

Wisconsin Administrative Code re: Imputing Income, Serial/Shared/Split Parenting

DCF 150.03 Support orders.

DCF 150.03(1) (1) Determining child support using the percentage standard. The court shall determine a parent's monthly income available for child support by adding together the parent's annual gross income or, if applicable, the parent's annual income modified for business expenses; the parent's annual income imputed based on earning capacity; and the parent's annual income imputed from assets, and dividing that total by 12. This may be done by completing the worksheet in Appendix B, although use of the worksheet for this purpose is not required. Except as provided in s. DCF 150.04 (4) and (5), the percentage of the parent's monthly income available for child support or adjusted monthly income available for child support that constitutes the child support obligation shall be:

DCF 150.03(1)(a) (a) 17% for one child;

DCF 150.03(1)(b) (b) 25% for 2 children;

DCF 150.03(1)(c) (c) 29% for 3 children;

DCF 150.03(1)(d) (d) 31% for 4 children; and

DCF 150.03(1)(e) (e) 34% for 5 or more children.

DCF 150.03 Note Note: See Appendix A which indicates the amount of child support at various levels of income using the percentage standard.

DCF 150.03(2) (2) Determining income modified for business expenses. In determining a parent's monthly income available for child support under sub. (1), the court may adjust a parent's gross income as follows:

DCF 150.03(2)(a) (a) Adding wages paid to dependent household members.

DCF 150.03(2)(b) (b) Adding undistributed income that meets the criteria in s. DCF 150.02 (13) (a) 9. and that the court determines is not reasonably necessary for the growth of the business. The parent shall have the burden of proof to show that any undistributed income is reasonably necessary for the growth of the business.

DCF 150.03(2)(c) (c) Reducing gross income by the business expenses that the court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

**DCF 150.03(3) (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.

**DCF 150.03(4) (4) Determining income imputed from assets.**

**DCF 150.03(4)(a)(a) The court may impute a reasonable earning potential to a parent's assets if the court finds both of the following:**

DCF 150.03(4)(a)1. 1. The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker's compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the parent has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income under s. DCF 150.02 (13).

DCF 150.03(4)(a)2. 2. The parent's assets are underproductive and at least one of the following applies:

DCF 150.03(4)(a)2.a. a. The parent has diverted income into assets to avoid paying child support.

DCF 150.03(4)(a)2.b. b. Income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.

DCF 150.03(4)(b) (b) The court shall impute income to assets by multiplying the total net value of the assets by the current 6-month treasury bill rate or any other rate that the court determines is reasonable and subtracting the actual income from the assets that was included as gross income under s. DCF 150.02 (13).

DCF 150.03(5) (5) Adjustment for child's social security. The court may include benefits received by a child under 42 USC 402 (d) based on a parent's entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433 in the parent's gross income and adjust a parent's child support obligation by subtracting the amount of the child's social security benefit. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit.

DCF 150.03(6) (6) Determine child support before maintenance. If a payer will have obligations for both child support and maintenance to the same payee, the court shall determine the payer's child support obligation under this chapter before determining the payer's maintenance obligation under s. 767.56, Stats.

DCF 150.03(7) (7) Calculation of family support. When the standard under sub. (1) is used to calculate support under s. 767.531, Stats., the amount determined shall be increased by the amount necessary to provide a net family support payment, after state and federal income taxes are paid, of at least the amount of a child support payment under the standard.

DCF 150.03(8) (8) Expression of ordered support. The support amount shall be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.34 (2) (am) 1. to 3., Stats., are satisfied.

DCF 150.03(9) (9) Trust. The court may protect and promote the best interests of the minor children by setting aside a portion of the child support that either party is ordered to pay in a separate fund or trust for the support, education, and welfare of such children.

DCF 150.03(10) (10) Dependency exemption. The court may order the payee to waive the federal dependency exemption provided that the payee's execution of the exemption waiver is made contingent on the receipt of child support payments.

DCF 150.03(11) (11) Deviation from the percentage standard.

