

Statement of Scope
Department of Children and Families

Rule Number: Chapter DCF 152
Relating to: Child Support Administrative Enforcement
Rule Type: Permanent

This statement of scope was approved by the governor on June 27, 2018.

1. Finding/nature of emergency (for emergency rules only)

Not applicable

2, Detailed description of the objective 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.

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. 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.

The proposed rule will also make statutory updates related to eliminating references to percentage-expressed orders, which are prohibited in cases receiving the services of the child support program. In addition, the proposed rule will replace obsolete language on 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.

3. Detailed explanation of statutory authority for the rule

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.

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule

80 hours

5. List with description of all entities that may be affected by the proposed rule

Child support payers and payees in cases receiving the services of the child support program when payers have lien eligible debts under s. 49.854 (2), Stats.; child support agencies; and title companies

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule

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.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small business)

No impact on small business.

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