financial institution 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.

(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.

(e) The data an institution provides to the department shall be in a standard format prescribed by the department, which the department shall design to provide identifying and account information meeting federal specifications for automated financial record matching.

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(2) NON-AUTOMATED FINANCIAL INSTITUTIONS. A financial institution that does not maintain account information in an automated format and is unable to provide an automated listing shall provide a written list of account holder names, with social security numbers, to the department. Upon receipt of ^{the} such a written list, the department may conduct the record match and may send a request for account information that is based on the records match to the financial institution.

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(3) REIMBURSEMENT FOR PARTICIPATION IN THE AUTOMATED FINANCIAL RECORD MATCHING PROGRAM. In accordance with s. 49.853(2), Stats., the department shall reimburse a financial institution \$100 per quarter for participation in a fully automated financial record matching program which meets the requirements of s. 49.853(3) or (4), Stats., and the requirements specified by the department under sub. (1)(e).

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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.

(End)

SEP 25 1998

ORDER OF ADOPTION

Pursuant to authority vested in the Department of Workforce Development by section(s)

49.22 (2m)(d), 49.853 (1)(dm), 49.854 (17), 49.858 (2), and 767.027 (2).

Stats., the Department of Workforce Development creates; amends;

repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter(s):

DWD 43
(Number)

Child Support Administrative Enforcement
(Title)

The attached rules shall take effect on October 1, 1998, pursuant to section 227.24, Stats.

Adopted at Madison, Wisconsin this

date: September 25, 1998.

DEPARTMENT OF WORKFORCE DEVELOPMENT

Judith Stewart
Secretary

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF)
WORKFORCE DEVELOPMENT)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Stewart, Secretary of the Department of Workforce Development, and custodian of the official records of said department, do hereby certify that the annexed rule relating to the child support administrative enforcement was duly approved and adopted by this department on September 25th, 1998.

I further certify that said copy has been compared by me with the original on file in the department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1 p.m. in the city of Madison, this 25th day of September, 1998.



Secretary

Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY
201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-7552
Fax: (608) 266-1784
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Gary Poulson
Assistant Revisor of Statutes
Suite 800
131 W. Wilson St.
Madison, Wisconsin 53703-3233

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: Emergency Rule
RULE NO.: DWD 43, Wis. Adm. Code
RELATING TO: Child Support Administrative Enforcement

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Linda Stewart'.

Linda Stewart
Secretary



Original Updated
 Corrected Supplemental

LRB or Bill No. -- Adm. Rule No.
DWD 43 -

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

Subject
CHILD SUPPORT - GENERAL

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Government Units Affected

- Towns Villages Cities
- Counties Others
- School Districts WTCS Districts

Fund Sources Affected:

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations:

Assumptions Used in Arriving at Fiscal Estimate

This rule implements various provisions of 1997 Wisconsin Act 191, related to the child support enforcement program including forfeitures for failing to comply with a subpoena, liens, and notice and service of process requirements.

Counties may realize cost savings by switching to mailing of notices of administrative enforcement instead of using service of process. The amount of savings cannot be determined at this time. Although the \$25 forfeiture for noncompliance with administrative subpoenas and requests for information may be imposed in a few cases, the amount of revenue generated is expected to be minimal. Local postage costs for liens are expected to be offset by the new enforcement tool. Agency workload may increase due to requests for financial records and court order review, however, these costs can be absorbed.

Long-Range Fiscal Implications

Agency/Prepared by:(Name & Phone No.)

DWD / Nikolay, Bob (266-9475)

Authorized Signature/Telephone No.

Frank J. Bernstein 266-9427

Date

9/25/98

Fiscal Estimate Worksheet

Detailed Estimate of Annual Fiscal Effect
DOA-2047(R10/94)

Original Updated
 Corrected Supplemental

LRB or Bill No./Adm Rule No. DWD 43 /	Amendment No.
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Subject
CHILD SUPPORT - GENERAL

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
Postage cost of \$69,000 for one-time mailing of approximately 152,500 pieces.

