



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-022

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 October 2002.]

1. Statutory Authority

Where is the statutory authority for the provision in s. DWD 40.03 (7) which specifies that if a payer will have obligations for both child support and maintenance in a particular case, the court is required to determine the payer’s child support obligation under ch. DWD 40 **before** determining the payer’s maintenance obligation under s. 767.26, Stats.?

2. Form, Style and Placement in Administrative Code

a. In s. DWD 40.02 (13), in the text of the rule, “DWD 40.02 (13)” should appear only in the first line. The subsequent paragraphs and subdivisions should just be listed as (a), (b), (c), etc. The same comment applies to SECTIONS 27 and 28 of the rule.

b. In s. DWD 40.03 (1) (intro.), in the treatment clause and the text, “(intro)” should be “(intro.)”. Also, in the last sentence in the text of the introductory clause, should “Except as provided in DWD 40.04 (4) and (5), “the percentage” be substituted for “The percentage”?

c. In s. DWD 40.01 (3), the intent of the provision would be clearer if the phrase “in and of itself,” is inserted after “A modification of any provision in this chapter shall not.” The intent should be that a modification in the rule alone is not a sufficient basis, but a modification coupled with the specific facts of a case applying the modified provision may be sufficient for “a substantial change of circumstances” determination. See, for example, the Wisconsin Court of Appeals decision in *Licary v. Licary*, 168 Wis.2d 686 (Ct. App. 1992) holding that the 1988

amendments to the child custody statutes in ch. 767, Stats., did not, in and of themselves, constitute a “substantial change of circumstances” for purposes of modification of custody.

d. In s. DWD 40.04 (2) (b) 3., 4., 5., and 6., “(b)” after “subd.” should be deleted. The correct reference to a subdivision is “subd. _ (insert the number of the subdivision).”

e. Section DWD 40.04 (4) requires the department to publish revisions in the schedule in the Wisconsin Administrative Register. Would it not provide the public with substantially more notice of these changes if they were done by rule? Is there a reason that these revisions should not be done by rule?

f. Since the percentages in the “Current” and “Proposed” columns in Appendix C will be changed once the rule takes effect, the chart needs to be changed to reflect the fact that the new figures are no longer proposed figures but are the rule.

g. In the treatment clause in Section 5 (and elsewhere in the rule where the term “respectively” appears in such a clause), the word “respectively” should be deleted.

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

a. In s. DWD 40.02 (3), “mean” should be “means.” Since the term “basic support costs” is being defined, the verb should be singular.

b. In s. DWD 40.02 (28), “when” should be inserted before “multiplied.”

c. In s. DWD 40.02 (26), first line, “court-order” should be “court-ordered.”

d. In s. DWD 40.03 (3) (intro.), “by doing any of the following” should be substituted for “as follows”. In par. (b), “is” should be substituted for “should be considered.” In par. (c), “are more than” should be substituted for “may differ from.”

e. In s. DWD 40.03 (4), first sentence, “to the parent” should be inserted after “impute income.” In the second sentence, “to the parent” should be inserted after “may impute.”

f. In s. DWD 40.03 (5) (a) 1., the part of the provision beginning “and when” does not fit in well grammatically with the rest of the provision and should be redrafted.

g. Section DWD 40.03 (6) seems confusing. Is a court permitted to do one of the actions listed and not the other (i.e., can the court include benefits received, but not adjust a parent’s child support obligation or vice versa)? The confusion is caused because the two clauses use the term “may” and are connected by “and.” This should be redrafted to clarify the intent. Subsection (10) permits creation of a trust if the payer’s legal obligation for child support “exceeds the amount necessary to maintain the standard of living the child would have if the child were living with both parents.” How is the requirement in quotes to be determined?

h. In s. DWD 40.04 (4) (a), “an monthly” should be “a monthly.”

i. Throughout various provisions in the rule, the terms “parent” and “payer” are sometimes used interchangeably. The entire rule should be checked to make sure that these

terms are used appropriately and consistently. For example, “payer” should not be used in one part of a sentence or provision and then “parent” used in another part of the same sentence or provision to refer to the same person. The same issue should be checked with reference to the use of the terms “parent” or “parents” and “party” or “parties.” [See, e.g., s. DWD 40.03 (2).]