



## Clearinghouse Rule 19-070

### State of Wisconsin Department of Children and Families

#### **Administrative Enforcement of Interest on Child Support DCF 152**

The Wisconsin Department of Children and Families proposes to repeal ss. DCF 152.03 (16) (Note), (17) (Note), and (23), 152.06 (5) (d), 152.10 (5), and 152.12 (2) (Note) and to amend ss. DCF 152.03 (5), 152.06 (5) (b) and (c), and 152.12 (1) (a) (intro.) and (2), relating to the administrative enforcement of interest on child support.

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#### **Analysis Prepared by the Department of Children and Families**

**Statutory authority:** Sections 49.858 (2) (c) and 49.854 (1) (f), Stats.

**Statutes interpreted:** Sections 49.852, 49.854, 49.857, and 49.858, Stats.

**Related statutes and rules:** Section 767.511, Stats.

#### **Explanation of Agency Authority**

Section 49.858 (2) (c), Stats., requires the department to promulgate rules specifying the level of support that is overdue before an individual is considered to be delinquent in the payment of support for purposes of administrative support enforcement, including liens against property. Under s. 49.858 (1) (b), Stats., “support” has the meaning given in s. 49.857 (1) (g), Stats. Under s. 49.857 (1) (g), Stats., “support” is defined as child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse.

Section 49.854 (1) (f), Stats., defines “support” for purposes of the lien docket to include child or family support, maintenance, medical expenses of a child, birth expenses, and accrued interest on delinquent amounts of the other types of support. To align these two provisions, the department is interpreting “other expenses” in s. 48.857 (1) (g), Stats., to include interest.

#### **Summary of the Proposed Rule**

The proposed rule will add interest on delinquent support to the amount eligible for collection through the statewide support lien docket and administrative enforcement actions.

In addition, the proposed rule will make the following updates:

- Eliminate references to percentage-expressed orders, which are prohibited in cases receiving the services of the child support program.
- Replace obsolete language on the amount of the reimbursement for financial institutions that participate in the record matching program with a cross-reference to the current reimbursement amount under s. 49.852 (2), Stats.
- Clarify lien payment procedures.

## **Summary of Factual Data and Analytical Methodologies**

### **Support Lien Docket**

When the department certifies that a person obligated to pay support is eligible for the support lien docket under s. 49.854, Stats., an administrative lien arises by operation of law against the real and personal property in which the person has a recorded ownership interest. The department may place a person on the support lien docket if the person owes a lien-eligible amount that equals or exceeds the monthly amount due or \$500, whichever is greater.

Certification to the support lien docket is required before the department or a child support agency may take any of the administrative enforcement actions under ss. 49.852 to 49.858, Stats., and ch. DCF 152, such as account seizure, real and personal property seizure, or denial of state-issued grants and loans. Collection also occurs upon the sale of property with a lien or if the person pays the amount required to satisfy the lien.

### **Change in Circumstances**

When the support lien docket and ch. DCF 152 were implemented in 1999, the interest rate on delinquent support was 1.5 percent per month or 18 percent per year. Implementation of the support lien docket was controversial, and some considered it particularly unfair to payers who had large arrearages due to the high interest rate. Although interest on delinquent support was eligible for collection through the support lien docket under s. 49.854 (f) 5., Stats., it was expressly excluded from the definition of “arrearage debt” that is used to calculate the “lien-eligible amount” under s. DCF 152.03 (5) and (15).

Over the past 20 years, interest forgiveness programs have reduced large arrearages. The interest rate on delinquent support has been reduced to .5 percent per month or 6 percent per year under the statewide pilot program under s. 767.511 (6m), Stats., as created by 2013 Wisconsin Act 20. The pilot program was implemented in 2014 and is not expected to end in the foreseeable future.

Judicial enforcement options to collect interest from available assets burden court time and resources. With limited enforcement options, interest-only cases remain open and affect the state’s performance on federal standards that determine incentive payments.

