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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

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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 subds. 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."

Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

Department of Workforce Development

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Notice of Administrative Rules in Final Draft Form

Clearinghouse rule number: 98-130
Rule number: DWD 43
Relating to: Child Support Administrative Enforcement

Dear Senator Risser and Representative Jensen:

I have enclosed a proposed rule and rule report for referral to the appropriate legislative standing committees. The report consists of a summary of the public hearing comments and the agency response, Legislative Council Rules Clearinghouse Report and the agency response, a fiscal estimate, and a regulatory flexibility analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink that reads "Linda Stewart". The signature is written in a cursive, flowing style.

Linda Stewart, Ph.D.
Secretary

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 81 as DWD 40 to 41, 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 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. Act 191 requires the promulgation of administrative rules before the department may begin implementing the authorized administrative child support enforcement provisions. These are the proposed rules for the implementation of 1997 Wisconsin Act 191.

According Act 191, past-due support constitutes a lien against all of a child support payer's real and personal property in existence at the time of levy. 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 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, lien payments, and renewal of liens. Based on public testimony, the rule has been modified to require the department to develop procedures for releasing a lien and releasing property from a lien. The rule has also been modified to clarify the priority of the child support lien.

Payers placed on the lien docket have the opportunity to request a financial records and court order review to contest the lien amount. In response to comments received at public hearings, the rule has been revised to provide payers with an opportunity to request a meeting with a child support worker to review the financial records and to discuss any alleged errors in the records as a part of the financial record review process. Moreover, the rule has been modified to clarify that the relevant financial records provided to the payer will include the account history report and any relevant county financial records prior to the implementation of the statewide automated child support enforcement system. A note has also been added to the rule to specify the type of information that will be included on the account history report. In addition to the relevant

financial records, the department or child support agency will also provide the payer with a form that may be used to identify any alleged error in the records.

To enforce a lien, the department or child support agency may use the 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 case equal or exceed a threshold. For each administrative enforcement action, the rule defines the threshold that arrears in a 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. Lump-sum pension payments, judgments, and settlements may be intercepted when a payer is placed on the lien docket.

In addition to considering the arrears in a case, 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 amount that the property value must exceed before seizure may be initiated. For financial account seizure, the funds in all of a payer's accounts must exceed \$500. The rule has been modified to specify that the payer's equity in personal property must exceed \$500 per item before seizure may be initiated. In response to comments received at public hearings, the value that real property must exceed before seizure may be initiated has also been clarified in the rule. For real property seizure, the payer's equity in the property must exceed 10 percent of the property's fair market value.

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. In response to comments received at public hearings, the definition of diligent effort has been expanded to include use of automated locate resources.

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 rule has been modified to provide a definition for a protective order.

In response to comments received at public hearings, the rule has also been modified to require the department or child support agency to provide notice to a payee when a payer requests a hearing, and the hearing has been scheduled.

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 is \$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 is \$500. In response to comments received at public hearings, the rule has been modified to identify the process for quashing an administrative subpoena and for collecting the administrative forfeiture.

Act 191 requires the department and financial institutions doing business 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 the department will use to enter into agreements with financial institutions and requires the department to reimburse financial institutions for participating in the data match program. In general, financial institutions will be reimbursed \$100 per quarter for performing a data match with the department. In response to comments received at the public hearings, the distinction between an automated and a nonautomated financial institution has been removed from the rule.

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

SECTION 1. 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) 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 doing business in the state, and persons subject to administrative subpoenas issued in accordance with s. 49.22 (2m)(b), Stats., or requests for information issued in accordance with s. 49.22 (2m)(a), Stats.

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 does any of the following:
 - (a) Puts child support liens into effect by placing them on the child support lien docket and electronically delivers the docket to the county registers of deeds.
 - (b) Receives proceeds from the sale of property when there is a child support lien against the property, and either the payer has transferred the property or the property has been seized and sold by an entity other than the department or a child support agency.
 - (c) Takes any administrative enforcement action.

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

- (a) The intercept of lump-sum pension payments in accordance with s. 49.852, Stats.
- (b) The seizure of accounts at financial institutions in accordance with s. 49.854(5), Stats.
- (c) The seizure of personal property in accordance with s. 49.854(6), Stats.
- (d) The seizure of real property in accordance with s. 49.854(7), Stats.
- (e) The intercept of judgments and settlements in accordance with s. 49.856, Stats.
- (f) The denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses for failure to pay support in accordance with s. 49.857, Stats.

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

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

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

(7) "Child support lien" or "lien" means an administrative lien that arises by operation of law under s. 49.854 (2), Stats., against the real and personal property in which the payer has a

recorded ownership interest at the time of levy. A lien does not attach to the property title of a beneficial interest in a trust, member interest in a limited liability company, partner interest in a partnership, or shareholder interest in a corporation.

