

## Chapter DWD 40

### CHILD SUPPORT PERCENTAGE OF INCOME STANDARD

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**Note:** Chapter HSS 80 was renumbered chapter DWD 40 by emergency rule effective October 1, 1998. Chapter HSS 80 as it existed on July 31, 1999 was renumbered chapter DWD 40, Register, July, 1999, No. 523, eff. 8-1-99.

#### Preface

Section 49.22 (9), Stats., requires the department to adopt and publish a standard to be used by courts in determining child support obligations. The standard is to be based on a percentage of the gross income and assets of either or both parents.

The percentage standard established in this chapter is based on an analysis of national studies, including a study done by Jacques Van der Gaag as part of the Child Support Project of the Institute for Research on Poverty, University of Wisconsin, Madison, entitled "On Measuring the Cost of Children," which disclose the amount of income and disposable assets that parents use to raise their children. The standard is based on the principle that a child's standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together. It determines the percentage of a parent's income and potential income from assets that parents should contribute toward the support of children if the family does not remain together. The standard determines the minimum amount each parent is expected to contribute to the support of their children. It expects that the custodial parent shares his or her income directly with their children. It also presumes that the basic needs of the children are being met. This latter presumption may be rebutted by clear and convincing evidence that the needs of the children are not being met.

The rules also prescribe procedures for determining equitable child support obligations under a variety of financial and family circumstances.

#### DWD 40.01 Introduction. (1) AUTHORITY AND PURPOSE.

This chapter is promulgated under the authority of s. 49.22 (9), Stats., for the purpose of establishing a standard to be used in determining child support under ss. 767.02, 767.08, 767.10, 767.23, 767.25, 767.32 and 767.51, Stats.

(2) **APPLICABILITY.** This chapter applies to any petition for a temporary or final order for child support of a marital or nonmarital child in an action affecting a family under s. 767.02, Stats., any stipulated child support settlement under s. 767.10, Stats., or any revision of judgment under s. 767.32, Stats.

(3) **EFFECT OF RULE CHANGE.** A modification of any provision in this chapter shall not in and of itself be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under s. 767.32, Stats.

**Note:** A modification of any provision in this chapter shall apply to orders established after the effective date of the modification.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. (2) (b) to (d), Register, August, 1987, No. 380, eff. 9-1-87; am. (1), r. and recr. (2), Register, February, 1995, No. 470, eff. 3-1-95; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register January 2003 No. 565; **CR 03-022: cr. (3) Register December 2003 No. 576, eff. 1-1-04.**

#### DWD 40.02 Definitions. In this chapter:

(1) "Acknowledgement of paternity" means both the mother and the father voluntarily signed and filed a form under s. 69.15 (3) (b) 1. or 3., Stats., with the state registrar.

(2) "Adjusted monthly income available for child support" means the monthly income at which the child support obligation is determined for serial family payers, which is the payer's monthly income available for child support less the amount of any existing legal obligation for child support.

(3) "Basic support costs" means food, shelter, clothing, transportation, personal care, and incidental recreational costs.

(4) "Child" means the natural or adopted child of the payer.

(5) "Child support" or "child support obligation" means an obligation to support a marital child either in an intact family or as a result of a court order, an obligation to support the payer's

nonmarital child as a result of a court order, or an obligation to support the payer's nonmarital child in an intact family as a result of adoption, maternity or an acknowledgement of paternity.

(6) "Court" means a circuit court judge or family court commissioner.

(7) "Current 6-month treasury bill rate" means the yield of a U.S. government security with a term of 6 months.

(8) "Department" means the Wisconsin department of workforce development.

(9) "Dependent household member" means a person for whom a taxpayer is entitled to an exemption for the taxable year under 26 USC 151.

(10) "Equivalent care" means a period of time during which the parent cares for the child that is not overnight, but is determined by the court to require the parent to assume the basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight.

(11) "Family support" means an amount which a person is legally obligated to pay pursuant to an order under s. 767.261, Stats., as a substitute for child support under s. 767.25, Stats., and maintenance payments under s. 767.26, Stats.

(12) "Federal dependency exemption" means the deduction allowed in computing taxable income pursuant to 26 USC 151 for a child of the taxpayer who has not attained the age of 19 or who is a student.

(13) "Gross income."

(a) "Gross income" means all of the following:

1. Salary and wages.
2. Interest and investment income.
3. Social Security disability and old-age insurance benefits under 42 USC 401 to 433.

4. Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income.

5. Unemployment insurance.

6. Income continuation benefits.

7. Voluntary deferred compensation, employee contributions to any employee benefit plan or profit-sharing, and voluntary employee contributions to any pension or retirement account whether or not the account provides for tax deferral or avoidance.

8. Military allowances and veterans benefits.

9. Undistributed income of a corporation, including a closely-held corporation, or any partnership, including a limited or limited liability partnership, in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset under s. DWD 40.03 (4). In this paragraph:

a. "Undistributed income" means federal taxable income of the closely held corporation, partnership, or other entity plus depreciation claimed on the entity's federal income tax return less a reasonable allowance for economic depreciation.

b. A "reasonable allowance for economic depreciation" means the amount of depreciation on assets computed using the straight line method and useful lives as determined under federal income tax laws and regulations.

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**Note:** Income considered under this subsection is subject to the adjustments under s. DWD 40.03 (2).

10. All other income, whether taxable or not, except that gross income does not include any of the following:

- a. Child support.
- b. Foster care payments under s. 48.62, Stats.
- c. Kinship care payments under s. 48.57 (3m) or (3n), Stats.
- d. Public assistance benefits under ch. 49, Stats., except that child care subsidy payments under s. 49.155, Stats., shall be considered income to a child care provider.
- e. Food stamps under 7 USC 2011 to 2036.
- f. Cash benefits paid by counties under s. 59.53 (21), Stats.
- g. Supplemental Security Income under 42 USC 1381 to 1383f and state supplemental payments under s. 49.77, Stats.
- h. Payments made for social services or any other public assistance benefits.

(b) This subsection defines gross income used in establishing a child support order under this chapter and may not be used to limit income withholding under s. 767.265, Stats., or the assignment of worker's compensation benefits for child support under s. 102.27 (2), Stats.

**Note:** This paragraph clarifies that although the portion of worker's compensation awards not intended to replace income is excluded from gross income in *establishing* a child support order, the full worker's compensation benefit is assignable for the *collection* of child support.

(14) "Income imputed based on earning capacity" means the amount of income that exceeds the parent's actual income and represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community.

(15) "Income imputed from assets" means the amount of income ascribed to assets that are unproductive and 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 standard of living they would have if they were living with both parents, and that exceeds the actual income from the assets.

(16) "Income modified for business expenses" means the amount of income after adding wages paid to dependent household members, adding undistributed income that the court determines is not reasonably necessary for the growth of the business, and subtracting business expenses that the court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

(17) "Intact family" means a family in which the child or children and the payer reside in the same household and the payer shares his or her income directly with the child or children and has a legal obligation to support the child or children.

(18) "Legal obligation for child support" has the meaning prescribed for "child support" or "child support obligation" in sub. (5).

(19) "Low-income payer" means a payer for whom the court uses the monthly support amount provided in the schedule in Appendix C based on the court's determination that the payer's total economic circumstances limit his or her ability to pay support at the level provided under s. DWD 40.03 (1) and the payer's income available for child support is at a level set forth in the schedule in Appendix C.

(20) "Marital child" means a child determined to be a marital child under s. 767.60, Stats.

(21) "Monthly income available for child support" means the monthly income at which the child support obligation is determined, which is calculated by adding the parent's annual gross income or, if applicable, the parent's annual income modified for business expenses; the parent's annual income imputed based on

earning capacity; and the parent's annual income imputed from assets, and dividing that total by 12.

(22) "Parent" means the natural or adoptive parent of the child.

(23) "Payee" means the parent who is the recipient of child support as a result of a court order.

(24) "Payer" means the parent who incurs a legal obligation for child support as a result of a court order.

(25) "Serial family payer" means a payer with an existing legal obligation for child support who incurs an additional legal obligation for child support in a subsequent family as a result of a court order.

(26) "Shared-placement payer" means a parent who has a court-ordered period of placement of at least 25%, is ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child, and is determined to owe a greater support amount than the other parent under the calculation in s. DWD 40.04 (2) (b).

(27) "Split-placement payer" means a payer who has 2 or more children and who has physical placement of one or more but not all of the children.

(28) "Standard" or "percentage standard" means the percentage of income standard under s. DWD 40.03 (1) which, when multiplied by the payer's monthly income available for child support or adjusted monthly income available for child support, results in the payer's child support obligation.

