Benjamin Kain
Involved Fathers of Wisconsin
bkain222@gmail.com
262-287-8386

Memorandum

To: Members, Legislative Study Committee on Child Placement and Support

From: Ben Kain, Involved Fathers of Wisconsin

Date: September 24, 2018

Re: Birth Cost Recovery Program

Ben Kain, President & Founder of Involved Fathers of Wisconsin, wishes to submit a brief reply to the Wisconsin Legislative Council Study Committee's Memorandum of September 18, 2018, which included a footnote that the birth cost recovery program is outside the scope of the Committee.

I urge reconsideration of this issue and request that the birth cost recovery program be discussed amongst the members of this Committee and that a vote be taken to determine whether or not a bill should be introduced ending the birth cost recovery practice entirely.

The Birth Cost Recovery Program is Directly Within the Scope of this Committee

Birth cost recovery is defined as "medical support" under administrative code chapter DCF 150.05, directly within the scope of the Committee's directive "to review the standards under current law for determining periods of physical placement and child support obligations".

DCF Has Repeatedly Taken the Position that Birth Cost Orders Constitute a Form of Child Support

The attached public hearing record for DCF 150.05 (page 19) shows that DCF has repeatedly taken the position that "birth cost orders constitute a form of child support". When doing so, DCF has consistently referenced the attached policy guidance notice from the Federal Office of Child Support Enforcement, which says "medical support is a subset of child support". For that reason, when it comes to setting the amount of birth cost orders, DCF has chosen to use "the same definition of income that it does for the calculation of all support orders".

The 2014 DCF Child Support Guidelines Advisory Panel Made Recommendations Regarding Birth Cost Recovery

Indeed, a panel convened by DCF in 2014 provided recommendations relating to changes in child support guidelines and the birth cost recovery program. The birth cost recovery program is implemented and enforced by county child support agencies. Birth costs are collected through the exact same enforcement methods agencies use for collecting regular child support which is paid to a custodial parent. Agencies do not take unmarried fathers to small claims court to obtain a judgment for birth costs; rather, court orders for repayment of birth costs are included in initial child support and placement/custody orders. This practice puts unmarried fathers automatically behind in "child support" upon the births of their children, yet that initial "child support arrearage" is never paid to the mother or the child; instead, it is paid entirely to the State. The child support agencies receive 15% of the federal incentive funding for collection of birth costs, with the remainder going to DHS.

The Birth Cost Recovery Program in Wisconsin is Unconstitutional

Finally, I am attaching to this memorandum a court case finding the birth cost recovery practice in violation of the equal protection clause, ending the practice in the state of Idaho. Currently, only Wisconsin, Michigan, Kansas and Minnesota still collect birth costs from unmarried fathers, and Wisconsin leads all states in the amounts collected by millions of dollars. The vast majority of all other states in the US have ended the practice because it has been found to be harmful to children, mothers, fathers and families (data suggests that the practice contributes to infant mortality, domestic violence, and fatherlessness).

Moreover, it is important to note that child support agencies in Wisconsin collect birth costs from unmarried fathers who are awarded primary placement of their children in the initial placement/custody order. If the father doesn't pay, he is subjected to contempt proceedings, and could face jail time for not paying the State. So, put simply, a father could be receiving child support from the non-custodial mother, and at the same time be under a child support order payable only to the State. Unless I have awoken in an alternate universe, I do not understand how a parent could be receiving child support from the other parent, yet at the same time owe "child support" to the State. If the State wants to collect birth costs, they should be required to take the father to small claims court – they should not be utilizing enforcement methods originally designed to collect actual child support (i.e. payable to the child's primary parent) to pad their budgets. The practice is unconscionable.

Involved Fathers of Wisconsin urges the Committee to discuss this issue and consider a bill which would end the practice, aligning Wisconsin with the vast majority of other states to place families and children before federal incentive dollars.

Thank you.

Very truly yours,

Benjamin Kain

Benjamin Kain
Involved Fathers of Wisconsin

Listen

Federal Income Tax Refund Offset Program to Recoup Medical or Birthing Expenses Owed to State

PIQ-07-01

Published: February 6, 2007

Information About: State/Local Child Support Agencies
Topics: Medical Support
Types: Policy, Policy Interpretation Questions (PIQ)
Tags: Child Support Guidelines, Collection & Enforcement Systems

POLICY INTERPRETATION QUESTIONS

PIQ-07-01

DATE: February 6, 2007

TO: State and Tribal IV-D Directors

SUBJECT: Use of Federal Income Tax Refund Offset Program to recoup medical expenses or birthing expenses owed to a State

QUESTION 1: Do guidelines apply to the establishment of medical support orders for birthing expenses?

RESPONSE 1: Yes. Guidelines apply to the establishment of any child support order. Medical support is a subset of child support and child support orders must be established using guidelines which must at a minimum: take into consideration all earnings and income of the noncustodial parent; be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and provide for the child(ren)'s health care needs, through health insurance coverage or other means, in accordance with 45 CFR 302.56. In seeking judgments or awards for retroactive medical support, including birthing expenses, the IV-D agency must use the guidelines and take into consideration the obligated parent's ability to pay, or justify the deviation from the application of the guidelines.

QUESTION 2: May a State IV-D agency submit for Federal Income Tax Refund Offset past-due medical support, whether cash medical support or judgments for birthing costs, set in accordance with State guidelines?

RESPONSE 2: Yes. Past-due medical support set in accordance with State guidelines may be submitted for Federal income tax refund offset if the requirements in 45 CFR 303.72 are met. Federal regulations at 45 CFR 303.72(a) define past-due support qualifying for Federal income tax refund offset to include past-due support owed in cases with assigned support and in cases in which the IV-D agency is providing services under §302.33. Regulations of the Department of the Treasury at 31 CFR 285.3(c)(1) authorize the submission of past-due support for Federal income tax refund offset in cases in which support has been assigned to the State or cases in which the State is providing collection services under section 454(4) of the Social Security Act. Both sets of regulations cover all types of IV-D cases.

Margot Bean
Commissioner, Office of Child Support Enforcement

CC: ACF Regional Administrators
ACF OCSE Regional Program Managers

☞ **07hr_JCR-AR_CRule_08-066_pt01**

☞

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2007-08
(session year)

Joint
(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

Jim Doyle
Governor

Reggie Bicha
Secretary

201 East Washington Avenue
P.O. Box 8916
Madison, WI 53708-8916

Telephone: 608-267-3905
Fax: 608-261-6972
dcf.wisconsin.gov

State of Wisconsin

Department of Children and Families

Rule Report for Legislative Review

Proposed Rules Relating to Establishment of Birth Cost Orders Based on Child Support Guidelines

DWD 40
CR 08-066

Basis and Purpose of the Proposed Rules

Under s. 767.89 (3) (e), Stats., the content of a paternity judgment shall include an order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established may not exceed one-half of the total actual and reasonable pregnancy and birth expenses.

The federal Office of Child Support Enforcement has issued an interpretation for cases under Section IV-D of the Social Security Act that requires birth cost orders to be set under a state's child support guidelines that take into consideration a father's ability to pay.

The proposed rules create a procedure for determining birth cost judgments in the child support guidelines in Chapter DWD 40 that incorporates the requirements of s. 767.89 (3) (e), Stats., and allows a court to consider a father's ability to pay.

Public Hearing Summary

A public hearing was held in Madison on July 29, 2008. A summary of the public comments and the Department's responses is attached.

Response to Legislative Council Staff Recommendations

All comments were accepted.

Changes to Analysis Prepared under Section 227.14 (2), Stats.

- Updated to reflect the transfer of agency authority from the Department of Workforce Development to the Department of Children and Families.
- Clarified substantive language to reflect mandatory provision that the birth cost judgment not exceed one-half of the actual and reasonable cost of the mother's pregnancy and the child's birth and permissive provision that court may order an amount based on the father's income.
- Updated discussion of federal minimum wage increase on July 24, 2008, from future to past tense.

- Updated discussion of federal regulation on medical support in child support cases from a rule proposed on September 20, 2006, to a final regulation issued on July 21, 2008.

Final Regulatory Flexibility Analysis

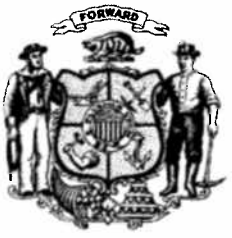
The rule may affect small businesses but will not have a significant economic impact on a substantial number of small businesses. The rule could affect a private insurance company seeking recovery of birth costs under s. 767.89 (3) (e), Stats., but the effect would be *de minimus*.

Department Contacts

Connie Chesnik
Attorney
Office of Legal Counsel
267-7295

Elaine Pridgen
Administrative Rules Coordinator
Office of Legal Counsel
267-9403

WISCONSIN STATE LEGISLATURE



State of Wisconsin
Department of Children and Families

Establishment of Birth Cost Orders Based on Child Support Guidelines

DWD 40

The Wisconsin Department of Children and Families proposes to amend ss. DWD 40.03(3) and 40.04(4)(b) and to create ss. DWD 40.02 (12m), 40.05, and DWD 40 Appendix D, relating to establishment of birth cost orders based on child support guidelines.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 49.22 (9) and 227.11 (2) (a), Stats.
Statutes interpreted: Section 767.89 (3) (e), Stats.
Related statutes or rules: 45 CFR 302.33, 302.56, 303.31, 303.72(a)

Explanation of agency authority. Effective July 1, 2008, agency authority to administer the child support program was transferred from the Department of Workforce Development (DWD) to the Department of Children and Families (DCF). The Legislative Reference Bureau is currently making the technical corrections necessary to publish the DWD rules and Department of Health and Family Services (DHFS) rules that are now administered by DCF with the new agency information. The new DCF rules are expected to be published this fall. Until the DCF rules are published by the Legislative Reference Bureau, they will be referred to by their DWD or DHFS numbers.

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. According to the federal Office of Child Support Enforcement (OCSE), medical support is a subset of child support.

Summary of the proposed rule. Under s. 767.89 (3) (e), Stats., the content of a paternity judgment shall include an order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established may not exceed one-half of the total actual and reasonable pregnancy and birth expenses. The order shall specify the court's findings as to whether the father's income is at or below the federal poverty line and specify whether periodic payments are due on the obligation, based on the father's ability to pay or

contribute to those expenses. If the father has no present ability to pay, the court may modify the judgment or order at a later date to require the periodic payments if the father has the ability to pay at that time.