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

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

(9) "Department" means the Wisconsin department of workforce development.

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

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

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

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

(14) "Gross income" has the meaning given in s. DWD 40.02 (13).

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

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

NOTE: For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed amount, the monthly amount due is calculated using the fixed amount. A court-ordered provision expressed only as a percentage of income is not included in the monthly amount due when determining the lien threshold. However, when determining the threshold for administrative enforcement actions, the expected monthly amount due in DWD 43.10 is the fixed amount that is used to calculate the monthly amount due when a provision is expressed only as a percentage of income.

(17) "Monthly charge" means the sum of court-ordered provisions for periodic payments, expressed as a fixed amount, on child support, family support, maintenance, lying-in costs, past support, and other medical support due in one month in a case. The monthly charge does not include court-ordered provisions for periodic payments on arrearage debts.

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

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

(19) "Payee" has the meaning given in s. DWD 40.02 (22).

(20) "Payer" has the meaning given in s. DWD 40.02 (23).

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

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

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

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

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

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

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)1., (5)(d), (6)(a), (d), and (e), or (7)(a), (d), and (e), 49.856 (3), and 49.857 (3)(a) and (am), Stats.

(2) **USE OF MAIL.** The department or child support agency may send notices related to the administrative enforcement of a child support order by regular mail to the last-known mailing address provided by the payer under s. 767.263 (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 to provide a new verified address, the department or child support agency shall send notice to payer using the current employer mailing address provided by the payer under s. 767.263 (2), Stats. If the notice to the payer mailed to the payer's employer is returned, or the payer has not provided a current employer mailing

address, the department or child support agency shall use diligent effort to obtain a mailing address for the payer.

NOTE: Under 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 includes the following:

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

1. License suspension and denial. For license suspension and denial under s. 49.857, Stats., the payer's mailing address of record at a state licensing agency or authority to provide notice under ss. 49.857 (3)(a) and (am), Stats., if the address is verified.
2. Account seizure. For account seizure under s. 49.854 (5), Stats., the payer's mailing address of record at a financial institution to provide notice under s. 49.854 (5) (d), Stats., if the address is verified.
3. Personal property seizure. For personal property seizure under s. 49.854 (6), Stats., the payer's mailing address of record at a state agency that titles personal property to provide notice under ss. 49.854 (6)(a), (d), and (e), Stats., if the address is verified.
4. Real property seizure. For real property seizure under s. 49.854 (7), Stats., the payer's mailing address of record on the tax bill for the property subject to seizure to provide notice under ss. 49.854 (7)(a), (d), and (e), Stats., if the address is verified.

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

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

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

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 of \$25. If the failure to comply with an administrative subpoena or request for information is the result of intentional conduct by the subpoena respondent to hide information, falsify information, or provide incomplete information, the department or child support agency may require the subpoena respondent to pay an administrative forfeiture of \$500.

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

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

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

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

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

(4) **LIEN AMOUNT** The lien amount on the lien docket shall equal the sum of lien-eligible amounts from the cases in which the lien-eligible amount meets or exceeds the lien threshold. The lien amount may include court-ordered liens made pursuant to s. 767.30, Stats.

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

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

(c) The child support agency shall distribute any support payment made that does not meet the conditions in par. (a) or (b) in accordance with s. 767.25(6), 767.261, 767.51 (5p), or 767.62 (4)(g), 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.

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

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

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

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

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

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

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

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

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

DWD 43.07 Financial record review. (1) In accordance with s. 49.854 (3)(ag), Stats., a payer may request a financial record review within 10 business days of the date of the notice of lien. The request shall be made in writing to the child support agency. The purpose of the financial record review is to determine the correctness of the financial records in a case. The financial record review shall cover only the period of time after the last judicial review or other account review.

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

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

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

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

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

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

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

DWD 43.08 Seizure of property. (1) FREEZING FINANCIAL ACCOUNTS. (a)

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

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

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

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

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

(c) The department, child support agency, and financial institution shall presume that a payer's ownership interest in an account is an equal pro-rata share of the account based on the number of individuals with a recorded ownership interest in the account.

(2) SEIZURE OF PERSONAL PROPERTY OTHER THAN FINANCIAL

ACCOUNTS. (a) The department or a child support agency may not seize personal property

under s. 49.854(6), Stats., unless the payer's equity in the property, minus expected levy fees, exceeds \$500 per item total.

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

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

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

2. The lien exceeds \$5,000.

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

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

(b) When initiating the intercept of judgments and settlements under s. 49.856, Stats., the department or child support agency shall specify in the notice provided under s. 49.856 (2),

Stats., that the amount withheld from the judgment or settlement payment may not exceed the payer's ownership interest in the judgment or settlement payment.

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

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

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

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

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

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

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