**Note:** The standard is based on national studies of the percentage of income used to support a child or children, with adjustment downward of those percentages to reflect costs incurred by the payer for what used to be called visitation under Wisconsin law and is now called physical placement and to maintain health insurance for the child or children.

(29) "Variable costs" means the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child's special needs, and other activities that involve substantial cost.

(30) "Worksheet" means the department's percentage standard worksheet, printed as Appendix B to this chapter.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. (2) (b) to (d), r. and recr. (12) to (14), renum. (26) to (28) to be (27) to (29) and am. (29), cr. (26), Register, August, 1987, No. 380, eff. 9-1-87; r. and recr. Register, February, 1995, No. 470, eff. 3-1-95; CR 03-022: am. (2), r. and recr. (3), r. (4), renum. (5) through (10) to be (4) through (9), am. (8), cr. (10), r. and recr. (13), (20), (25), (28) and (30), renum. (14), (16), (17) and (18) to be (16), (17), (18) and (20), am. (16) and (18), cr. (14), am. (15), renum. (19), (22), (23) and (24) to be (22), (23), (24) and (25), cr. (19), r. and recr. (21), renum. (26) and (27) to be (27) and (28) and am., cr. (26), r. and recr. (29), renum. (31) to be (30) Register December 2003 No. 576, eff. 1-1-04.

**DWD 40.03 Support orders. (1) DETERMINING CHILD SUPPORT USING THE PERCENTAGE STANDARD.** The court shall determine a parent's monthly income available for child support by adding together the parent's annual gross income or, if applicable, the parent's annual income modified for business expenses; the parent's annual income imputed based on earning capacity; and the parent's annual income imputed from assets, and dividing that total by 12. This may be done by completing the worksheet in Appendix B, although use of the worksheet for this purpose is not required. Except as provided in s. DWD 40.04 (4) and (5), the percentage of the parent's monthly income available for child support or adjusted monthly income available for child support that constitutes the child support obligation shall be:

- (a) 17% for one child;
- (b) 25% for 2 children;
- (c) 29% for 3 children;
- (d) 31% for 4 children; and
- (e) 34% for 5 or more children.

**Note:** See Appendix A which indicates the amount of child support at various levels of income using the percentage standard.

(2) DETERMINING INCOME MODIFIED FOR BUSINESS EXPENSES. In determining a parent's monthly income available for child support under sub. (1), the court may adjust a parent's gross income as follows:

(a) Adding wages paid to dependent household members.

(b) Adding undistributed income that meets the criteria in s. DWD 40.02 (13) (a) 9. and that the court determines is not reasonably necessary for the growth of the business. The parent shall have the burden of proof to show that any undistributed income is reasonably necessary for the growth of the business.

(c) Reducing gross income by the business expenses that the court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

**(3) DETERMINING INCOME IMPUTED BASED ON EARNING CAPACITY.** In situations where the income of a parent is less than the parent's earning capacity or is unknown, the court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community. If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the court may impute to the parent the income that a person would earn by working 35 hours per week for the federal minimum hourly wage under 29 USC 206 (a)(1). If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

**(4) DETERMINING INCOME IMPUTED FROM ASSETS.** (a) The court may impute a reasonable earning potential to a parent's assets if the court finds both of the following:

1. The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker's compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the parent has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income under s. DWD 40.02 (13).

2. The parent's assets are underproductive and at least one of the following applies:

a. The parent has diverted income into assets to avoid paying child support.

b. Income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.

(b) The court shall impute income to assets 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 subtracting the actual income from the assets that was included as gross income under s. DWD 40.02 (13).

**(5) ADJUSTMENT FOR CHILD'S SOCIAL SECURITY.** The court may include benefits received by a child under 42 USC 402 (d) based on a parent's entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433 in the parent's gross income and adjust a parent's child support obligation by subtracting the amount of the child's social security benefit. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit.

**(6) DETERMINE CHILD SUPPORT BEFORE MAINTENANCE.** If a payer will have obligations for both child support and maintenance to the same payee, the court shall determine the payer's child support obligation under this chapter before determining the payer's maintenance obligation under s. 767.26, Stats.

**(7) CALCULATION OF FAMILY SUPPORT.** When the standard under sub. (1) is used to calculate support under s. 767.261, Stats., the amount determined shall be increased by the amount necessary to provide a net family support payment, after state and federal income taxes are paid, of at least the amount of a child support payment under the standard.

**(8) EXPRESSION OF ORDERED SUPPORT.** The support amount shall be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.10 (2) (am) 1. to 3., Stats., are satisfied.