If the birth costs were paid by the Medicaid program, the order for payment of birth costs under s. 767.89 (3) (e), Stats., will be to the State of Wisconsin. An unmarried mother who applies for or receives Medicaid is required to cooperate with the local child support agency in establishing paternity (if necessary), obtaining medical support, and assigning the rights to payment of medical support to the state. There are exceptions to the child support cooperation requirement for good cause and for women during pregnancy and 60 days post-partum.

Federal and state income tax refund offset is one of the primary tools for collection of birth cost orders owed to the state. OCSE recently notified Wisconsin that it will not certify the state's request for federal income tax refund offset for birth cost orders that have been determined using the methodology in s. 767.89 (3) (e), Stats. This provision requires the court to make a finding based on the father's ability to pay before *setting a periodic payment* on birth costs. OCSE's interpretation of federal regulations as issued in Policy Interpretation Question PIQ-07-01 provides that the *judgment amount* must be set according to guidelines that take into consideration the father's ability to pay.

This rule creates a procedure in the child support guidelines in Chapter DWD 40 that allows a court to take into consideration the father's ability to pay in determining the birth cost judgment amount. The court shall include in a paternity judgment or order a birth cost judgment amount that does not exceed one-half of the actual and reasonable cost of the mother's pregnancy and child's birth and may order the lowest of the following:

- An amount that does not exceed the sum of 5% of the father's current monthly income available for child support multiplied by 36 months.
- If the father's child support obligation was determined under the low-income payer provision in s. DWD 40.04 (4) and the father's monthly income available for child support is between 75% and 125% of the federal poverty guidelines, the maximum birth cost judgment amount provided in the schedule in Appendix D.
- If the father's child support obligation was determined under the low-income payer provision in s. DWD 40.04 (4) and the father's monthly income available for child support is less than 75% of the federal poverty guidelines, a birth cost judgment at an amount appropriate for the father's total economic circumstances.

Although the primary impetus for this rule is to comply with federal child support regulations to ensure that OCSE will certify birth cost orders owed to the State of Wisconsin in cases under Section IV-D of the Social Security Act, the birth cost provision will also apply to other parties, such as a private insurance company seeking recovery of birth costs under s. 767.89 (3) (e), Stats.

The department will revise the schedule of the maximum birth cost judgment amounts for low-income payers in Appendix D every year based on changes in the federal poverty guidelines and publish notice of the revisions to the schedule in the *Wisconsin*

Administrative Register. Currently the schedule in Appendix C on determining the child support obligation of low-income payers is revised at least once every 4 years based on changes in the federal poverty guidelines since the schedule was last revised. The proposed rule will provide that both Appendix C and Appendix D will be revised every year based on changes in the federal poverty guidelines.

The proposed rule will also create a cross-reference to the medical support provision in s. 767.513, Stats., in the newly-created section on medical support in s. DWD 40.05. OCSE has notified Wisconsin that the medical support provision in s. 767.513, Stats., must be within the child support guidelines in Chapter DWD 40.

In addition, the proposed rule amends the section on determining income imputed based on earning capacity when information on the parent's actual income or ability to earn is unavailable. The current rule provides that the court may impute to the parent the income that a person would earn by working 35 hours per week for the federal minimum wage. This provision was created effective January 1, 2004, when the federal and state minimum wage were the same rate.

From June 1, 2005, to July 23, 2008, the state minimum wage was higher than the federal minimum wage, and the provision on imputing income when information is unavailable was inconsistently applied by counties during this time. Some counties used the state minimum wage in determining earning capacity since it was the applicable minimum wage rate, while others used the federal minimum wage as the current rule provides.

The proposed rule will allow courts to impute income to the parent at the higher of the state or federal minimum wage. This change will have no effect in the near future since the federal minimum wage is now higher than the state minimum wage, but it will ensure consistency among counties if the state rate is again higher than the federal rate. On July 24, 2008, the federal minimum wage rate was increased to $6.55 and the state minimum wage rate is still $6.50. Effective 7/24/09, the federal minimum wage rate will be $7.25, and the state minimum wage is proposed to also increase to $7.25.

Summary of related federal requirements. In PIQ-07-01, OCSE states that medical support is a subset of child support, and child support orders must be set under state guidelines that comply with 45 CFR 302.56. State guidelines must:

- Take into consideration all earnings and income of the noncustodial parent.
- Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.
- Provide for the child's health care needs through health insurance coverage or other means.
- Provide a rebuttable presumption that the amount determined using the guidelines is the correct child support to be awarded.

The circumstances in which past-due support qualifies for federal income tax refund offset are listed in 45 CFR 303.72(a). The list includes cases where the child support agency is providing services to a Medicaid recipient.

Comparison with rules in adjacent states. All states are required to comply with the OCSE interpretation that birth cost judgment amounts must be set under the state's child support guidelines.

Minnesota, Michigan, and Illinois recover a portion of birth costs paid by the Medicaid program from fathers. Iowa does not.

Summary of factual data and analytical methodologies. OCSE has notified states that birth cost judgment amounts must be set according to child support guidelines that take into consideration the father's ability to pay.

This rule provides that the amount of a birth cost judgment may not exceed 5% of the father's income over 3 years, with a graduated scale of lower amounts for fathers with income below 125% of the federal poverty guidelines. The 5% limit is based on a recent federal regulation on medical support in child support cases. The federal regulation provides that cash medical support or private health insurance is considered reasonable in cost to the obligated parent if it does not exceed 5% of his or her gross income. *Child Support Enforcement Program; Medical Support*, 73 Fed. Reg. 42,416, 42441 (July 21, 2008) (to be codified at 45 CFR Parts 302, 303, 304, 305, and 308).

Effect on small businesses. The rule may affect small businesses but will not have a significant economic impact on a substantial number of small businesses.

Analysis used to determine effect on small businesses. The rule could affect a private insurance company seeking recovery of birth costs under s. 767.89 (3) (e), Stats., but the effect would be *de minimus*.

Agency contact person. Attorney Connie Chesnik, Office of Legal Counsel, Department of Children and Families, (608) 267-7295, connie.chesnik@wisconsin.gov.

Place where comments are to be submitted and deadline for submission. Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Department of Children and Families, 201 E. Washington Avenue, Madison, WI, 53708 or elaine.pridgen@wisconsin.gov. The comment deadline is July 30, 2008.

SECTION 1. DWD 40.02 (12m) is created to read:

DWD 40.02 (12m) "Federal poverty guidelines" means the poverty guidelines updated periodically in the Federal Register by the U.S. department of health and human services under the authority of 42 USC 9902 (2).

SECTION 2. DWD 40.03 (3) is amended to read:

DWD 40. 03 (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 higher of the federal minimum hourly wage under 29 USC 206 (a)(1) or the state minimum wage in s. DWD 272.03. 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.

SECTION 3. DWD 40.04 (4) (b) is amended to read:

DWD 40.04 (4) (b) The department shall revise the schedule in Appendix C ~~at least once~~ every ~~4 years. The revision shall be~~ year 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.

SECTION 4. DWD 40.05 is created to read:

DWD 40.05 Medical support. (1) RESPONSIBILITY FOR HEALTH EXPENSES. In addition to ordering child support for a child under this chapter, the court shall specifically assign responsibility for and direct the manner of payment for the child's health expenses under s. 767.513, Stats.

(2) BIRTH COST JUDGMENT. (a) In this subsection, "birth cost judgment" means an order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth under s. 767.89 (3) (e), Stats.

(b) The court shall include in a paternity judgment or order a birth cost judgment amount that does not exceed one-half of the actual and reasonable cost of the mother's pregnancy and child's birth and may order the lowest of the following:

1. An amount that does not exceed the sum of 5% of the father's current monthly income available for child support multiplied by 36 months.

2. If the father's child support obligation was determined under s. DWD 40.04 (4) and the father's monthly income available for child support is between 75% and 125% of the federal poverty guidelines, the maximum birth cost judgment amount provided in the schedule in Appendix D.

3. If the father's child support obligation was determined under s. DWD 40.04 (4) and the father's monthly income available for child support is less than 75% of the federal poverty guidelines, a birth cost judgment at an amount appropriate for the father's total economic circumstances.

(c) The department shall revise the schedule in Appendix D every year based on changes in the federal poverty guidelines. The department shall publish revisions to the schedule in the Wisconsin Administrative Register.

SECTION 5. DWD 40, Appendix D is created to read:

Chapter DWD 40

APPENDIX D

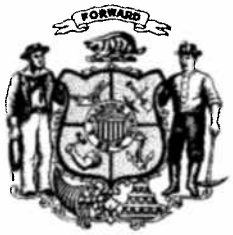
2008 Maximum Birth Cost Judgment Amounts for Low-Income Payers at 75% to 125% of the Federal Poverty Guidelines

Monthly Income Up To:	Percent	Number of Months	Maximum Birth Cost Judgment Amount*
$650	3.28%	36	$768
$675	3.38%	36	$821
$700	3.49%	36	$879
$725	3.60%	36	$940
$750	3.71%	36	$1,002
$775	3.81%	36	$1,063
$800	3.92%	36	$1,129
$825	4.03%	36	$1,197
$850	4.14%	36	$1,267
$875	4.25%	36	$1,339
$900	4.35%	36	$1,409
$925	4.46%	36	$1,485
$950	4.57%	36	$1,563
$975	4.68%	36	$1,643
$1,000	4.78%	36	$1,721
$1,025	4.89%	36	$1,804
$1,050	5.00%	36	$1,890

*The maximum birth cost judgment amount may not exceed the identified percentage of the father's current monthly income available for child support multiplied by 36 months.

SECTION 6. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.


WISCONSIN STATE LEGISLATURE


FORWARD

Department of Children and Families

Public Hearing Summary

Proposed Rules Relating to Establishment of Birth Cost Orders Based on Child Support Guidelines

DWD 40
CR08-066

A public hearing was held in Madison on July 29, 2008. The following commented on the proposed rules:

1. Carol Medaris, Senior Legal Analyst
   Center for Family Policy and Practice
   (CFFPP)
   Madison
2. Bob Andersen, Attorney
   Legal Action of Wisconsin (LAW)
   Madison
3. Erin McBride, Attorney
   ABC for Health, Inc., and ABC for Rural Health (ABC)
   Madison

The following observed for information only:

1. M. Roulet, Program Director
   Center for Family Policy and Practice
   Madison
2. Pamela Kahler, Drafting Attorney
   Legislative Reference Bureau
   Madison
3. Mike Brown, Legal Intern
   ABC for Health, Inc., and ABC for Rural Health
   Madison

Comment Summary and Department Response

ABC: The proposed rules that take a father's ability to pay into account offer a more equitable assignment of cost recovery. Setting an unrealistic order just increases the amount of unpaid debt owed by parents, deters employment, reduces counties' collection rates and incentive payments, and increases administrative costs spent working unsuccessful cases. Setting a realistic order improves the chances that fathers will continue to pay over time.