DCF 150.03(11)(a)(a) Upon request by a party, the court may modify the amount of child support payments determined under sub. (1) if, after considering the factors in s. 767.511 (1m), Stats., as applicable, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties.

DCF 150.03(11)(b) (b) If the court under par. (a) modifies the amount of child support payment determined under sub. (1), the court shall state in writing or on the record the amount of support that would be required by using the percentage standard under sub. (1), the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification as provided under s. 767.511 (1n), Stats.

DCF 150.04 DCF 150.04 Determining the child support obligation in special circumstances. Child support may be determined under special circumstances as follows:

**DCF 150.04(1) (1) Determining the child support obligation of a serial-family parent.**

DCF 150.04(1)(a)(a) Applicability. This subsection applies only if the additional child support obligation incurred by a parent is a result of a court order and the support obligation being calculated is for children from a subsequent family or subsequent paternity judgment or acknowledgment. A parent may not use the provisions of this subsection as a basis for seeking modification of an existing order based on a subsequently incurred legal obligation for child support.

DCF 150.04(1)(b) (b) Determination. For a serial-family parent the child support obligation incurred for a marital or nonmarital child in a subsequent family as a result of a court order may be determined as follows:

DCF 150.04(1)(b)1. 1. Determine the parent's monthly income available for child support under s. DCF 150.03 (1) (intro.).

DCF 150.04(1)(b)2. 2. Determine the order of the parent's legal obligations for child support by listing them according to the date each obligation is incurred. For a marital child, the legal obligation for child support is incurred on the child's date of birth. For a nonmarital child, the father's legal obligation for child support is incurred on the date that paternity is legally established. For a nonmarital child in an intact family, it is incurred on the date of adoption or the date that paternity is legally established. For a nonmarital maternal child in an intact family, it is incurred on the child's date of birth.

DCF 150.04(1)(b)3. 3. Determine the first child support obligation as follows:

DCF 150.04(1)(b)3.a. a. If the parent is subject to an existing support order for that legal obligation, except a shared-placement order under s. DCF 150.04 (2), the support for that obligation is the monthly amount of that order.

DCF 150.04(1)(b)3.b. b. If the parent is in an intact family or is subject to a shared-placement order under s. DCF 150.04 (2), the support is determined by multiplying the appropriate percentage under s. DCF 150.03 (1) for that number of children by the parent's monthly income available for child support or, if applicable, determine support under sub. (2), (3), (4), or (5).

DCF 150.04(1)(b)4. 4. Adjust the monthly income available for child support by subtracting the support for the first legal obligation under subd. 3. from the parent's monthly income available for child support under subd. 1.

DCF 150.04(1)(b)5. 5. Determine the second child support obligation as follows:

DCF 150.04(1)(b)5.a. a. If the parent is subject to an existing support order for that legal obligation, except a shared-placement order under s. DCF 150.04 (2), the support for that obligation is the monthly amount of that order.

DCF 150.04(1)(b)5.b. b. If the parent is in an intact family or is subject to a shared-placement order under s. DCF 150.04 (2), the support is determined by multiplying the appropriate percentage under s. DCF 150.03 (1) for that number of children by the parent's monthly income available for child support or, if applicable, determine support under sub. (2), (3), (4), or (5).

DCF 150.04(1)(b)6. 6. Adjust the monthly income available for child support a second time by subtracting the support for the second legal obligation determined under subd. 5. from the first adjusted monthly income available for child support determined under subd. 4.

DCF 150.04(1)(b)7. 7. Repeat the procedure under subds. 5. and 6. for each additional legal obligation for child support the serial-family parent has incurred.

DCF 150.04(1)(b)8. 8. Multiply the appropriate percentage under s. DCF 150.03 (1) for the number of children subject to the new order by the final adjusted monthly income available for child support

determined in either subd. 6. or 7. to determine the new child support obligation or if applicable, determine the new child support obligation under sub. (2), (3), (4), or (5).