**(9) TRUST.** The court may protect and promote the best interests of the minor children by setting aside a portion of the child support that either party is ordered to pay in a separate fund or trust for the support, education, and welfare of such children.

**(10) DEPENDENCY EXEMPTION.** The court may order the payee to waive the federal dependency exemption provided that the payee's execution of the exemption waiver is made contingent on the receipt of child support payments.

**(11) DEVIATION FROM THE PERCENTAGE STANDARD.** (a) Upon request by a party, the court may modify the amount of child support payments determined under sub. (1) if, after considering the factors in s. 767.25 (1m), Stats., as applicable, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties.

(b) If the court under par. (a) modifies the amount of child support payment determined under sub. (1), the court shall state in writing or on the record the amount of support that would be required by using the percentage standard under sub. (1), the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification as provided under s. 767.25 (1n), Stats.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1) (intro.), Register, August, 1987, No. 380, eff. 9-1-87; am. (1) (intro.), renum. (2) to (4) to be (4) to (6) and am. (5), cr. (2), (3), (7), Register, February, 1995, No. 470, eff. 3-1-95; corrections in (7) made under s. 13.93 (2m) (b) 7., Stats., Register January 2003 No. 565; CR 03-022: r. and recr. (1) (intro), (2), (3), and (5), renum. (4), (6) and (7) to be (7), (10) and (11), cr. (4), cr. (6), (8) and (9) Register December 2003 No. 576, eff. 1-1-04.

**DWD 40.04 Determining the child support obligation in special circumstances.** Child support may be determined under special circumstances as follows:

**(1) DETERMINING THE CHILD SUPPORT OBLIGATION OF A SERIAL-FAMILY PAYER.** (a) *Applicability.* This subsection applies only if the additional child support obligation incurred by a payer is the result of a court order and the support obligation being calculated is for children from a subsequent family or subsequent paternity judgment or acknowledgment. A payer may not use the provisions of this subsection as a basis for seeking modification of an existing order based on a subsequently incurred legal obligation for child support.

(b) *Determination.* For a serial-family payer the child support obligation incurred for a marital or nonmarital child in a subsequent family as a result of a court order may be determined as follows:

1. Determine the payer's monthly income available for child support under s. DWD 40.03 (1) (intro.);

2. Determine the order of the payer's legal obligations for child support by listing them according to the date each obligation is incurred. For a marital child, the legal obligation for child support is incurred on the child's date of birth. For a nonmarital child, the legal obligation for child support is incurred on the date of the court order. For a nonmarital child in an intact family, it is incurred on the date of adoption or the date of the filing of an acknowledgment of paternity. For a nonmarital maternal child in an intact family, it is incurred on the child's date of birth;

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3. Determine the first child support obligation as follows:
  - a. If the payer is subject to an existing support order for that legal obligation, except a shared-placement order under s. DWD 40.04 (2), the support for that obligation is the monthly amount of that order; or
  - b. If the payer is in an intact family or is subject to a shared-placement order under s. DWD 40.04 (2), the support is determined by multiplying the appropriate percentage under s. DWD 40.03 (1) for that number of children by the payer's monthly income available for child support;
4. Adjust the monthly income available for child support by subtracting the support for the first legal obligation under subd. 3. from the payer's monthly income available for child support under subd. 1.;
5. Determine the second child support obligation as follows:
  - a. If the payer is subject to an existing support order for that legal obligation, except a shared-placement order under s. DWD 40.04 (2), the support for that obligation is the monthly amount of that order; or
  - b. If the payer is in an intact family or is subject to a shared-placement order under s. DWD 40.04 (2), the support is determined by multiplying the appropriate percentage under s. DWD 40.03 (1) for that number of children by the payer's monthly income available for child support;
6. Adjust the monthly income available for child support a second time by subtracting the support for the second legal obligation determined under subd. 5. from the first adjusted monthly income available for child support determined under subd. 4.;
7. Repeat the procedure under subds. 5. and 6. for each additional legal obligation for child support the serial family payer has incurred;

8. Multiply the appropriate percentage under s. DWD 40.03 (1) for the number of children subject to the new order by the final adjusted monthly income available for child support determined in either subd. 6. or 7. to determine the new child support obligation.

**Note:** The following example shows how the child support obligation is determined for a serial-family payer whose additional child support obligation has been incurred for a subsequent family.