CFFPP
and LAW: We generally oppose the assessment of birth costs to reimburse the state for Medicaid expenses. A federal advisory group, the Medical Child Support Working Group, submitted a report to the Department of Health and Human Services and the Department of Labor in June 2000 entitled *21 Million Children's Health: Our Shared Responsibility.* This report recommends that Congress amend Title IV-D of the Social Security Act to preclude state IV-D agencies from attempting to recover Medicaid-covered prenatal, birthing, and perinatal expenses from the noncustodial parent.

The report asserts that collecting birth costs runs counter to the public policy goal of encouraging mothers to seek prenatal care. In 1990, Congress eliminated the Medicaid child support cooperation requirement for women in the Poverty Level Pregnant Women Program because the cooperation requirement was deemed a potential barrier to prenatal care. States' practice of collecting expenses of the pregnancy and birth after a child is born runs counter to the intent of removing the cooperation requirement. If the mother is concerned about child support cooperation, that concern will be just as real after the birth as before it.

Collecting birth costs also discourages voluntary paternity establishment. It is more important to establish paternity and future child support and to encourage fathers to establish a relationship with their children-perhaps through joining a fatherhood program-than to recoup pregnancy-related Medicaid costs.

Furthermore, since the fathers of children receiving Medicaid are likely to be low income, the State usually cannot collect the assessed amounts anyway. Birthing costs thus artificially inflate the amount of arrears carried on the State's books and make program performance appear worse than it is. Moreover, to the extent that the State does collect the medical expenses as arrears owed to the State, this money reimburses the State at the expense of additional support that might go to the child.

LAW: The Office of Inspector General of the Department of Health and Human Services issued two reports in 2000, *The Establishment of Child Support Orders for Low Income Non-Custodial Parents* and *State Policies Used to Establish Child Support Orders for Low Income Non Custodial Parents.* These reports found that noncustodial parents who were charged front end costs were more likely to fail to make child support payments than were parents who were not charged with such costs. Front end costs can include retroactive support, *birth related medical costs*, service of process, court or attorney fees, and the costs for paternity testing.

ABC: While still controversial, national policy trends have been against recovering birth costs at all. A ban against recovering Medicaid birthing costs was part of H.R. 4678 (2000) that passed in the House 405 to 18, earlier versions of the TANF reauthorization bills, and S. 1626/H.R. 3395 (Bayh-Obama, 2007). The mission of the child support program is undergoing a basic shift from welfare cost recovery to helping parents support their children. The child support program's reimbursement-

driven policies have interfered with states' ability to implement policies supportive of families. By eliminating its cost recovery focus, a full distribution policy would convert the child support program into an income support program for low income working parents, simplify program administration, rationalize the program's message, and change its culture.

Department response: The recommendations of the Medical Child Support Working Group were never adopted by the federal Office of Child Support Enforcement. Nor has a clear link been established in Wisconsin that shows that setting birth cost orders is a deterrent to the voluntary acknowledgment of paternity. However, the number of non-marital births continues to rise and it is important for non-marital fathers to accept financial responsibility for the costs associated with the births of their children. These rule amendments are designed to tie the birth cost order more closely to the father's ability to pay and, as such, are likely in the vast majority of cases to significantly reduce the amount owed.

ABC: The state must recognize two-parent families. Many unmarried low income fathers live with and support their partner and child. Imposing birth cost recovery on these low income households only exacerbates a host of other economic and social challenges. Tax intercept of arrearages gets sent first to the state, so intercepting birth cost as an arrearage puts the state in line for collection before the mom and baby.

Department response: The Department agrees that it is not in the best interest of the family to establish birth cost orders when the father's income has been used to determine the family's eligibility for medical assistance.

When the mom and potential father of an unborn child do not have an older child in common, the father's income is usually not taken into consideration when determining medical assistance eligibility. However, when the couple has a second child in common, and there is an intact family situation, the potential father's income is usually taken into consideration in determining medical assistance eligibility for the household. In such cases, the Child Support Agency must not obtain an order for birth costs.

In October 2004, the Bureau of Child Support developed a policy that CSAs may not seek birth cost orders for father's to repay medical assistance benefits if all of the following apply:

- The parents have an older child in common.
- The parents live together at the time the child is born.
- The intact family situation has been reported to the economic support agency and is documented in their automated case system prior to the child's birth.

CFFPP
and LAW: In the absence of a statutory change removing court authority to order birth costs, we agree that a father's ability to pay should be considered in setting the amount of his total birth cost obligation. Fathers with income below 200% of the federal poverty

level should not be ordered to pay for birth costs when those costs are paid by Medicaid.

Since 200% of the federal poverty level is the eligibility requirement for the Standard Plan in the new BadgerCare Plus program, this modification would exempt fathers from birth cost obligations in substantially similar circumstances as the children's mother, whose family income qualifies the household for Medicaid. In fact, pregnant women are eligible for the Benchmark Plan in BadgerCare Plus at 300% of the federal poverty level, which may be an even more appropriate level to begin assessing fathers for Medicaid birth costs.

Department response: The low-income scale for birth costs is currently capped at 125% of poverty. This cap is set at the same level as the low-income standard for setting child support orders. The Department will soon be proposing new amendments to DWD 40 to include mandated language related to medical support from the federal regulation issued July 21, 2008. During this rule-making process, the cap for low income child support and birth costs will also be reviewed.

LAW: There is nothing wrong with having the ability to estimate or impute income for child support because otherwise an individual who could work could defeat his or her responsibility simply by not working or by working at a lesser paying job.

There is something very wrong with imputing income for determining a birth cost order. Birth costs are an entirely different matter and serve only to reimburse governments for Medicaid costs, while child support is essential for the well being of children.

CFFPP: We oppose imputing income in all child support and birth cost cases in the absence of clear evidence of the father's ability to earn and his purposeful reduction of earnings. Without this additional criteria, the practice of imputing income penalizes "dead-broke" dads as well as "dead-beat" dads.

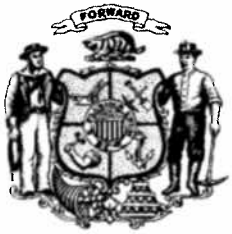
Using the chart at Appendix D, imputing income at the minimum wage would result in a debt of about $1700 (assuming that that did not exceed one-half the total birth costs). For fathers with ongoing child support and medical support obligations, and who lack regular, sufficient earnings in the first place, this is going to be an arrears amount that is likely to not only stay "on the books" forever, but result in steadily increasing arrears for those fathers who are discouraged from ever trying to keep up.

The reason the department is changing this rule is to ensure that a birth cost order is based on a father's ability to pay. Imputing income does not result in a real determination of ability to pay.

LAW: DWD 40 uses the term "monthly income available for child support" to describe the income on which child support and birth cost orders are based. This term lumps together actual income and estimated income. The rule should refer separately to actual earnings and earnings that are imputed so the reader can understand what is really being talked about.

Department response: A parent has a personal responsibility to a child, both for that child's ongoing support and for the costs associated with his or her birth. The inability to impute income to a parent for the purpose of setting a birth cost order can just as easily allow a parent to defeat that responsibility. The federal Office of Child Support Enforcement has instructed states that the establishment and enforcement of birth cost orders is an appropriate IV-D activity provided that the methodology for establishing those orders is included in the state's guidelines for setting support. Income under those guidelines is defined to include imputed income under certain circumstances. Because birth cost orders constitute a form of support, the department is using the same definition of income that it does for the calculation of all support orders.

WISCONSIN STATE LEGISLATURE



2007 Session

FISCAL ESTIMATE
DOA-2048 N(R03/97)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 40

Amendment No. if Applicable

Subject
Establishment of birth cost orders based on child support guidelines

Fiscal Effect

State: ☒ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local:

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected:
☐ Towns ☐ Villages ☐ Cities
☐ Counties ☐ Others _____
☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

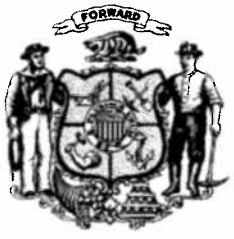
Assumptions Used in Arriving at Fiscal Estimate

The rule allows Wisconsin to continue to collect birth cost judgments owed to the state through federal income tax refund offset. If the department failed to enact this rule to comply with OCSE requirements, the state and county child support agencies would likely experience a decrease in revenue. In calendar year 2007, the child support program collected $11,481,000 in birth costs through federal income tax refund offset. Of the nearly $11.5 million collected, approximately $6.62 million was returned to the federal government to reimburse Medicaid costs, $1.72 million was used by county child support agency programs to benefit children in the state, and the remaining $3.14 million was returned to the state Medicaid program.

Long-Range Fiscal Implications
Continuation of current revenue.

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
DWD/Sue Kinas 608-264-9826	266-9427	6/23/08

WISCONSIN STATE LEGISLATURE



LCRC
FORM 2

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **08-066**

AN ORDER to amend DWD 40.03 (3) and 40.04 (4) (b); and to create DWD 40.02 (12m) and 40.05, and DWD 40 Appendix D, relating to establishment of birth cost orders based on child support guidelines.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

06-26-2008 RECEIVED BY LEGISLATIVE COUNCIL.

07-18-2008 REPORT SENT TO AGENCY.

RNS:AS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment Attached YES ☐ NO ☑

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment Attached YES ☑ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment Attached YES ☐ NO ☑

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment Attached YES ☑ NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment Attached YES ☑ NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

   Comment Attached YES ☐ NO ☑

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment Attached YES ☐ NO ☑

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 08-066

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

a. In the "Effect on small businesses" section of the analysis, it appears that "will" should replace "will may."

b. In s. DWD 40.05, either both subsections should have titles or neither should.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. DWD 40.03 (3), "Chapter" should be replaced with "ch." However, that chapter specifies several state minimum wages, such as the minimum wages for opportunity and minor employees, tipped employees, and others. Is it possible to include a more specific citation, such as s. DWD 272.03 (1m) (a)? If this citation changes in the future, the proposed rule that makes the change could also change the cross-reference.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DWD 40.05 (2) (b), it appears that this paragraph could be more clearly drafted. First, s. 767.89 (3) (e), Stats., provides that the court shall include in the paternity judgment or order an order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the pregnancy and birth.