In addition, not including interest debt in the administrative lien amount causes considerable confusion for payers when the payee formerly received Wisconsin Works payments and part of the arrearage is owed to the state due to child support assignment and part is owed to the payee. Under federal law on distribution of support, the principal and interest owed to the payee needs

to be paid before any state-owed amount in most cases. This means that the amount needed to satisfy the lien is higher than the amount on the lien docket. Interest owed to the payee, which is not included in the lien-eligible amount, must be paid before the remaining payment is applied to the state-owed principal, which is included in the lien-eligible amount. Currently, payers arrive at the child support agency intending to satisfy the lien, are told they must pay more than they expected, and have difficulty understanding the child support agency's explanation of this complex situation.

With the various changes in circumstances since implementation of the support lien docket, the department believes that the balance of interests now weighs more heavily toward including interest on delinquent support in the lien-eligible amount and allowing collection through administrative enforcement actions.

### **Summary of Related Federal Requirements**

42 USC 666 requires all states to implement procedures under which liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the state. 45 CFR 302.70 requires states to have procedures for the imposition of liens against the real and personal property of noncustodial parents who owe overdue support.

The order of the distribution of collected support is in 42 USC 657, which was created by the Deficit Reduction Act of 2005 and became effective October 1, 2009.

### **Comparison to Rules in Adjacent States**

The adjacent states do not use a lien docket in the same manner as Wisconsin, so it is unclear whether interest is included in the unpaid support subject to administrative enforcement. Interest is assessed on unpaid support at the following rates:

Michigan: At a judge's discretion, a surcharge may be calculated at 6-month intervals at the rate of a 5-year Treasury bill plus 1% (beginning 1/1/2011)

Minnesota: 4% per year (beginning 1/1/2008)

Illinois: 9% per year (beginning 1/1/2000)

Iowa: 10% per year in law, but interest is not commonly applied to child support

### **Effect on Small Business**

The rule will not affect small businesses as defined in s. 227.114 (1), Stats.

### **Analysis Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis**

Including interest in the lien-eligible amount affects support payers and payees. The reimbursement amount for financial institutions participating in the financial record matching program is determined under s. 49.853 (2), Stats.

## **Agency Contact Person**

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## **Place Where Comments are to be Submitted and Deadline for Submission**

Comments may be submitted to Elaine Pridgen, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or [dcfpublichearing@wisconsin.gov](mailto:dcfpublichearing@wisconsin.gov). The comment deadline is June 13, 2019.

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### **SECTION 1. DCF 152.03 (5) is amended to read:**

**DCF 152.03 (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~~ and interest on arrears or on missed payments.

### **SECTION 2. DCF 152.03 (16) (Note), (17) (Note), and (23) are repealed.**

### **SECTION 3. DCF 152.06 (5) (b) and (c) are amended to read:**

**DCF 152.06 (5) (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 in addition to the monthly amount due.

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

### **SECTION 4. DCF 152.06 (5) (d) is repealed.**

### **SECTION 5. DCF 152.10 (5) is repealed.**

**SECTION 6. DCF 152.12 (1) (a) (intro.) and (2) are amended to read:**

**DCF 152.12 (1) (a) (intro.)** The department or a designee shall enter into agreements with financial institutions to operate a financial record matching program using an automated data exchange to the extent feasible to identify the accounts of delinquent payers. In the agreement, the financial institution shall agree to provide information on the accounts maintained at the institution in a standard format prescribed by the department, and shall indicate all of the following:

**(2) REIMBURSEMENT FOR PARTICIPATION IN THE FINANCIAL RECORD MATCHING PROGRAM.** In accordance with s. 49.853 (2), Stats., the department shall reimburse a financial institution ~~\$250~~ \$125 per quarter for participating in the financial record matching program in accordance with s. 49.853 (3) or (4), Stats., and the terms of the agreement under sub. (1).

**SECTION 7. DCF 152.12 (2) (Note) is repealed.**

**SECTION 8. EFFECTIVE DATE.** This rule shall take effect the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.