II. Annualize Costs:	Annualized Fiscal Impact on Stated funds from:	
	Increased Costs	Decreased Costs
A. State Costs (by Category)		
State Operations - Salaries & Fringes	\$0	- \$0
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs	\$0	- \$0
Local Assistance	\$0	- \$0
Aids to Individuals or Organizations	\$0	- \$0
TOTAL State Costs by Category	\$0	- \$0
B. State Costs (by Fund Source)	Increased Costs	Decreased Costs
GPR:	\$0	- \$0
FED:	\$0	- \$0
PRO/PRS:	\$0	- \$0
SEG/SEG-S:	\$0	- \$0
II. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes:	\$0	- \$0
GPR Earned:	\$0	- \$0
FED:	\$0	- \$0
PRO/PRS:	\$0	- \$0
SEG/SEG-S:	\$0	- \$0
TOTAL State Revenues:	\$0	- \$0

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs:	\$0	\$0
Net Change in Revenues:	\$0	\$0

Agency/Prepared by: (Name & Phone No.)

DWD / Nikolay, Bob (266-9475)

Authorized Signature/Telephone No.

Howard Bernstein 266-9427

Date

9/25/98

State of Wisconsin
Department of Workforce Development

EMERGENCY RULE

DWD 43

CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

The Wisconsin Department of Workforce Development proposes an order to renumber chs. HSS 80 to 82 as DWD 40 to 42, and to create ch. DWD 43, relating to child support administrative enforcement.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

As described in the analysis below, state and federal legislation has created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the permanent rulemaking process proceeds, DWD is adopting the provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

Analysis

Authority for rule. Secs. 49.22 (2m)(d), 49.853 (1)(dm), 49.854 (17), 49.858 (2), and 767.027 (2), Stats.

Statutes interpreted. Secs. 49.22, 49.853, 49.854, 49.858 and 767.027, Stats.

Summary. In compliance with the child support enforcement requirements in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), 1997 Wisconsin Act 191 became effective May 1, 1998. The Act expands the authority of the Department of Workforce Development and county child support agencies to establish and acknowledge paternity, and to enforce child support orders. The Act requires the promulgation of administrative rules before the Department may begin implementing several provisions in the Act. These are the proposed rules for the implementation of 1997 Wisconsin Act 191.

According to the Act, past-due support constitutes a lien against all of a child support payer's real and personal property. Child support liens will be placed on the child support lien docket and electronically delivered to the county registers of deeds. The rule describes the threshold that arrears in a court case must equal or exceed before a payer is placed on the child support lien docket, the calculation of the lien amount, the filing date of the lien, and lien payments.

To enforce a lien, the Department or child support agency may use administrative enforcement actions authorized in Act 191. These administrative remedies include suspending and denying professional, occupational, recreational, and driver licenses; seizing real and personal property, including financial accounts; and intercepting judgments, settlements, and lump-sum pension payments. The Department or child support agency may initiate these administrative remedies if arrears owed by a payer in a court case equal or exceed a threshold. For each administrative enforcement action, the rule defines the threshold that arrears in a court case must equal or exceed before the Department or child support agency may initiate that action. Generally, that threshold for license suspension and account seizure is 300% of the monthly amount due, and the threshold for real and personal property seizure is 600% of the monthly amount due.

In addition to considering the arrears in a court case, when considering property seizure as an administrative remedy, the Department or child support agency must determine whether property identified for seizure has sufficient value before initiating any seizure process. The rule specifies the factors that must be considered when determining the value of the property, and the amount that the property value must exceed before seizure may be initiated. In general, the funds in a financial account must exceed \$500, the payer's equity in personal property must exceed \$100, and the payer's equity in real property must exceed 10 percent of the property's fair market value, before the Department or child support agency may seize the property.

Child support payers have an opportunity to negotiate alternative payment plans to suspend the execution of administrative enforcement actions. The rule outlines the process for negotiating payment plans, the factors that must be considered when establishing payment plans, and the possible terms and conditions of payment plans. The rule also defines noncompliance with a payment plan, and provides payers with an opportunity to renegotiate payment plans.

Notice of lien and administrative enforcement actions may be provided by regular mail to the last-known address of a child support payer. According to Act 191, notice requirements are met if notice of lien or administrative enforcement action has been sent to the last-known address provided by the payer, and a diligent effort has been made to ascertain the location of the payer. The rule outlines the process the department and child support agency will use to verify and obtain an address from a postmaster, and the diligent efforts that will be taken to obtain the current address of a payer.

The rule describes the circumstances in which a payee will be notified that an administrative enforcement action has been initiated against the payer. In general, these are circumstances in which the Department or the child support agency is aware that the payer is subject to a

protective order or there is otherwise reason to believe that a payee or child may be harmed physically or emotionally by the payer.