Second, the introductory language in par. (b) provides that the court may order a birth cost judgment that is the lowest of the amounts set forth in subds. 1. to 4. However, subds. 3.

and 4. do not set forth specific amounts but instead state what the court may use in determining the amount of the judgment for certain fathers. This is awkward grammatically.

It may be clearer to state in par. (b) that the court shall order a birth cost judgment that does not exceed one-half of the actual and reasonable cost of the pregnancy and child's birth and that the court may order the lowest of the amounts in subds. 1. to 4. In subd. 3., "the court may use" should be deleted and in subd. 4., "the court may order a birth cost judgment at" should be deleted.

Also in that paragraph, in subds. 2., 3., and 4., "a father's" should be replaced with "the father's."

b. In s. DWD 40.05 (2) (b) 2., it is not clear which 36 months are covered. Is it the 36 months immediately preceding the court order or is it referring to anticipated earnings over the next 36 months? This should be clarified.

STATE OF IDAHO)
COUNTY OF KOOTENAI) SS
FILED:

2016 MAR -7 PM 1:05

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, Department of Health and Welfare, Child Support Services (IDHW), Petitioner/Respondent, vs. CHRISTIAN A CUA BARRIOS, Respondent/Appellant.	Case No. CV-2014-7359 **OPINION ON APPEAL**

This is an appeal brought by Christian Armando Cua Barrios ("Christian"), Respondent/Appellant, challenging the Judgment entered against him on June 29, 2015, in favor of the Idaho Department of Health and Welfare ("IDHW"), Petitioner/Respondent.

BACKGROUND

Christian and Helina Romero ("Helina") are the biological parents of CACR, a minor child born on [redacted] 2014. Appellant's Opening Br., p. 4. Christian and Helina were both high school students when CACR was conceived. *Id.* In June 2014, Cristian and Helina graduated from high school. *Id.* A month later CACR was born. *Id.* At the time of CACR's birth, both parents were eighteen years old,

ORIGINAL

both lived at home with their parents, and both were unemployed. *Id.* Neither parent had the means to pay for Helina's prenatal care or for the cost of CACR's birth. Br. of Resp't IDHW, p. 1-2.) While Helina was pregnant, she applied for and received Idaho Medicaid benefits.[1] *Id.* at 2. Idaho Medicaid paid a total of $13,873.00 in connection with Helina's pregnancy for prenatal care and for CACR's birth. *Id.*

Sometime in August 2014, Christian began working part time (26 hours a week) at Red Lobster in Coeur d'Alene. Aff. of Christian Cua Barrios in Supp. of Mem. in Supp. of Resp't Barrios's Cross Mt. for sum. J., p. 2. He earned $9.75 per hour. *Id.* Christian earned a total of $5,736.60 in 2014. *Id.*

On December 29, 2014, IDHW filed an Amended Establishment Petition for Child Support and Medicaid Reimbursement against both Christian and Helina. IDHW sought to establish child support for CACR, to obtain an order requiring Christian and Helina to obtain medical insurance for CACR, and to obtain reimbursement from Christian for his *pro rata* share of the "birth costs" paid by Idaho Medicaid during Helina's pregnancy and as a result of CACR's birth. Amended Establishment Pet. for Child Supp. and Medicaid Reimbursement. IDHW argued that Christian should be responsible for one-half of the total amount paid by Medicaid (i.e., $6,936.50). *Id.* at p. 4, ¶ X. IDHW did not seek any

[1] Helina presumably qualified for Idaho Medicaid benefits under I.C. § 56-254(1)(b). That Section states: "The department shall make payments for medical assistance to, or on behalf of, the following persons eligible for medical assistance. . . . (b) Pregnant women of any age whose family income does not exceed one hundred thirty-three percent (133%) of the federal poverty guideline and who meet other eligibility standards in accordance with department rule, or who meet the presumptive eligibility guidelines in accordance with section 1920 of the social security act."

reimbursement from Helina for her *pro rata* share of the costs incurred based on the exemption found in I.C. § 56-203B. Tr. on Appeal, 7:15-25; 8:1-6. That exemption states:

> Debt under this section shall not be incurred by, nor at any time be collected from a parent . . . who would be or is eligible for or who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person . . . [is] in such status and the collection of the debt from such person would not be in the fiscal interest of the state or would not be in the best interest of the child(ren) for whom such person owes support.

On May 11, 2015, IDHW filed a Motion for Summary Judgment and a Memorandum in Support of that Motion.[2] IDHW asked the trial court to enter a Judgment in its favor against Christian for his *pro rata* share of the "birth costs" paid by Idaho Medicaid. Mem. in Supp. of Mot. for Summ. J., p. 6. On May 27, 2015, Christian filed a Memorandum in Support of Respondent Cua Barrios's Cross Motion for Summary Judgment and in Opposition to State's Motion for Summary Judgment and an Affidavit in support of his Motion and in opposition to IDHW's Motion.[3] In his Memorandum, Christian requested that the trial court deny IDHW's Motion for Summary Judgment and instead enter Judgment in his favor.

---

[2] On May 8, 2015, following mediation, a Judgment of Child Custody, Visitation and Child Support was entered. That Judgment set out a custody schedule and Christian's obligation to pay child support. It also obligated Christian and Helina to provide health insurance coverage for CACR in the future if coverage were to become available at a reasonable cost. As a result, the only unresolved issue raised in IDHW's Motion for Summary Judgment, and the only issue raised in this appeal, is the reimbursement sought by IDHW from Christian for his *pro rata* share of the expenses incurred by Idaho Medicaid in connection with Helina's pregnancy and CACR's birth.

[3] Although Christian's Memorandum references a cross-motion for summary judgment and requested that the trial court "grant his motion for summary judgment," it does not appear that a separate cross-motion for summary judgment was ever filed. Nonetheless, the trial court apparently construed Christian's Memorandum as a cross-motion for summary judgment. *See* Tr. on Appeal at 4:5-7; Order Re: Motions for Summary Judgment.

Mem. in Supp. of Resp't Cua Barrios's Cross Mot. for Summ. J. and in Opp. to State's Mot. for Summ. J., p. 2.

A hearing was held on the motions for summary judgment on June 24, 2015. The Magistrate granted IDHW's Motion for Summary Judgment and denied Christian's Motion for Summary Judgment, and entered a Judgment against Christian in favor of IDHW for Medicaid reimbursement in the amount of $6,939.57. Order Re: Motions for Summary Judgment; Judgment.

On August 7, 2015, Christian filed a timely Notice of Appeal with this Court appealing from the Judgment entered against him. Christian has identified the following issues on appeal:

1. Did the Court err when it failed to find that the Appellant is entitled to the exemption from liability for Medicaid reimbursement pursuant to I.C. § 56-203B?
2. Did the Court err when it determined that the Appellant was liable to the State of Idaho for reimbursement of Medicaid costs paid on behalf of the natural mother as "Birth Costs"?
3. Did the Court err when it determined that I.C. § 7-1121 authorizes the State to seek Medicaid reimbursement from a person who is not currently possessed of sufficient means to repay medical costs expended on behalf of a mother and birth costs for a child?
4. Did the Court err when it determined that the State of Idaho's application of I.C. § 56-203B was not in violation of the Equal Protection Clause of the Idaho and U.S. Constitutions?

Appellant's Opening Br., p. 6.

Appellate argument was heard on Friday, January 22, 2016, in the Kootenai County Courthouse. Christian was present along with his attorney, Melanie E. Baillie, who argued on his behalf. Susan K. Servick was present

and argued on behalf of IDHW. This matter is now fully submitted and ready to be decided.

STANDARD OF REVIEW

In an appeal from an order granting summary judgment, this Court's standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment. *Venable v. Internet Auto Rent & Sales, Inc.*, 156 Idaho 574, 578, 329 P.3d 356, 360 (2014), *review denied* (July 31, 2014) (citation omitted). The disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. *Id.* "[I]f the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law," summary judgment is appropriate. *Id.*; I.R.C.P. 56(c).

An appellate court exercises free review in determining whether a genuine issue of material fact exits and whether the moving party is entitled to judgment as a matter of law. *McHugh v. Reid*, 156 Idaho 299, 302, 324 P.3d 998, 1001 (Ct. App. 2014).

> The party moving for summary judgment initially carries the burden of establishing that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial. Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking. Once such an absence of evidence has been established, the burden then shifts to the nonmoving party to

> show, via further depositions, discovery responses, or affidavits, that there is indeed a genuine issue for trial or to offer a valid justification for the failure to do so under I.R.C.P. 56(f). The nonmoving party cannot rest upon mere speculation and must submit more than just conclusory assertions that an issue of material fact exists to withstand summary judgment.

Id. at 303, 324 P.3d at 1002.

When an action is to be tried to a court without a jury, the trial court, as the fact-finder, is not restricted in drawing inferences in favor of the nonmoving party. *Id.* at 302, 324 P.3d at 1101. The trial court is entitled to reach the most probable inferences based upon the undisputed evidence properly before it and to grant summary judgment despite the possibility of conflicting inferences. *Id.* However, conflicting evidentiary facts must still be viewed in favor of the nonmoving party. *Id.* at 302-03, 324 P.3d at 1001-02. "The test for reviewing the inferences drawn by the trial court is whether the record reasonably supports the inferences." *Shawver v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 361, 93 P.3d 685, 692 (2004).

Under Rule 8(c), I.R.C.P., a party must set forth any matter constituting an affirmative defense in his answer to a claim filed against him. "An affirmative defense is a defendant's assertion raising new facts and arguments that, if true, will defeat the plaintiff's . . . claim, even if all allegations in the complaint are true." *Fuhriman v. State, Dep't of Transp.*, 143 Idaho 800, 803, 153 P.3d 480, 483 (2007). In opposing a motion for summary judgment, the nonmoving party has the burden of supporting his claimed affirmative defense. *Chandler v. Hayden*, 147 Idaho 765, 771, 215 P.3d 485, 491 (2009). Consequently, the nonmoving party seeking to assert an affirmative defense to the claim brought against him must present

evidence in support of that defense in order to defeat the opposing party's motion for summary judgment. *Id.*

ANALYSIS

A. Did the Magistrate Judge err in failing to find that Christian is entitled to the exemption[4] from liability for Medicaid reimbursement set forth in I.C. § 56-203B?

