



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 4

TO: MEMBERS OF THE SPECIAL COMMITTEE ON REVIEW OF SPOUSAL
MAINTENANCE AWARDS IN DIVORCE PROCEEDINGS

FROM: Margit Kelley, Staff Attorney

RE: Brief Review of Wisconsin's Laws Regarding Modification of Maintenance Awards and
Calculating Child Support

DATE: October 7, 2010

At the hearing of the Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings on August 24, 2010, Chair Staskunas and other members of the Committee requested a brief overview of Wisconsin's laws regarding: (1) modification of maintenance awards; and (2) calculating child support. While these subject areas are not directly within the scope of the committee's charge, background information on these areas could be helpful in providing an understanding of their interrelationship with determining spousal maintenance awards. The following information briefly summarizes Wisconsin's laws in these areas.

Modification of Maintenance Awards [s. 767.59, Stats.]

A maintenance award may be modified only when there has been a substantial change in circumstances of the parties since the entry of the last order. The burden of proof for convincing the court that there has been a substantial change in circumstances that warrant a review of the last maintenance order is on the party seeking the modification.

A court may not revise a judgment that waives maintenance to a party. Also, a court may not revise a judgment that incorporated the parties' stipulation to non-modifiable maintenance. A court may not revise the amount of maintenance payments that were due prior to the date that notice of the action to modify the award is given, except to correct previous errors in calculation.

If a substantial change in circumstances has occurred that gives the court the authority to modify a maintenance award, the court may then increase, reduce, extend, or terminate the award. Any modification is not to be a retrial of issues in the original judgment.

A court must terminate a maintenance order upon receiving proof of a recipient's remarriage, or upon the death of the recipient.

Calculating Child Support

As part of a divorce judgment, paternity judgment, or cases where a child's parents may live apart, the court is required to order either or both parents to pay child support for their minor children or for any child under 19 years old who is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. In cases of teenage parents, both sets of grandparents also have a child support obligation. The court must determine the amount of child support to be paid using child support standards promulgated by the Department of Children and Families (DCF), unless the court finds that to do so would be unfair to the child or any of the parties.

Chapter DCF 150, Wis. Adm. Code, establishes the child support standards that are to be applied to a person's income to determine the appropriate level of child support. Child support amounts are based on a percentage of the parent's gross income. The percentage standards are as follows:

- 17% for one child.
- 25% for two children.
- 29% for three children.
- 31% for four children.
- 34% for five or more children.

Although the child support amount is calculated based on the percentage standard, current law provides that the child support order must be expressed as a fixed sum. The order may be expressed as a percentage only in limited circumstances.

When both parents have court-ordered periods of physical placement of a child for at least 25% of the year (92 overnights) the percentage standard is calculated for both parents and offset under a given formula.

The percentage standard is applied to the obligated parent's gross monthly income. The gross income includes all salary and wages before taxes and other deductions are taken out, any imputed income based on earning capacity, income from assets, workers' compensation, unemployment income, and Social Security disability. Income does not include public welfare assistance.

The court is also permitted to set child support based on a payer's ability to earn, or "imputed income," beyond actual earnings. The court may consider factors such as past earnings; current physical and mental health; history of child care responsibilities of the parent with primary placement; the parent's education, training, and recent work experience; and local job openings.

Special rules govern the application of the percentage standards to the following different types of payers:

- A serial family payer, which is a payer with an existing child support obligation who incurs an additional child support obligation in a subsequent family.
- A split-custody payer, which is a payer who has physical placement of at least one but not all the children.
- Low-income payers, with an income below 150% of the federal poverty level. The court may use given reduced percentage rates if the payer's income is below 150% of the federal poverty level. If a payer's monthly income is below 75% of the federal poverty level, the court may set an order at an amount appropriate for the payer's total economic circumstances.
- High-income payers earning more than \$84,000 per year. The court may use given reduced percentage rates for the portion of gross income in excess of \$84,000. A further reduced percentage rate applies to income in excess of \$150,000.

A court may set child support without using the percentage standards only in limited circumstances. Upon request of a party to the action, the court may deviate from the percentage standard if the court finds that the use of the percentage standard is unfair to the child or to any of the parties. Any deviation must include consideration of an extensive list of factors set forth in the statutes.

A court that issues a child support order must also assign responsibility for payment of the child's health care expenses. In assigning responsibility, the court must consider specified factors, including existing and available health insurance, the extent of coverage, and the cost of health insurance coverage for the child. The court may require a parent to initiate or continue health care insurance coverage for a child.

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