The Department and the child support agencies have the authority to request from any person information that they determine necessary for administering the child support program. Act 191 gives the Department and child support agencies additional authority to issue administrative subpoenas to obtain financial information and other documentation necessary for child support administration. Under the Act, the Department or child support agency may require individuals or entities to pay an administrative forfeiture for failure to comply with an administrative subpoena or a request for information. The rule specifies the administrative forfeiture that may be imposed for failure to comply with an administrative subpoena or a request for information, and when the administrative forfeiture may be imposed. Generally, an administrative forfeiture for a failure to comply will not exceed \$25, but if the failure to comply is the result of intentional conduct by the subpoena respondent to hide information, falsify information, or provide incomplete information, the administrative forfeiture will equal \$500.

The Department's goal is to begin implementation of these provisions in 1999.

SECTION 1. Chs. HSS 80 to 82 are renumbered chs. DWD 40 to 42.

SECTION 2. Chapter DWD 43 is created to read:

DWD 43
CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

DWD 43.01 Authority and purpose. This chapter is promulgated under the authority of ss. 49.22 (2m)(d), 49.853 (1)(dm), 49.854 (17), 49.858 (2), and 767.027 (2), Stats., for the purpose of administering the child support program under s. 49.22, Stats.

DWD 43.02 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., 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.

DWD 43.03 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:
 - (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.; and (f) the denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses for failure to pay support in accordance with s. 49.858, Stats.
- (4) "Alternative payment plan" or "plan" means a negotiated agreement between a child support agency and a payer, or a plan 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 court case.

(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 against all of a payer's real and personal property when he or she owes an arrearage debt.

(8) "Department" means the Wisconsin Department of Workforce Development.

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

(10) "Expected monthly amount due," for a court-ordered provision expressed only as a percentage of income, equals the identified monthly income multiplied by the percentage ordered for the provision. To determine a payer's identified monthly income, a 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, income information reported by the payer's employer under s. 767.265(3h), Stats., information provided verbally or in writing to the child support agency by the payer, or tax returns or records.

(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) "Gross income" has the meaning given in s. DWD 40.02 (13) [formerly HSS 80.02 (13)].

(14) "Lien-eligible amount" means the amount in a court case that is eligible to be placed on the lien docket.

(15) "Monthly amount due" is the sum of all court-ordered provisions for periodic payments due in one month in a court case including arrearage debts.

(16) "Monthly charge" is the sum of court-ordered provisions for monthly payments on child support, family support, maintenance, lying-in costs, past support, and other medical support in a court case. The monthly charge does not include court-ordered provisions for periodic payments on arrearage debts.

(17) "Ownership interest" is defined as any personal financial interest.

NOTE: This definition applies to the financial record matching program under sec. 49.853(3) and (4), Stats.

(18) "Payee" has the meaning given in s. DWD 40.02 (22) [formerly HSS 80.02 (22)].

(19) "Payer" has the meaning given in s. DWD 40.02 (23) [formerly HSS 80.02 (23)].

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

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

(22) "Threshold" is 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 in a court case.

DWD 43.04 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), 49.854 (5)(d), 49.854 (6)(a), (d), and (e), 49.854 (7)(a), (d), and (e), 49.856 (3), and 49.857 (3)(a), (am), and (b), 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. 767.263 (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 provide a new verified address, the department or child support agency shall send notice to the current employer mailing address provided by the payer under s. 767.263 (2), Stats. If notice to the 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 sec. 767.263 (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 means the following for each administrative enforcement action:

(a) License suspension and denial. To obtain and use the payer's address of record at a state licensing agency to provide notice under ss. 49.857 (3)(a), (am), and (b), Stats.

(b) Account seizure. To obtain and use the payer's address of record at a financial institution to provide notice under s. 49.854 (5) (d), Stats.

(c) Personal property seizure. To obtain and use the payer's 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 personal property subject to seizure is titled.

(d) Real property seizure. To obtain and use the payer's 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.

(e) Pension intercept. To obtain and use the payer's address of record at the entity administering a pension plan to provide notice under s. 49.852 (2), Stats.

(f) Judgment and settlement intercept. To obtain and use the payer's address of record with the judgment debtor to provide notice under s. 49.856 (3), Stats.

(4) LOCATE RESOURCES. When the department or a child support agency sends a notice and the notice is returned, the department or a child support agency shall use all appropriate automated federal, state, and local locate resources and interfaces to ascertain a payer's current mailing address.