I.C. § 56–203B makes clear that "[a]ny payment of public assistance money made to or for the benefit of any dependent child . . . creates a debt due or owing to the department by the parent . . . who [is] responsible for support of such [child] in an amount equal to the support obligation as is subsequently determined by court order pursuant to the Idaho child support guidelines . . . ." Idaho's Supreme Court has instructed that "[t]he statute should be read in conjunction with the remedial language of I.C. §§ 32–1002 [repealed 2011] and 32–1003, which prescribe duties of support and establish parental liability for necessaries furnished to a child by a third party 'in good faith' when a parent has neglected to do so." *State, Dep't of Health & Welfare v. Housel*, 140 Idaho 96, 104, 90 P.3d 321, 329 (2004) (citation omitted) (internal quotation marks omitted). The statute reflects the State's goal of assuring that parents, and not taxpayers, bear the financial responsibility of supporting their children. *State, Dep't of Health & Welfare ex rel. Martz v. Reid*, 124

[4] Christian, throughout his briefing and oral argument, described the effect of I.C. § 56-203B as an "exemption." However, I.C. § 56-203B is not simply an exemption. It is an exemption in that it exempts someone who falls within its ambit from incurring a debt: "[d]ebt shall not be incurred by . . . ." In addition, the statute also creates a temporary bar to the collection of debt once incurred: "[d]ebt under this section shall not . . . at any time be collected . . . ." While this opinion will frequently describe the statute as an "exemption," because that is how Christian has characterized the statute's application, it is more accurate to refer to the statute's application as a "bar." For the sake of accuracy, it will occasionally be referred to as a bar in this opinion.

Idaho 908, 913, 865 P.2d 999, 1004 (Ct.App.1993) (citation omitted). Consistent with this goal, I.C. § 56–203C empowers IDHW to seek an order for support, including medical support, and I.C. § 56-203B creates a debt to and an interest in IDHW to seek and obtain reimbursement for any public assistance moneys paid on behalf of a dependent child.

A parent may be exempt from incurring a debt or IDHW may be barred from collecting a debt under I.C. § 56-203B if the parent can show that he "would be or is eligible for or . . . is the recipient of public assistance moneys for the benefit of [a] minor dependent [child]." I.C. § 56-203B. The exemption and bar found in I.C. § 56-203B reads in full as follows:

> Debt under this section shall not be incurred by, nor at any time be collected from a parent or other person who would be or is eligible for or who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status and the collection of the debt from such person would not be in the fiscal interest of the state or would not be in the best interest of the child(ren) for whom such person owes support.

Christian acknowledges that he is the biological father of CACR, that CACR is a dependent minor child, and that public assistance moneys were paid by IDHW in connection with Helina's pregnancy and CACR's birth.[5] Appellant's Opening Brief, p. 5. As a defense, Christian contends that IDHW failed to prove his ineligibility for public assistance moneys, and that, in fact, he is a parent "who would be or is eligible for . . . public assistance moneys for the benefit of [his] minor dependent [child]" and was therefore exempt from reimbursing the IDHW. *Id.* at 8,

[5] Public assistance moneys include moneys paid by IDHW for "general assistance, old-age assistance, aid to the blind, assistance to families with children, aid to the disabled, and medical assistance." I.C. § 56-201(e).

10. (Because Christian was not entitled to public assistance moneys when Helina was pregnant it appears that a debt to IDHW was incurred. Consequently, it seems as if he should have argued that IDHW was *barred* from collecting the debt from him, rather than that he was *exempt* from having to repay IDHW. *See* footnote 4, *supra*.)

At the hearing on the parties' motions for summary judgment, Christian presented evidence that his annual earnings for 2014 were $5,736.60, and that in May 2015, (shortly before the hearing on the motions for summary judgment), he was still working at Red Lobster, part time (24 hours a week), and earning between $9.47 and $9.90 per hour. Aff. of Christian Cua Barrios in Supp. of Mem. in Supp. of Resp't Barrios' Cross Mt. for Summ. J., p. 2. Based on this submission, Christian claimed that after CACR's birth he was eligible to receive Medicaid benefits for CACR based on I.C. § 56-254(1)(a). Mem. in Supp. of Resp't Cua Barrios's Cross Mot. for Summ. J. and in Opp. to State's Mot. for Summ. J., p. 5. That provision allows a parent to receive Idaho Medicaid benefits for his minor child if the "family income does not exceed one hundred eighty-five percent (185%) of the federal poverty guideline and who meets age-related and other eligibility standards in accordance with department rule." I.C. § 56-254(a)(1).

The federal poverty guidelines for 2014 established poverty for a household of one at a yearly gross income of $11,670.00, a household of two at $15,730.00, and a household of three at $19,790.00. Annual Update of the HHS Poverty guidelines, 79 Fed. Reg. 3593 (Jan. 22, 2014); Mem. in Supp. of Resp't Cua Barrios's Cross Mot. for

Summ. J. and in Opp. to State's Mot. for Summ. J., p. 5. Based on his income, Christian claimed that he made below the federal poverty guideline in 2014 (and also in 2015) and therefore, was eligible to receive Medicaid benefits on behalf of CACR after the child's birth. Mem. in Supp. of Resp't Cua Barrios's Cross Mt. for Summ. J. and in Opp. to State's Mot. for Summ. J., p. 5. Accordingly, Christian now contends that he was "exempt" from reimbursing IDHW for moneys it spent during Helina's pregnancy and CACR's birth (i.e., that IDHW was *barred* from collecting the money from him). Appellant's Opening Br., p. 12.

Christian also claims that even if he were not eligible to receive Medicaid benefits on behalf of CACR (since Helina obtained such coverage first), he was still eligible to receive other public assistance funds (such as funds for child care from the Idaho Child Care Program (ICCP) or for food assistance from the Idaho Food Stamp Program) for the benefit of CACR and was therefore "exempt" from having to repay Idaho Medicaid.[6] Appellant's Opening Brief, p. 12.

IDHW contends, as an initial matter, that Christian had the burden of showing his eligibility for public assistance money on behalf of CACR at the summary judgment hearing and that he failed to carry that burden. Br. of Resp't IDHW, p. 13-14. In addition, at the hearing, IDHW claimed, and still contends,

---

[6] As noted, *see* footnote 3, *supra*, although Christian uses the term exemption, his argument really appears to be that IDHW is *barred* from collecting any debt incurred by him in connection with Helina's pregnancy and CACR's birth. Christian claims once CACR was born he became eligible to obtain Medicaid, ICCP, and food stamps on CACR's behalf. Under I.C. § 56-203B it appears that Christian incurred a debt to IDHW for Helina's prenatal care and CACR's birth because he was ineligible to obtain any kind of public assistance moneys for the benefit of CACR until after CACR's birth. (Only pregnant women can obtain such assistance for unborn children.) Consequently, because the costs sought by IDHW arose prior to the time when Christian could have been eligible for assistance for the benefit of CACR, the issue really is whether IDHW was barred from collecting the debt from him.

that Christian does not qualify for the exemption found in I.C. § 56-203B. IDHW's position is premised on the fact that Helina was receiving Idaho Medicaid benefits for CACR at the time, that Idaho law does not permit two parents, living separately, to receive public assistance for the same child, and that Christian had no other dependent minor child for whom he could receive funding.[7] *Id.* at 12-13; Mem. in Opp'n to Def.'s Mt. for Summ. J. and Reply, p. 5. On appeal, IDHW also argues that Christian had the affirmative defense to establish entitlement to benefits and that because he failed to do so, summary judgment was appropriate. Br. of Resp't IDHW, p. 13.

At the conclusion of the hearing on the parties' Motions for Summary Judgment, the trial Court made the following findings and conclusions:

> [C]oncerning the requirement to have Mr. Cua Barrios pay the [birth costs] . . . it appears to me that the Court does have some discretion under the statutes to determine whether it would be appropriate for either parent or both parents to pay. . . . Ms. Baillie's client works at Red Lobster. Makes 5,000 plus a year. And it's her . . . client's position that it would be unjust to require [him] to pay the medical expenses or his share of the medical expenses incurred for the birth of his child . . . . that when [I.C. § 56-203B] was changed following the Reed [sic] case, that if a person was eligible for the public assistance Medicaid, that then they would not be required to repay those medical expenses. But reading the statutory scheme in its entirety, starting

[7] The bar to recovery contained in I.C. § 56-203B, requires that the person seeking to prevent IDHW from recovering must have actual custody of a child in order to be eligible for the bar to apply. Following the Idaho Court of Appeals ruling in *State, Dept. of Health and Welfare ex rel. Martz v. Reid,* 124 Idaho 908 (Ct. App. 1993), the Idaho Legislature amended I.C. § 56-203B. The amendment prevents IDHW from seeking reimbursement from a parent "who would be or is eligible for" public assistance moneys for the benefit of a minor dependent child. The statement of fiscal impact for that change reads as follows: "If this legislation is enacted it would result in a reduction of money paid for reimbursement of public assistance paid to or on behalf of a dependent child. There are no statistics available to determine how many non-custodial parents would be eligible for public assistance and who would not be responsible for payment of public assistance paid to or on behalf of their dependent child. *The non-custodial parent would have to have a child in their home in order to qualify.* As a result, it is difficult to calculate how much of a reduction of money paid for reimbursement of public assistance there would be." (italics added).

with the Reed [sic] case and looking at all of the cases here that the state - - and statues that the state has put forth, I do not believe that the Court has to focus only on that particular time when the benefits are received or paid or when the child is born. I think that would be way too narrow reading of all the statutes. I think the Court has to look at the big picture.

. . .

In this case, the Department is seeking to recover $6,936.57, which is the pro rata share of the $13,873 that were in medical expenses incurred for the birth of the child here.

Under the statutes and the case law cited in the Department's memorandum in support of their motion for summary judgment, I find that there isn't any genuine issue as to any material fact. That there isn't anything that will preclude Mr. Cua Barrios from paying these expenses in the future. That he doesn't have any disabilities or anything that would prohibit him from earning money to make these payments and it becomes a matter of, you know, how do you pay that obligation as opposed to whether it's legally required to be paid.

So I am going to grant the Department's motion for summary judgment. . . . I will enter a judgment in favor of the Department for the $6,936.57 which represents the pro rata share of the costs incurred relating to the birth of the child.

Tr. on Appeal at 22-24.

