

Statement of Scope

Department of Children and Families

Rule Number: Chapter DCF 150

Relating to: Correction affecting the determination of child support when the parents have shared placement and the payer receives the child's SSDI benefits

Rule Type: Emergency

This statement of scope was approved by the governor on September 6, 2018.

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

An emergency rule is needed because a significant number of cases involving parents who receive SSDI are impacted by a drafting error in recent changes to ch. DCF 150. Without an emergency rule, the credit against a parent's child support obligation intended by the rule change will not be available.

2. Detailed description of the objective of the proposed rule.

Rule Revisions Effective July 1, 2018

Changes to DCF 150, the Percentage of Income Standard for setting child support, were published in the Administrative Register June 25, 2018, with an effective date of July 1, 2018. The rule revisions were developed in response to recommendations from the Child Support Guidelines Advisory Committee established to provide guidance to the Department on revisions to the state policy regarding the guidelines used to determine child support payments and the application of those guidelines in special circumstances.

One of the changes addressed how SSDI benefits intended for the children should be considered for the purpose of establishing child support when the parent receiving the benefit on behalf of the children does not have primary placement. This provision is intended to give a payer credit for the Social Security benefits his or her child is receiving that are directly attributable to the payer's work history. If the parents share placement of the child/ren, each parent should receive a share of the child(ren)'s benefit that is proportionate to the time the child(ren) spends with that parent.

Proposed Rule

The proposed rule will correct s. DCF 150.03 (5) (b) 7., which applies to the determination of child support when the parents have shared placement and the payer receives the child's SSDI benefits. The provision mistakenly states that the payer should pay either the "greater" of the amount determined under this section or the amount determined under a straight forward application of the percentage standard. The language should require that the payer pay either the "lesser" of the amount determined under this section or the amount determined under a straight forward application of the percentage standard.

3. Detailed explanation of statutory authority for the rule

Section 49.22 (9), Stats., provides that the department shall promulgate rules that provide a standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents. The rules shall provide for consideration of the income of each parent and the amount of physical placement with each parent in determining a child support obligation in cases in which a child has substantial periods of physical placement with each parent.

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

15 hours.

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

The rule will apply to the determination of child support when the parents have shared placement and the payer receives the child's SSDI benefit. The percentage of income standard applies to temporary and final orders for child support or family support of a marital or nonmarital child in any action affecting the family under s. 767.001, Stats., including stipulated child support settlements under s. 767.34, Stats.

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

45 CFR 302.56 (a) provides that each state shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the state.

45 CFR 302.56 (e) requires states to review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

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

Minimal impact; no impact on small business.

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