(5) NOTICE TO JOINT-PROPERTY HOLDERS. The department or child support agency shall provide notice related to the seizure of property to any joint-property holder as follows

(a) Account seizure. Notice under s. 49.854 (5)(d), Stats., shall be sent to the address of record at the financial institution.

(b) Personal property seizure. Notice under s. 49.854 (6)(a), Stats., shall be sent to the address of record at a state agency that titles personal property if the personal property subject to seizure is titled.

(c) Real property seizure. Notice under ss. 49.854 (7)(a) and (e), Stats., shall be sent to the address of record on the tax bill for the property subject to seizure.

NOTE: Pursuant to s. 49.854 (5)(d), (6)(a), and (7)(a) and (e), Stats., the department or child support agency is required to provide a notice to any person with an ownership interest in a property subject to seizure. The joint-property holder has 20 business days after the date of the notice to request a hearing to protect the portion of the property that is attributable to his or her net contributions to the property.

DWD 43.05 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 not to exceed \$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.

(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 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.

DWD 43.06 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 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 court cases equals or exceeds the lien threshold. If an individual is a payer in more than one court case, each court case will be evaluated separately to determine whether the lien threshold has been met, and to determine the lien amount.

(3) DETERMINING THE LIEN-ELIGIBLE AMOUNT. (a) The lien-eligible amount equals the difference between the monthly charge and the arrearage debt in a court case.

(b) Determining the monthly charge. 1. A court-ordered provision expressed only as a percentage of income shall not be included in the calculation of the monthly charge.

2. For a court-ordered provision requiring only a fixed sum, the monthly charge shall be calculated using the fixed sum amount.

3. For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed sum, the monthly charge shall be the calculated using the fixed sum amount.

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

(b) Determining the monthly amount due. 1. A court-ordered provision expressed only as a percentage of income shall not be included in the calculation of the monthly amount due.

2. For a court-ordered provision requiring only a fixed sum, the monthly amount due shall be calculated using the fixed sum amount.

3. For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed sum, the monthly amount due shall be the calculated using the fixed sum amount.

(5) LIEN AMOUNT The lien amount on the lien docket shall equal the sum of lien-eligible amounts from the court 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. 767.30, Stats.

(6) PAYMENT OF LIEN. (a) Any payment toward the lien amount shall:

1. Indicate that the payment is a lien payment.
2. Specify the court case or cases in which the lien arose.

(b) A payment to satisfy a lien shall meet the conditions specified in (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. 767.25(6), Stats.

(d) Payments toward a court-ordered lien under s. 767.30, 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. 767.30, Stats., if appropriate.

(7) **FILING DATE.** The filing date on the lien docket is the date that a lien amount was first recorded on the docket for a payer. The filing date does not change if the lien amount is adjusted up or down within five years after the filing date.

(8) **REFILING A LIEN.** (a) At the end of the five year effective period of a lien, the department or a child support agency may refile the lien if the lien-eligible amount equals or exceeds the lien threshold. When a lien is refiled, the date on which the lien is refiled shall become the date of filing on the lien docket, and a new five-year period shall commence.

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

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

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

DWD 43.07 Financial record review. (1) In accordance with s. 49.853 (3)(ag), Stats., a payer may request a financial records and court order review (financial record review) within 10 business days of the date of the notice of lien. The financial record review will determine the correctness of the financial records in a court case and will 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 sec. 49.854(3)(ag), Stats.

(2) Upon receiving a request for a financial record review, the child support agency shall provide the relevant financial records and information explaining how to interpret the records to the payer.

NOTE: Under sec. 49.854(3)(ag), Stats., the department or child support agency may not charge the payer for providing the payment records or for performing the financial record review.

(3) Within 20 business days after receiving the relevant financial records, the payer shall provide a statement of any alleged error to the child support agency. If the payer provides a statement of alleged error within the time frame, the child support agency shall provide a written determination as to whether the lien against the payer is in the correct amount. The child support agency must provide the written determination within 60 days after the date of the payer's request for a financial record review.

DWD 43.08 Seizure of property. (1) DEPARTMENT'S INITIAL ASSUMPTION AS TO JOINTLY OWNED PROPERTY. When the department or a child support agency acts under s. 49.854, Stats., the department or the child support agency shall initially assume that a payer's ownership interest in property that is jointly owned with one or more other persons is an equal pro rata share based on the number of joint owners. The department or child support agency shall proceed on this basis unless a person requests a hearing under s. 49.854(7m), Stats., in which case the department or child support agency shall be bound by the decision of the family court commissioner or the reviewing court.