Christian's counsel then asked the Magistrate for clarification on the court's findings.

Ms. Baillie: I just wanted to be sure about one thing, your Honor, if you could clarify.

You said under 56-203(b) [sic] the exemption relates specifically to public assistance. Then you said one who is or could be eligible for public assistance. And then you said Medicaid. But the statute doesn't say Medicaid. So did you mean public assistance or Medicaid or were you just assuming public assistance meant Medicaid? Because it is defined in the statute, public assistance is, and it doesn't just incorporate Medicaid.

The Court: Well, it includes any recipient of any public assistance monies.

Ms. Baillie: Okay. So - -

The Court: That's what the statute says.

Ms. Baillie: So I want to make sure I understand. Is the Court saying. That my client is not eligible for public assistance?

The Court: Quite honestly, I don't know whether he would be eligible or not. There isn't anything before me that would establish that he would or would not be and you have to read that whole sentence together. You can't just kind of parse it out that way so that you can say based on the Reed [sic] case and the change in the statue, anybody who would be or is eligible for or who is the recipient of public assistance monies for the benefit of the minor dependent children. You have to read it altogether.

Ms. Baillie: Right. So such as food stamps or Medicaid or ICCP or any of those other public assistance benefits that a person might be eligible for - -

The Court: Uh-huh.

Ms. Baillie: - - under the statute?

The Court: Right. And that's - -

Ms. Baillie: Okay. I just wanted to make sure that - - and so the Court's position is that he didn't establish that he would be eligible?

The Court: There's nothing here that shows that he would be eligible for - - to be the recipient of public assistance monies for the benefit of the minor dependent child.

Tr. on Appeal at 25:20-25; 26-27.

At the trial level, IDHW established that Christian incurred a debt that was due and owing to IDHW for his share of the public assistance moneys expended for the benefit of CACR. Christain admitted paternity, and admitted that public assistance money (i.e., Idaho Medicaid benefits) had been paid by IDHW on behalf

of CACR (although Christian disputed the exact amount of money spent "for the benefit of" CACR). Consequently, IDHW established that under I.C. § 56-203B, Christian, the biological father of CACR, owed a debt to IDHW for a portion of the public assistance moneys spent on behalf of CACR. I.C. § 56-203B.

It is clear the Magistrate squarely placed the burden of establishing eligibility for public assistance moneys on Christian. The bar that prevents IDHW from seeking reimbursement found in I.C. § 56-203B is an affirmative defense. *See Fuhriman*, 143 Idaho at 803, 153 P.3d at 483; *see also Davison v. State, Dep't of Health & Welfare*, 104 Idaho 442, 444, 660 P.2d 54, 56 (1982) ("Where a claimant has applied for and been denied benefits, the claimant has the burden of proving that he met all eligibility requirements."). This is the case because if Christian's assertion regarding his eligibility for public assistance moneys on behalf of CACR were true, IDHW's claim against him for reimbursement would have been barred. This would have been the case despite the fact that Christian admitted paternity and admitted that public assistance moneys had been paid on behalf of CACR. Consequently, Christian had the burden of supporting his claimed affirmative defense. *Hayden*, 147 Idaho at 771, 215 P.3d at 491.

In order to support his claimed affirmative defense and demonstrate that there was a genuine issue of material fact for trial, Christian was required to present evidence supporting his eligibility for public assistance moneys on behalf of CACR. Christian failed to carry his burden. The only evidence Christian presented at the hearing on the parties' motions for summary judgment was his

yearly income for 2014, his hourly wage and weekly hours of work for 2015, and the federal poverty guidelines for 2014. Based on this evidence, Christian failed to raise a question of fact about his eligibility for public assistance for CACR.

Christian's claim that he was eligible for public assistance is merely a conclusory assertion. Although Christian's income level may be one piece of the puzzle, eligibility for public assistance also takes into account other factors. For example, it appears that Helina's receipt of public assistance moneys on behalf of CACR likely renders Christian, the non-custodial parent, ineligible to receive public assistance moneys (at least in the form of Idaho Medicaid benefits) on behalf of CACR. *See Davison*, 104 Idaho at 55-56, 660 P.2d at 443-44. Additionally, information regarding Christian's household size and household income (which would include his parents if he were still living at home and if they claimed him as a dependent on their taxes) are necessary to determine his eligibility for public assistance monies.[8] The record is devoid of any evidence, beyond Christian's bare assertions, that he was eligible to receive public assistance moneys on behalf of CACR.

The Magistrate Judge did not err in requiring Christian to set forth facts supporting his claim to eligibility of public assistance. Further, the Magistrate Judge did not err in finding that Christian failed to carry his burden of setting forth facts to indicate he was entitled to public assistance benefits in order to create a

[8] *See* IDHW's Application for Assistance (including food assistance and child care assistance) available at: http://healthandwelfare.idaho.gov/Portals/0/FoodCashAssistance/ApplicationForAssistance1.pdf

genuine issue of fact regarding the affirmative defense. As a result, the Magistrate's granting of summary judgment in this regard was correct.

B. Did the Magistrate err in determining that Christian was liable to IDHW for reimbursement of Medicaid costs paid on behalf of Helina?

Christian contends that the trial court erred in ordering him to reimburse IDHW for half of the costs associated with Helina's prenatal care and "birth related health care." Appellant's Opening Brief, p. 5, 14. Christian argues that "[t]he total pre natal (sic) and birth related health care costs for Ms. Romero totaled $13,576.39," while the costs incurred for CACR's birth were only $296.75. *Id.* at 5. It is Christian's position that I.C. § 56-203B "extends only to public assistance money expended for or on behalf of a dependent child," and that there is nothing in that statute that would make a father liable "for the prenatal medical expenses of an expectant mother." *Id.* at 16. Christian's argument is rejected.

I.C. § 56-203B states that "[a]ny payment of public assistance money made to or for the benefit of any dependent child . . . creates a debt due or owing to the department by the parent." In support of its Motion for Summary Judgment, IDHW submitted the Affidavit of Mark Turner, M.D. Dr. Turner reviewed the itemized costs claimed by IDHW and, based on his medical opinion, education, and experience, determined that "each medical service included . . . was reasonable and necessary for Helina's care *and reasonable and necessary for the health of her unborn child.*" Aff. of Mark Turner M.D., p. 3. (italics added). Christian presented no evidence to contradict of Dr. Turner's Affidavit.

The trial court did not err in finding that Christian was liable for half of the total costs claimed by IDHW. Christian failed to present any evidence that raised a genuine issue of material fact for trial showing that the costs incurred by IDHW were not for the benefit of CACR. Therefore, the trial court properly concluded that I.C. § 56-203B allowed IDHW to seek reimbursement of all money spent for the benefit of a dependent child, including prenatal costs, and that Christian was liable for $6,939.57 (as opposed to some lesser amount).

C. Did the trial court err in determining that I.C. § 7-1121 authorizes IDHW to seek Medicaid reimbursement from a father who is not currently capable of paying the medical costs incurred on behalf of his child?

Christian filed a voluntary acknowledgment of paternity with the Bureau of Vital Statistics before IDHW filed its Establishment Petition for Medical Support and Medicaid Reimbursement. Establishment Pet. for Medical Supp. and Medicaid Reimbursement, p. 2, ¶ V. Based on this fact, Christian argues that the provisions of the Idaho Code, Title 7, Chapter 11 ("Paternity Act") are inapplicable to this case, and that it was error for the trial court to rely on I.C. § 7-1121 in finding that he was liable to IDHW for expenses paid by it in connection with Helina's pregnancy.

The Paternity Act applies to proceedings to establish paternity and child support. I.C. § 7-1110 authorizes IDHW to initiate a proceeding to establish the paternity of a child receiving public benefits and to compel support for the child from the child's biological father. Proceedings under the Paternity Act are commenced either by the filing of a verified voluntary acknowledgment of parentage, or by the filing of a verified complaint. I.C. § 7-1111. I.C. § 7-1106 states

that "a voluntary acknowledgment of paternity . . . shall constitute a legal finding of paternity upon the filing of a signed and notarized acknowledgment with the vital statistics unit of the department of health and welfare." Upon execution of a voluntary acknowledgment of paternity, the court "may enter an order for the support of a child . . . without further proceedings to establish paternity." I.C. § 7-1106(3). I.C. § 7-1121 sets forth what an order for child support may encompass once paternity has been established. The relevant portion of that provision reads as follows:

> (1) In a proceeding in which the court has made an order of filiation, the court may direct a father possessed of sufficient means or able to earn such means to pay monthly or at other fixed periods a fair and reasonable sum for the support and education of the child. . . .
> (2) The order of filiation may direct the father to pay or reimburse amounts paid for the support of the child prior to the date of the order of filiation and may also direct him to pay or *reimburse* amounts paid for: . . . (c) *such expenses in connection with the pregnancy of the mother* as the court may deem proper.

I.C. § 7-1121 (italics added).

In contrast, Idaho Code, Title 56, Chapter 2, ("Public Assistance Law") governs IDHW's administration of public assistance moneys. Specifically, I.C. § 56-203B states that any payment of public assistance money (including medical assistance) for the benefit of any dependent child creates a debt due or owing to IDHW by the child's parent. In order to carry out its responsibilities under the Public Assistance Law, I.C. § 56-203C gives IDHW the power to "[p]etition to establish an order for support including medical support and support for a period during which a child received public assistance."

A basic tenet of statutory construction is that the more specific statute or section addressing an issue controls over the statute that is more general. *Marshall v. Dept. of Transp.*, 137 Idaho 337, 341, 48 P.3d 666, 670 (Ct. App. 2002) (citation omitted). "[T]he more general statute should not be interpreted as encompassing an area already covered by one which is more specific." *Id.* (citation omitted).

The Paternity Act does not specifically authorize IDHW to seek reimbursement for prenatal and birth expenses paid by Medicaid. I.C. § 56-203B clearly governs repayment of public assistance funds paid on behalf of a minor child. I.C. § 7-1121 only generally allows a court to issue a child support order directing a father to reimburse for expenses paid in connection with the pregnancy of his child's mother. (These expenses would presumably be those other than what have been paid by Idaho Medicaid.) The Paternity Act is specifically directed at establishing paternity and child support. On the other hand, I.C. § 56-203B expressly governs the reimbursement of Medicaid expenditures made on behalf of a minor child. I.C. § 56-203B controls under the facts of this case, not I.C. § 7-1121.