Assumptions:

Parent A's current monthly income available for child support is \$3000.  
 Parent A and Parent B were married, had a child in 1990 and divorced in 1991. Parent A is subject to an existing support order of \$450 per month.  
 Parent A remarries and has two children, one born in 1996 and the other in 1997, and remains an intact family.  
 Parent A was adjudicated the father in 1998 for a child born in 1995. Child support needs to be established for this child.  
 Order of parent A's legal obligation for child support.  
 First legal obligation: one child (1990) (divorce)  
 Second legal obligation: 2 children (1996 and 1997) (intact family)  
 Third legal obligation: one child (1998) (paternity)

Calculation:

Parent A's current monthly income available for child support	\$3000
The first legal obligation is subject to an existing monthly support order (divorce)	\$ 450
Adjust the monthly income available for child support	\$3000
	<u>- 450</u>
First adjusted monthly income available for child support	\$2550
Determine support for the second legal obligation (intact family)	\$2550
	<u>x .25</u>
	\$637.50

Adjust the first adjusted monthly income available for child support	\$2550
	<u>- 637.50</u>
Second adjusted monthly income available for child support	\$1912.50
Determine support for the third legal obligation (paternity)	\$1912.50
	<u>x .17</u>
	\$ 325.12

**(2) DETERMINING THE CHILD SUPPORT OBLIGATIONS OF SHARED-PLACEMENT PARENTS.** (a) The shared-placement formula may be applied when both of the following conditions are met:

1. Both parents have court-ordered periods of placement of at least 25% or 92 days a year. The period of placement for each parent shall be determined by calculating the number of overnights or equivalent care ordered to be provided by the parent and dividing that number by 365. The combined periods of placement for both parents shall equal 100%.

2. Each parent is ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child.

(b) The child support obligations for parents who meet the requirements of par. (a) may be determined as follows:

1. Determine each parent's monthly income available for child support under s. DWD 40.03 (1). In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time under s. DWD 40.03 (3), the court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more.

2. Multiply each parent's monthly income available for child support by the appropriate percentage standard under s. DWD 40.03 (1).

3. Multiply each amount determined under subd. 2. by 150%.  
**Note:** The 150% accounts for household maintenance expenditures duplicated by both parents, such as a bedroom, clothes, and personal items.

4. Multiply the amount determined for each parent under subd. 3. by the proportion of the time that the child spends with the other parent to determine each parent's child support obligation.

5. Offset resulting amounts under subd. 4. against each other. The parent with a greater child support obligation is the shared-placement payer. The shared-placement payer shall pay the lesser of the amount determined under this subd. or the amount determined using the appropriate percentage standard under s. DWD 40.03 (1). If the shared-placement payer is also a low-income payer, the child support obligation may be the lesser of the amount determined under this subd. or under sub. (4).

6. In addition to the child support obligation determined under subd. 5., the court shall assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third-party service provider. The court shall not direct payment of variable costs to be made to the department or the department's designee, except as incorporated in the fixed sum or percentage expressed child support order.

**Note:** The following example shows how to calculate the child support obligations of shared-placement parents.

Number of children: Two
Parent A: \$2,000 monthly income available for child support
Court-ordered placement of the child for 219 days a year or 60%.
Parent B: \$3,000 monthly income available for child support
Court-ordered placement of the child for 146 days a year or 40%.

	<u>Parent A</u>	<u>Parent B</u>
1. Monthly income available for child support	\$2,000	\$3,000
2. Monthly income available for child support X percentage standard for two children	$\$2,000 \times 25\% = \$500$	$\$3,000 \times 25\% = \$750$
3. Amount in 2. X 150%.	$\$500 \times 150\% = \$750$	$\$750 \times 150\% = \$1125$
4. Amount in 3. X the proportion of time that the child spends with the other parent	$\$750 \times 40\% = \$300$	$\$1125 \times 60\% = \$675$
5. Offset	$\$675 - \$300 = \$375$	
6. Court also assigns responsibility for payment of the child's variable costs.	Manner of payment is between the parents or from a parent to a third-party service provider, except as incorporated in the fixed sum or percentage expressed child support order.	

**(3) DETERMINING THE CHILD SUPPORT OBLIGATIONS OF SPLIT-PLACEMENT PARENTS.** For parents who have 2 or more children and each parent has placement of one or more but not all of the children, the child support obligations may be determined as follows:

(a) Determine each parent's monthly income available for child support under s. DWD 40.03 (1).