(2) SEIZURE OF FINANCIAL ACCOUNTS. (a) *Minimum for seizure.* The department or a child support agency may not seize an account under s. 49.854 (5), 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 at the time of seizure.

(b) Amount to be seized. The department or a child support agency may only seize funds in excess of \$500 across all of a payer's accounts. If accounts are jointly-held, and the joint-account holder has requested a hearing under s. 49.854 (7m), Stats., the department or child support agency may not seize any amount that the court determines is attributable to the contributions of the joint-account holder.

(3) SEIZURE OF PERSONAL PROPERTY OTHER THAN FINANCIAL ACCOUNTS. The department or a child support agency may not seize personal property under s. 49.854(6), Stats., unless both of the following conditions are met:

(a) The payer's equity in the property, minus expected levy fees, exceeds \$100.

(b) The lien exceeds \$500.

(4) VALUATION OF JOINTLY-HELD REAL AND PERSONAL PROPERTY. For the purpose of determining whether jointly-held property (other than financial accounts) that is subject to lien has sufficient value to be seized, the department or child support agency shall assume that the payer's equity in the property is the payer's proportionate share of the property's equity.

(5) SEIZURE OF REAL PROPERTY. 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:

(a) The payer's equity in the property, minus expected levy fees, exceeds 10 percent of the property's fair market value.

(b) The lien exceeds \$5,000.

(6) **JOINTLY-HELD PROPERTY AND COURT HEARINGS.** If a financial account, personal property, or real property is jointly held, a person other than the payer 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, and may make the request in any county that initiated property seizure. If the joint-property holder does not request a hearing, the department or child support agency shall seize the payer's proportionate share of the property.

DWD 43.09 Notice to the payee of enforcement proceedings. 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 court case, or the child support agency has reason to believe that a payee or child in a payer's court cases may be harmed physically or emotionally by the payer, the department or the child support agency shall provide written notice to said payee when an administrative enforcement action has been initiated against the payer. The notice to the payee must be provided within 5 business days of the date of the notice sent to the payer in accordance with s. 49.852(2), 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), 49.856(2), or 49.857(3)(a), Stats.

DWD 43.10 Thresholds for administrative enforcement actions. (1) **LICENSE SUSPENSION.** A child support agency may initiate license suspension if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 300 percent of the monthly amount due in the court case.

(2) **ACCOUNT SEIZURE.** A child support agency may initiate account seizure if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 300 percent of the monthly amount due in the court case or \$1,000, whichever is greater.

(3) **REAL AND PERSONAL PROPERTY SEIZURE.** A child support agency may initiate real or personal property seizure if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 600 percent of the monthly amount due in the court case.

(4) **INTERCEPT OF LUMP-SUM PENSION PAYMENTS, JUDGMENTS, AND SETTLEMENTS.** A child support agency may initiate the intercept of lump-sum pension payments, judgments, and settlements when a payer has been placed on the child support lien docket.

(5) **DETERMINING THE MONTHLY AMOUNT DUE.** (a) 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.

(b) For a court-ordered provision requiring only a fixed sum, the monthly amount due shall be calculated using the fixed sum amount.

(c) For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed sum, the monthly amount due shall be the calculated using the fixed sum amount.

DWD 43.11 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, suspension, 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 ss. 49.854(5)(b), 49.854(6)(a), 49.854(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 on mistake of fact and on the reasonableness of the plan.

NOTE: Under ss. 49.854 (5)(d), (6)(b), and (7)(b), and ss. 49.857(3)(a) and (am), 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 ss. 49.854(5)(b), 49.854(6)(a), 49.854(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 ss. 49.854(5)(b), 49.854(6)(a), 49.854(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 ss. 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), or 49.857 (3)(a) or (am), Stats., a hearing will be conducted. If the court determines that the plan is not reasonable, it may establish a plan by setting payments pursuant to s. 767.30 (1), Stats.

(3) NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER COURT DETERMINATION ON MISTAKE OF FACT. If a court determines that a payer owes arrears as a result of a review of mistake of fact under ss. 49.854(5)(f), 49.854(6)(c), 49.854(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 shall not be certified to state licensing agencies 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 shall 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 shall not be sold.