I.C. § 56-203B is the applicable statute to be applied in determining a parent's liability for Medicaid reimbursement paid on behalf of his child, not I.C. § 7-1121. Consequently, to the extent the Magistrate Judge relied on I.C. § 7-1121 to do what he did, it was error for him to do so.[9] However, this error appears to be

[9] It appears from the record that the trial court, at least in part, took into account I.C. § 7-1121 in determining that Christian was obligated to repay his *pro rata* share of the "birth costs" sought by IDHW. Specifically, it appears the trial court put emphasis on the fact that Christian appeared "able to earn such means to pay" for the costs sought by the IDHW. Tr. on Appeal, 15:9-20; 22:16-25; 23:1-25; 24:1-18. A court's ability to look at a party's future earnings in fashioning a support order is a component of I.C. § 7-1121, not I.C. § 56-203B.

harmless since Christian failed to carry his burden of establishing eligibility for public assistance money, and the judgment against him will not be vacated on these grounds.

D. Did the trial court err in determining that IDHW's treatment of Christian was constitutional under the Equal Protection Clauses of the State and Federal Constitutions?

Christian contends that he has been denied the equal protection of law because he has been discriminated against on the basis of his gender when considering how I.C. § 56-254(1)(b) and I.C. § 56-203B have been applied. Appellant's Opening Brief, p. 18-25. This is the case, Christian argues, because IDHW's enforcement of I.C. § 56-203B in this instance discriminates against men. Tr. on Appeal, 16:9-25; 17:1. Christian contends that I.C. § 56-203B makes a father liable to repay "pregnancy Medicaid costs," while at the same time it exempts the child's mother from any obligation to repay the costs incurred. Appellant's Opening Brief, p. 18-19. This is the case despite the fact that the father, who just like the mother, may also be indigent. *Id.* at 19.

Where a statute's constitutionality is challenged, a trial court's ruling is reviewed *de novo* because it involves purely a question of law. *State v. Cobb*, 132 Idaho 195, 197, 969 P.2d 244, 246 (1998). There is a strong presumption that a statute is constitutional, and an appellate court is obliged to seek an interpretation of a statute that upholds its constitutionality. *Id.* "It is fundamental that the judicial power to declare legislative action invalid upon constitutional grounds is to be exercised only in clear cases." *Rudeen v. Cenarrusa*, 136 Idaho 560, 564, 38 P.3d

598, 602 (2001) (citation omitted) (internal quotation marks omitted). A statute will not be declared unconstitutional unless its invalidity is clear beyond a reasonable doubt. *Id.* (citations omitted).

> The equal protection clauses of the state and federal constitutions embrace the principle that all persons in like circumstances should receive the same benefits and burdens of the law. Equal protection issues focus upon classifications within statutory schemes that allocate benefits or burdens differently among the categories of persons affected.
>
> In analyzing an equal protection claim under either the state or federal constitution, the first step is to identify the statutory classification under attack. The second step is to decide the applicable standard by which the legislative classification is to be judicially reviewed: "strict scrutiny," the "rational basis" test, or an intermediate standard of review. The third step is to determine whether the appropriate standard has been satisfied.

State, Dep't of Health & Welfare ex rel. Martz v. Reid, 124 Idaho 908, 911-12, 865 P.2d 999, 1002-03 (Ct. App. 1993).

Here, Christian concedes that I.C. § 56-203B, standing alone, is gender-neutral. Appellant's Opening Brief, p. 21. However, he contends that when read and applied in conjunction with I.C. § 56-254(1)(b), the statutory scheme discriminates against fathers, or at least has a "disparate impact" upon them. *Id.* Christian argues that "under the federal constitution this classification warrants intermediate scrutiny," while the rational basis test applies under the Idaho Constitution. *Id.*

IDHW argues that I.C. § 56-203B distinguishes between parents "who receive, or qualify for, public assistance on behalf of their dependent children and parents who do not qualify for public assistance on behalf of a dependent child." Br.

of Resp't, p. 18. "Parents who do not receive, or who are not qualified to receive, public assistance on behalf of [their] dependent . . . child(ren) are not eligible for an exemption." *Id.* IDHW points to the equal protection analysis in *Reid*, suggesting it is controlling authority, and asserts that rational basis review is the appropriate standard to be employed. *Id.* IDHW contends that I.C. § 56-203B "reflects the goal of the State of Idaho to make parents, not taxpayers, bear the financial responsibility of supporting their children. This goal is rationally served by limiting the exemption [in I.C. § 56-203B] to parents who receive, or qualify for, public assistance on behalf of their dependent children." *Id.* at 20.

The Magistrate Judge identified the issue as follows: Christian is "[b]asically arguing that there has been some violation of the equal protection clause by the application of this statue [I.C. § 56-203B]. Put simply, by trying to collect from the father not the mother." Tr. on Appeal, 21:4-10. The Magistrate agreed with IDHW and found that the court was constrained by the precedent set in *Reid*. Tr. on Appeal, 21:11-20. Consequently, the trial court applied the rational basis test and concluded that "on balance, it passes the rational relation test." Tr. on Appeal, p. 21:16-20.

As an initial matter, it is important to distinguish the facts in *Reid* from the facts of this case. In *Reid*, June Reid, the defendant, and her former husband, Clifton Martz, had a daughter during their marriage. *Reid*, 124 Idaho at 910, 865 P.2d at 1001. Reid also had a child, a son, from a previous relationship. *Id.* Reid and Martz were later divorced. *Id.* Eventually the parties' daughter went to live

with Martz, and Reid's son remained with her. *Id.* at 911, 865 P.2d at 1002. Martz at some point began receiving public assistance moneys for the benefit of the parties' minor daughter in the form of Aid to Dependent Children (ADC). *Id.* Reid was also eligible to receive public assistance money in the form of ADC on behalf her son; however, because of her personal convictions, she never applied for and did not receive public assistance. *Id.*

IDHW filed an action against Reid under I.C. § 56-203B for reimbursement of a portion of the ADC funds spent on behalf of the parties' daughter. *Id.* Martz was exempt from liability under I.C. § 56-203B because he was receiving benefits. *Id.* At the time, I.C. § 56-203B only provided an exemption for a parent who was actually receiving public assistance money for a dependent child. *Id.* at 913, 865 P.2d at 1003. It did not exempt a parent, like Reid, who was eligible for, but declined to obtain, public assistance. *Id.*

Reid argued that the statute, as applied to her, violated the equal protection clauses of the Idaho and Federal Constitutions. *Id.* at 912, 865 P.2d at 1002. Reid urged the Court to evaluate her claim under the strict scrutiny test because she contended the statute interfered with her fundamental right to parent. *Id.* at 912, 865 P.2d at 1003. Reid did not provide any argument or support that an intermediate standard of review should be employed. *Id.* at 913, 865 P.2d at 1004.

In evaluating Reid's claim, the Idaho Court of Appeals stated that: "As applied to the instant case, this statute distinguishes between parents who receive public assistance on behalf of their children, and parents who do not apply for such

benefits even though they are otherwise eligible to receive them." *Id.* at 912, 856 P.2d at 1003. Having identified the classification, the Court went on to evaluate Reid's claim under the rational basis test. *Id.* at 913, 856 P.2d at 1004. In reaching its conclusion, the Court stated that "strict scrutiny . . . does not apply in this case. Nor has Reid provided any argument or support that the intermediate means-focus analysis should be employed. Consequently, the standard of review which we will apply is the rational basis test." *Id.* (internal quotation marks omitted). The court concluded that the legislative goals underlying I.C. § 56-203B were rationally served by limiting the statutory exemption to ADC recipients and upheld the statutory classification as valid. *Id.*

Following *Reid*, the legislature amended I.C. § 56-203B to exempt from liability parents like Reid, "who would be or [who are] eligible for" public assistance moneys for the benefit of their child, but choose not to apply for such benefits. 1994 Idaho Laws Ch. 289 (H.B. 733).

As in *Reid*, the challenged statute in this case is I.C. § 56-203B; however, Christian challenges the statute's constitutionality when viewed in conjunction with I.C. § 56-254(1)(b). The pertinent parts of I.C. § 56-203B provide:

> Any payment of public assistance money made to or for the benefit of any dependent child . . . creates a debt due and owing to the department by the parent . . . who is responsible for support of such [child] in an amount equal to the support obligation as is subsequently determined by court order pursuant to the Idaho child support guidelines
> . . .
>
> *Debt under this section shall not be incurred by*, nor at any time be collected from a parent . . . who would be or is eligible for or who is

> the recipient of public assistance moneys for the benefit of minor dependent children for the period such person . . . [is] in such status and the collection of the debt from such person would not be in the fiscal interest of the state or would not be in the best interest of the child(ren) for whom such person owes support.

I.C. § 56-203B (italics added). The relevant portion of I.C. § 56-254 states that IDHW "shall make payments for medical assistance to, or on behalf of . . . [p]regnant women of any age whose family income does not exceed" a certain percentage of the federal poverty guidelines. I.C. § 56-254(1)(b).

As applied to the instant case and under these facts, the statutory scheme (and specifically the exemption at issue) distinguishes between a first-time mother who is eligible for public assistance moneys for the benefit of her unborn child by way of I.C. § 56-254(b), and a first-time father who would never be eligible to receive public assistance moneys on behalf of the same unborn child until after the child's birth. (Once born, a father might be eligible for public assistance benefits, which would act as a bar to IDHW recovering money paid for birth costs, while the mother's eligibility and exemption from having to repay IDHW for the benefits continues.) Stated differently, I.C. § 56-203B discriminates between mothers and fathers with respect to "liability for birth costs reimbursement." Appellant's Opening Brief, p. 19. The mother is always exempt: the father is not and is therefore liable.

Having identified the classification at issue, the second step is to decide the applicable standard of review. There are three standards used in reviewing a

statute under an equal protection challenge: strict scrutiny; the rational basis test; or the intermediate standard of review. *Reid*, 124 Idaho at 912, 865 P.2d at 1003.

Under rational basis review, the party challenging a law has the burden of proving that the state's goal is not legitimate and that the challenged law is not rationally related to a legitimate governmental purpose. *Cenarrusa*, 136 Idaho at 569, 38 P.3d at 607 (citation omitted); *Reid*, 124 Idaho at 913, 865 P.2d at 1004 ("the "rational basis" test requires only that the legislative classification bear a rational relationship to a legitimate government goal."). "[L]egislation relating to government welfare benefits are considered general economic and social welfare measures, and as such will be upheld under the rational basis test if statutory classifications advance legitimate government goals in a rational fashion." *Id.* (citations omitted) (internal quotation marks omitted).

