

CR 86-121

CERTIFICATE

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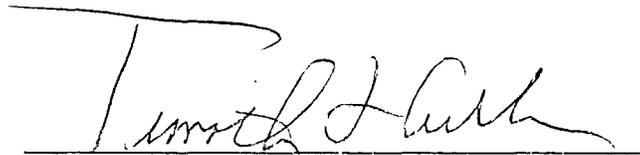
STATE OF WISCONSIN)
)
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

SS

I, Timothy F. Cullen, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to the percentage of income standard used by courts in determining child support obligations were duly approved and adopted by this Department on July 23, 1987.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 23rd day of July, 1987.



Timothy F. Cullen, Secretary
Department of Health and Social Services

SEAL:

9-1-87

7.16.87

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING, RENUMBERING, AMENDING AND CREATING RULES

To repeal HSS 80.01(2)(b) to (d); to renumber HSS 80.02(26) to (28); to amend HSS 80.02(29), as renumbered, 80.03(1)(intro.), and 80.04(1)(a) and (b)(intro.) and 1 and (3)(intro.), (a) and (c); to repeal and recreate HSS 80.02(12) to (14), 80.04(2) and 80.05; and to create HSS 80.02(26), relating to the percentage of income standard used by courts in determining child support obligations.

Analysis Prepared by the Department of Health and Social Services

These are amendments to ch. HSS 80, the Department's rules required under s. 46.25(9)(a), Stats., that incorporate a five-part percentage of income standard for courts to use in determining child support obligations in actions brought under ch. 767, Stats. Chapter HSS 80 went into effect on February 1, 1987. The standard becomes binding on courts beginning July 1, 1987, except that a court, on request of one of the parties in an action and after considering the list of factors set out in s. 767.25(1m) or 767.51(5), Stats., may find by clear and convincing evidence that use of the standard is unfair to the child or to any of the parties. The amendments make clear that use of the Department's percentage standard worksheet to calculate child support is optional; modify the suggested formula for determining the support obligation of a shared-time payer to correct the magnitude of the reduced level of required support; delete provisions exempting the courts from applying the standard in extreme income cases--that is, when the payer's income is very high or very low--with the understanding that these cases will be dealt with through a reduction in the statutory burden of proof; and modify the treatment of a payer's assets, so that income is imputed only to certain assets, and the treatment of depreciation, so that it is clear that a payer can deduct the actual costs of doing business but not the fictional depreciation of real property.

Pursuant to authority vested in the Wisconsin Department of Health and Social Services by s. 46.25(9)(a), Stats., the Department of Health and Social Services hereby repeals, renumbers, amends, repeals and recreates and creates rule interpreting s. 46.25(9)(a), Stats., as follows:

SECTION 1. HSS 80.01(2)(b) to (d) are repealed.

SECTION 2. HSS 80.02(12) to (14) are repealed and recreated to read:

HSS 80.02(12) "Gross income" means all income as defined under 26 CFR 1.61-1 that is derived from any source and realized in any form, whether money, property or services, and whether reported as total income on the payer's federal tax return or exempt from being taxed under federal law.

(13) "Gross income adjusted for child support" means gross income adjusted by adding wages paid to dependent household members, the business assets depreciation allowance under 26 USC 179 and the excess of accelerated depreciation as determined under 26 USC 167, and 26 USC 168 over straight line depreciation allowable under 26 USC 167 and subtracting public assistance and child and spousal support received from previous marriages.

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

SECTION 3. HSS 80.02(26) to (28) are renumbered HSS 80.02(27) to (29).

SECTION 4. HSS 80.02(26) is created to read:

HSS 80.02(26) "Total annual income for child support" means gross income adjusted for child support plus imputed income for child support.

SECTION 5. HSS 80.02(29), as renumbered, is amended to read:

HSS 80.02(29) "Worksheet" means the department's percentage standard worksheet, printed as Appendix B to this chapter, ~~or any other instrument or method adopted by the court to calculate a child support obligation that is consistent with this chapter.~~

Note. Copies of the "Percentage Standard Worksheet" (Form DGS 3144) can be obtained by writing Office of Child Support, Division of Community, P.O. Box 7851, Madison, WI 53707.

SECTION 6. HSS 80.03(1)(intro.) is amended to read:

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

SECTION 7. HSS 80.04(1)(a) and (b)(intro.) and 1 are amended to read:

HSS 80.04(1)(a) ~~Complete section I of the worksheet to determine~~
Determine the payer's base in accordance with s.HSS 80.03(1)(intro.).