(d) Real property seizure. Real property shall 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 established a plan pursuant to s. 767.30 (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 will be suspended.

(7) **PROCEEDING WITH ADMINISTRATIVE ENFORCEMENT ACTIONS.** If the court determines under (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 (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 must 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. Any periodic payment established under the plan, when combined with any other court-ordered payment of support, may not decrease the payer's gross income to an amount

below 100% of the poverty line established under 42 U.S.C. 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), 767.25 , or 767.51, Stats.

(b) In a case in which it is not possible to establish a periodic payment plan without reducing a payer's gross income to below the poverty line, the child support agency is not prohibited from negotiating a lump-sum payment with the payer, and 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. 767.265 (1).

(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 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, but is not limited to, the following:

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

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

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

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

(b) If a county which has a lien against a payer negotiates an alternative payment plan with the payer, the county is not precluded from receiving 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 counties.

EFFECTIVE DATE. This emergency rule shall take effect upon publication in accordance with sec. 227.24, Stats.

(End)

Tommy G. Thompson
Governor

Linda Stewart
Secretary

J. Jean Rogers
Division Administrator



ECONOMIC SUPPORT
201 East Washington Avenue
P.O. Box 7935
Madison, WI 53707-7935
<http://www.dwd.state.wi.us/>

State of Wisconsin
Department of Workforce Development

November 30, 1998

The Honorable Rebecca Young
State Assembly
P.O. Box 8953
Madison, WI 53708-8953

DEC 02 1998

Dear Representative Young:

Thank you for forwarding a copy of Debra A. Bougie's letter to the Department of Workforce Development. Secretary Stewart asked me to respond to you regarding Ms. Bougie's written testimony opposing the proposed administrative rules on the new child support enforcement law.

The department conducted four public hearings during October on proposed administrative rule DWD 43, *Child Support Administrative Enforcement*, and received written comments on the rule through November 6, 1998. As you know, the department is statutorily required to summarize and respond to comments on the rule as a part of the final proposed rule package that is submitted to the legislature. The department is currently working on responses to comments on the rule, and is planning to submit the final rule package to the legislature in January 1999. At that time, the department will provide Ms. Bougie and other parties who testified or submitted comments a copy of the final rule package with responses to testimony.

Sincerely,

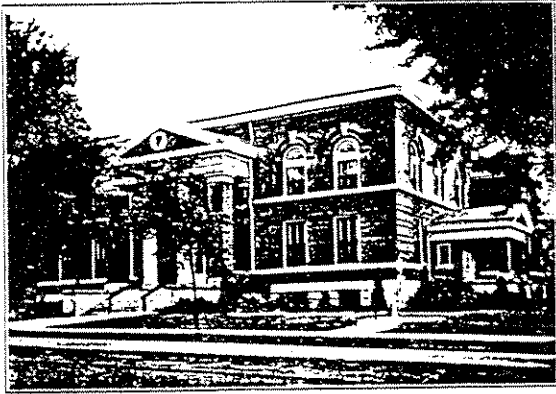
A handwritten signature in black ink, appearing to read 'J. Jean Rogers', is written over a horizontal line.

J. Jean Rogers
Administrator

cc: Other Members of Joint Committee on Administrative Rules

Senators Welch, Darling, Huelsman and Grobschmidt
Representatives Grothman, Seratti, Gunderson and Kreuser





GREEN LAKE COUNTY

COURTHOUSE
492 HILL STREET
GREEN LAKE, WI 54941-3188

November 25, 1998

Senator Robert Welch
14th District
PO Box 7882
Madison WI 53707-7882

DEC 02 1998

Re: Community Aids Funding Reduction


Dear Senator Welch,

The recently enacted federal budget reduced the Social Services Block Grant funding to Wisconsin by approximately \$7.6 million in federal fiscal year 1999. However, because the federal fiscal year begins on October 1, the State of Wisconsin will receive a total reduction of \$8.2 million in calendar year 1999. As you are aware, the State of Wisconsin, at this point, is passing this federal cut directly to the counties.

This reduction comes at a most inopportune time for Green Lake County. At the time this information was received, we had finalized our budget for 1999 and are now left with a \$25,000 funding gap in our Human Service budget.

Green Lake County respectfully requests, that the State of Wisconsin fund the loss in Community Aids funding to all Wisconsin counties.

Sincerely,


Paul Gustafson
Chairman Finance Committee
Green Lake County

cc: Wisconsin Counties Association