However, a more demanding standard of review is applied if the law dispenses benefits upon the basis of gender, or if the challenged statute "creates unusually sensitive, although not necessarily suspect classes, or where especially important though not fundamental interests are at stake" and is blatantly discriminatory. *Reid*, 124 Idaho at 912, 865 P.2d at 1003; *Cenarrusa*, 136 Idaho at 569, 38 P.3d at 607.

If a statute is challenged on the basis of gender disparity the heightened standard employed is intermediate scrutiny. *Cenarrusa*, 136 Idaho at 569, 38 P.3d at 607; *State v. LaMere*, 103 Idaho 839, 842, 655 P.2d 46, 49 (1982).

> In order to withstand intermediate scrutiny, gender classifications must serve important governmental objectives and the discriminatory

> means employed must be substantially related to the achievement of those objectives. In other words, gender classifications must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. Moreover, the government's objectives must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.

Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Trust, 147 Idaho 117, 131-32, 206 P.3d 481, 495-96 (2009) (citations omitted) (internal quotation marks omitted).

Counsel for Christian argues that a statute challenged under the Idaho Constitution is not evaluated under the intermediate scrutiny test articulated by the federal courts, but instead is evaluated under Idaho's "means focus" test. Appellant's Opening Br., p. 21. However, this Court has been unable to identify any Idaho authority where the "means focus" test has been applied to a claim of gender-based discrimination. In fact, Idaho case law suggests that the intermediate scrutiny test that applies when analyzing the federal constitution is the appropriate test to be applied in gender-based discrimination cases. *See State v. LaMere*, 103 Idaho 839, 842, 655 P.2d 46, 49 (1982); *Credit Bureau of Eastern Idaho, Inc. v. Lecheminant*, 149 Idaho 467, 470, 235 P.3d 1188, 1191 (2010); and *Murphey v. Murphey*, 103 Idaho 720, 723, 653 P.2d 441, 444 (1982).

It is also important to remember that this Court has distinguished the *Reid* decision from the facts in this case. *Reid* did not involve a claim of gender discrimination. Consequently, it does not stand for the proposition that the "means focus" test applies in a gender discrimination case. In addition, even assuming for

purposes of argument that the Idaho Supreme Court adopted the "means focus" test in gender-based discrimination claims instead of intermediate scrutiny, the federal test would establish a floor under which Idaho could not fall below. *See James v. City of Boise, Idaho*, 136 S. Ct. 685, (2016). As a result, it is unnecessary for this Court to consider or to apply the "means focus" test in this case.

Strict scrutiny is only applicable where a suspect class or fundamental right is involved. *Cenarrusa*, 136 Idaho at 569, 38 P.3d at 607.

As applied, the exemption from liability under I.C. § 56-203B is overtly based on gender. It is undisputed that I.C. § 56-203B makes parents (both male and female) liable to IDHW for moneys spent for the benefit of a dependent child. It is also undisputed, based on the evidence presented by IDHW, that prenatal costs (expended prior to a child's birth) and birth costs were incurred for the benefit of the child and therefore, created a debt due to IDHW. Consequently, as a general rule, a parent (male or female) is liable to the IDHW for any prenatal or birth costs expended by IDHW.

However, the exemption found in I.C. § 56-203B states that a parent will not incur any liability (or have a debt collected from him or her) if he or she is eligible for or receiving public assistance moneys for the benefit of a minor dependent child. Only pregnant women are eligible for and able to receive public assistance moneys for the benefit of an unborn child. I.C. § 56-254(1)(b); I.C. § 56-201(e) (defining public assistance moneys); Tr. on Appeal, 12:14-16. There is no provision that allows the father of an unborn child to receive public assistance moneys for the

benefit of that child until after the child is born. This creates a situation where a father, regardless of his financial condition, will inevitably incur a debt for at least a portion of the prenatal and birth costs paid by IDHW under "pregnancy Medicaid" benefits obtained by the mother of his child. Meanwhile, a mother, in the exact same or perhaps an even better financial condition than the father, is exempt from incurring any debt in connection with her prenatal care and the child's birth.

This statutory scheme does not merely distinguish "between parents who receive, or qualify for, public assistance on behalf of their dependent children and parents who do not qualify for public assistance on behalf of a dependent child," as IDHW asserts. Rather, the statute as applied creates a distinction between a woman who receives assistance on behalf of her unborn child (because she is a pregnant woman and therefore eligible for benefits) and the father who, because he is not a "pregnant woman," is not eligible for assistance for his unborn child. Under this scheme, the mother does not incur any debt in connection with prenatal and birth costs, whereas the father inevitably incurs a debt due to IDHW for the prenatal and birth costs of the child.

Because the statutory scheme created by I.C. §§ 56-203B and 56-254(1)(b) overtly discriminates between who is liable to IDHW for prenatal and birth costs paid for "pregnancy Medicaid" benefits on the basis of gender, intermediate scrutiny applies to Christian's federal equal protection challenge. Consequently, the gender classification created by I.C. § 56-203B "must serve important governmental objectives and the discriminatory means employed must be substantially related to

the achievement of those objectives." *Mark Wallace Dixson Irrevocable Trust*, 147 Idaho at 131-32, 206 P.3d at 495-96. In other words, the gender classification must be "reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. Moreover, the government's objectives must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." *Id.*

The governmental objectives underlying I.C. § 56-203B were clearly set out in *Reid.* In reviewing the statute, the Court stated "the broad language of I.C. § 56-203B is to be read in conjunction with the remedial language of I.C. §§ 32-1002 [since repealed] and 32-1003, which prescribe *parental* duties of support and establish *parental* liability for necessities furnished to a child by a third party. Thus viewed, I.C. § 56-203B reflects the state's goal of assuring that *parents*, and not taxpayers, bear the financial responsibility of supporting their children. At the same time, the statute manifests the legitimate interest of the state in providing assistance to those *parents* it determines are unable to provide for their children." *Reid*, 124 Idaho 908, 913, 865 P.2d 999, 1004 (Ct.App.1993) (citation omitted) (italics added).

Under this statutory scheme, the discriminatory means employed in furthering the State's objectives are not substantially related to the achievement of the State's goals. Holding a father, but not a mother, liable for prenatal and birth expenses simply because the mother, but not the father, was able to procure

Medicaid coverage for herself and the unborn child does not further the State's objectives. The statutory scheme created only assures that the father, not that both *parents*, will bear the financial responsibility of supporting the unborn child. Additionally, the statutory scheme does not further the State's interest in providing assistance to those *parents* who are unable to financially provide for their unborn child, but instead only provides assistance to pregnant women who are unable to provide for their unborn children. This is the case despite the fact that an expectant father, like Christian, may also be financially unable to provide for his unborn child. To hold one parent liable based on his gender, while excusing the other parent's financial responsibilities, likewise because of her gender, bears no substantial relationship to the achievement of the State's goals. These facts are therefore distinguishable from those in *Reid*. In *Reid*, the statute acted in a gender neutral fashion. In this case only women receive "pregnancy Medicaid" benefits and men are always (with very few exceptions) liable to repay them.

Even applying the lowest test, the rational basis standard of review, the statutory classification based on gender created by I.C. §§ 56-203B and 56-254(1)(b) is not rationally related to the State's legitimate goals. Requiring only one parent, the father, to pay for one-half of the prenatal care and birth costs of his child, while excusing the mother of that child from all the remaining attendant costs is not rationally related to the State's goal of holding *parents* responsible for their children. Nor is such a scheme rationally related to assisting *parents* who are unable to provide for their children. It would be rational to hold both parents liable,

or, if both parents are financially unable to provide for their unborn child, to hold neither liable. It is not rationally related to the purpose of holding *parents* responsible when only men may be held accountable.

It is well established that "all persons similarly circumstanced shall be treated alike." *Reed v. Reed*, 404 U.S. 71, 76, 92 S. Ct. 251, 254, 30 L. Ed. 2d 225 (1971). From the record it is clear that the only important difference between the way Christian and Helina are treated, is because of their gender. Both Christian and Helina were seventeen and in high school when their child was conceived, both had barely graduated when their child was born, both were unemployed, and both lived at home with their parents. Because Helina was a pregnant woman, she was able to obtain Medicaid benefits and was therefore able to escape liability for the expenses paid on behalf of her child while *in utero* and during birth. Because Christian is a man, he was not able to obtain any public assistance moneys on behalf of his unborn child. Consequently, he incurred a debt equal to half of what was paid for Helina's "pregnancy Medicaid" benefits despite the fact that he established that his income was below the federal poverty level.

For the reasons set forth above, this Court finds that Christian has been discriminated against on the basis of his gender. Under the statutory scheme, as applied, only men are held financially accountable for "pregnancy Medicaid" benefits paid out by IDHW. As a result, Christian has been denied the equal protection of the law.

CONCLUSION

The Magistrate Judge's decision, with the exception of the equal protection challenge, is **AFFIRMED**. The Magistrate Judge's decision as it relates to the equal protection challenge to I.C. § 56-203B and I.C. § 56-254, as applied, is **REVERSED** and the Judgment entered against Christian is **VACATED**. The case is **REMANDED** to the Magistrate Court for further proceedings consistent with this opinion.

Dated this 4th day of March 2016.

John R. Stegner
District Judge

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete, and correct copies of the foregoing OPINION ON APPEAL were delivered by the following methods to the following:

Susan K. Servick *Special Deputy Attorney General* 618 N. 4th Street Coeur d'Alene, Idaho 83814 Fax: (208) 667-1825 #193	[ ] E-Mail [ ] U.S. Mail [X] Fax [ ] Hand Delivery
Melanie Baillie *Attorney for Appellant* 1626 Lincoln Way Coeur d'Alene, ID 83814 Fax: (208) 664-1684 #794-795	[ ] E-Mail [ ] U.S. Mail [X] Fax [ ] Hand Delivery
Scott Wayman Magistrate Judge Kootenai County District Court P.O. Box 9000 Coeur d'Alene, Idaho 83816	[ ] E-Mail [ ] U.S. Mail [ ] Fax [X] Hand Delivery

on this 7th day of March 2016.

CLERK OF THE COURT

JIM BRANNON

By: _____
Deputy Clerk

FIRST JUDICIAL DISTRICT KOOTENAI COUNTY CLERK OF COURT STATE OF IDAHO