(b) ~~Complete section II of the worksheet to determine~~ Determine the payer's adjusted base by applying one of the following methods, as appropriate:

1. When the payer is subject to an existing support order, subtract the amount of the court-ordered support, if it is being paid, from the base to get the adjusted base; or

SECTION 8. HSS 80.04(2) is repealed and recreated to read:

HSS 80.04(2) DETERMINING THE CHILD SUPPORT OBLIGATION OF A SHARED-TIME PAYER. The child support obligation for a parent who the court determines is a shared-time payer may be calculated as follows:

(a) Determine the payer's base in accordance with s.HSS 80.03(1)(intro.);

(b) Multiply the appropriate percentage under s.HSS 80.03(1) by the payer's total annual income for child support to establish the payer's original annual level of child support;

(c) Divide the payer's original annual level of child support in par. (b) by 365 to determine the payer's original daily child support obligation;

(d) Determine the number of days a year the payer will care for the child overnight;

(e) Determine the number of days a year above the threshold and less than 183 that the payer will care for the child overnight;

(f) Multiply the number of days a year above the threshold the payer will care for the child overnight in par. (e) by the payer's original daily child support level in par. (c) to determine the amount by which the payer's annual support obligation is to be reduced;

(g) Subtract the amount by which the payer's annual support obligation is to be reduced in par. (f) from the payer's original annual level of child support as identified in par. (b) to determine the payer's final annual child support obligation;

(h) Divide the amount determined under par. (g) by 12 to determine the payer's monthly level of child support; and

(i) Express the shared-time payer's monthly child support obligation either as a fixed sum or as a percentage of the payer's base.

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

Assumption:

The payer is divorced and has one child;
The payer assumes 40% of child-caring responsibility, or 146 days;
The payer's monthly gross income is \$3,000; and
The payer has available assets.

Calculation:

The payer's total annual income for child support = \$36,000.
The payer's original annual child support obligation = $17\% \times \$36,000 = \$6,120$.
The payer's original daily child support obligation = $\$6,120 \div 365 = \16.77 .
The payer provides overnight child care 146 days a year.
The payer provides overnight child care 36.5 days a year above the threshold (146 days - 109.5 days = 36.5 days).
The payer's child support obligation is reduced by \$611.38 (36.5 x \$16.77).
The annual child support obligation of the shared time payer is $\$6,120 - \$611.40 = \$5,508.62$.
The monthly child support obligation of the shared-time payer is $\$5,508.60 \div 12 = \459.05 .

SECTION 9. HSS 80.04(3)(intro.), (a) and (c) are amended to read:

HSS 80.04(3) DETERMINING THE CHILD SUPPORT OBLIGATION OF A SPLIT-CUSTODY PAYER. (intro.) For a split-custody payer, the child support obligation ~~shall~~ may be determined as follows:

(a) ~~Complete section I, parts A and B of the worksheet to determine~~ Determine the payer's base in accordance with s.HSS 80.03(1)(intro.) for calculating the amount of child support.

(c) ~~Complete section II, parts A and B of the worksheet to determine~~ Determine the payee's base in accordance with s.HSS 80.03(1)(intro.) for calculating the amount of child support.

SECTION 10. HSS 80.05 is repealed and recreated to read:

HSS 80.05 DETERMINING IMPUTED INCOME FOR CHILD SUPPORT. For a payer with assets, a reasonable earning potential may be attributed to the assets as follows:

(1) Determine the payer's gross income;

(2) If the court finds that the payer has underproductive assets or has diverted income into assets to avoid paying child support or that income from the payer's assets is necessary to maintain the child or children at the economic level they would enjoy if they and their parents were living together, identify those assets and then impute income to them

by multiplying the total net value of the assets by the current 6-month treasury bill rate or any other rate that the court determines is reasonable; and

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

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s.227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Dated: July 23, 1987

By:



Timothy F. Cullen
Secretary

Seal:



State of Wisconsin

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

Tommy G. Thompson
Governor

Timothy F. Cullen
Secretary

July 23, 1987

Mailing Address:
Post Office Box 7850
Madison, WI 53707

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JUL 23 1987

Mr. Orlan Prestegard
Revisor of Statutes
9th Floor - 30 on the Square
Madison, Wisconsin 53702

Revisor of Statutes
Bureau

Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 80, administrative rules relating to the percentage of income standard used by courts in determining child support obligations.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rule changes apply to parties in actions affecting the family when minor children are involved, and to courts that order child support payments. They do not directly affect small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,


Timothy F. Cullen
SECRETARY

Enclosure