(b) Multiply each parent's monthly income available for child support by the appropriate percentage under s. DWD 40.03 (1) for the number of children placed with the other parent to determine each parent's child support obligation.

(c) Offset resulting amounts under par. (b) against each other. The parent with a greater child support obligation is the split-placement payer.

**Note:** The following example shows how to calculate the amount of child support for split-placement parents:

Assumptions:

- Parent A and B have 3 children.
- Parent A has placement of one child and Parent B has placement of 2 children.
- Parent A's monthly income available for child support is \$3,000.
- Parent B's monthly income available for child support is \$1,500.

Calculation:

- Parent A's child support obligation is  $\$3,000 \times 25\% = \dots\dots 750$
- Parent B's child support obligation is  $\$1,500 \times 17\% = \dots\dots 255$
- Parent A owes Parent B  $750 - 255 = \dots\dots\dots \$495$

**(4) DETERMINING THE CHILD SUPPORT OBLIGATION OF A LOW-INCOME PAYER.** (a) The court may use the monthly support amount provided in the schedule in Appendix C as the support amount for a payer with a monthly income available for child support at a level set forth in the schedule if the payer's total economic circumstances limit his or her ability to pay support at the level determined under s. DWD 40.03 (1). If a payer's monthly income available for child support is below the lowest income level in Appendix C, the court may set an order at an amount appropriate

for the payer's total economic circumstances. This amount may be lower than the lowest support amount in Appendix C.

(b) The department shall revise the schedule in Appendix C at least once every 4 years. The revision shall be based on changes in the federal poverty guidelines since the schedule was last revised. The department shall publish revisions to the schedule in the Wisconsin Administrative Register.

**Note:** The schedule in Appendix C provides reduced percentage rates that may be used to determine the child support obligation for payers with an income below approximately 125% of the federal poverty guidelines. If a payer's monthly income available for child support is below approximately 75% of the federal poverty guidelines, the court may order an amount appropriate for the payer's total economic circumstances. For monthly income amount for child support between approximately 75% and 125% of the federal poverty guidelines, the percentage rates in the schedule gradually increase as income increases. The percentage rates used in s. DWD 40.03 (1) apply to payers with income greater than or equal to approximately 125% of the federal poverty guidelines.

**(5) DETERMINING THE CHILD SUPPORT OBLIGATION OF A HIGH-INCOME PAYER.** (a) The payer's full monthly income available for child support shall be considered in determining the payer's child support obligation. The court may apply the reduced percentages under pars. (c) and (d) to income at the indicated levels.

(b) The court shall apply the percentages in s. DWD 40.03 (1) to a payer's monthly income available for child support that is less than \$7,000.

**Note:** A monthly income of \$7,000 is an annual income of \$84,000.

(c) The court may apply the following percentages to the portion of a payer's monthly income available for child support that is greater than or equal to \$7,000 and less than or equal to \$12,500:

1. 14% for one child.
2. 20% for 2 children.
3. 23% for 3 children.
4. 25% for 4 children.
5. 27% for 5 or more children.

**Note:** A monthly income of \$7,000 is an annual income of \$84,000 and a monthly income of \$12,500 is an annual income of \$150,000. The percentages that apply to income between \$84,000 and \$150,000 are approximately 80% of the full percentage standards.

(d) The court may apply the following percentages to the portion of a payer's monthly income available for child support that is greater than \$12,500:

1. 10% for one child.
2. 15% for 2 children.
3. 17% for 3 children.
4. 19% for 4 children.
5. 20% for 5 or more children.

**Note:** A monthly income of \$12,500 is an annual income of \$150,000. The standards that apply to income over \$150,000 are approximately 60% of the full percentage standards.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1) (a), (b) (intro.) and 1., (3) (intro.), (a) and (c), r. and recr. (2), Register, August, 1987, No. 380, eff. 9-1-87; r. and recr. (1), (2), Register, February, 1995, No. 470, eff. 3-1-95; **CR 03-022: am (1) (b) 3. a., b., 4., 5. a., b., 6., 8., r. and recr. (2), and (3), cr. (4) and (5) Register December 2003 No. 576, eff. 1-1-04.**

**DWD 40.05 Determining imputed income for child support. History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. and recr. Register, August, 1987, No. 380, eff. 9-1-87; am. (2), Register, February, 1995, eff. 3-1-95; **CR 03-022: r. Register December 2003 No. 576, eff. 1-1-04.**