DCF 150.04 Note Note: The following example shows how the child support obligation is determined for a serial-family parent whose additional child support obligation has been incurred for a subsequent family.

DCF 150.04 Note Assumptions:

DCF 150.04 Note Parent A's current monthly income available for child support is \$3000.

DCF 150.04 Note Parent A and Parent B were married, had a child in 2000 and divorced in 2001. Parent A is subject to an existing support order of \$450 per month.

DCF 150.04 Note Parent A remarries and has two children, one born in 2006 and the other in 2007, and remains an intact family.

DCF 150.04 Note Parent A was adjudicated the father in 2008 for a child born in 2005. Child support needs to be established for this child.

DCF 150.04 Note Order of parent A's legal obligation for child support.

DCF 150.04 Note First legal obligation: one child (2000) (divorce)

DCF 150.04 Note Second legal obligation: 2 children (2006 and 2007) (intact family)

DCF 150.04 Note Third legal obligation: one child (2008) (paternity)

DCF 150.04 Note Calculation: - See PDF for table 

## **DCF 150.04(2) (2) Determining the child support obligations of shared-placement parents.**

DCF 150.04(2)(a)(a) The shared-placement formula may be applied when both of the following conditions are met:

DCF 150.04(2)(a)1. 1. Both parents have court-ordered periods of placement of at least 25% or 92 days a year. The period of placement for each parent shall be determined by calculating the number of overnights or equivalent care ordered to be provided by the parent and dividing that number by 365. The combined periods of placement for both parents shall equal 100%.

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DCF 150.04(2)(a)2. 2. Each parent is ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child.

DCF 150.04(2)(b) (b) The child support obligations for parents who meet the requirements of par. (a) may be determined as follows:

DCF 150.04(2)(b)1. 1. Determine each parent's monthly income available for child support under s. DCF 150.03 (1). In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time under s. DCF 150.03 (3), the court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more. If a parent has one or more previous child support obligations, determine the parent's monthly income available for child support adjusted for the previous obligations as provided in sub. (1).

DCF 150.04(2)(b)2. 2. Multiply each parent's monthly income available for child support by the appropriate percentage standard under s. DCF 150.03 (1).

DCF 150.04(2)(b)3. 3. Multiply each amount determined under subd. 2. by 150%.

DCF 150.04 Note Note: The 150% accounts for household maintenance expenditures duplicated by both parents, such as a bedroom, clothes, and personal items.

DCF 150.04(2)(b)4. 4. Multiply the amount determined for each parent under subd. 3. by the proportion of the time that the child spends with the other parent to determine each parent's child support obligation.

DCF 150.04(2)(b)5. 5. Offset resulting amounts under subd. 4. against each other. The parent with a greater child support obligation is the shared-placement payer. The shared-placement payer shall pay the lesser of the amount determined under this subd. or the amount determined using the appropriate percentage standard under s. DCF 150.03 (1). If the shared-placement payer is also a low-income payer, the child support obligation may be the lesser of the amount determined under this subd. or under sub. (4).

DCF 150.04(2)(b)6. 6. In addition to the child support obligation determined under subd. 5., the court shall assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third-party service provider. The court shall not direct payment of variable costs to be made to the department or the department's designee, except as incorporated in the fixed sum or percentage expressed child support order.

DCF 150.04 Note Note: The following example shows how to calculate the child support obligations of shared-placement parents.

DCF 150.04 Note Number of children: Two

DCF 150.04 Note Parent A: \$2,000 monthly income available for child support

DCF 150.04 Note Court-ordered placement of the child for 219 days a year or 60%.

DCF 150.04 NoteParent B: \$3,000 monthly income available for child support

DCF 150.04 Note Court-ordered placement of the child for 146 days a year or 40%. - See PDF for table



**DCF 150.04(3) (3) Determining the child support obligations of split-placement parents.** For parents who have 2 or more children and each parent has placement of one or more but not all of the children, the child support obligations may be determined as follows:

DCF 150.04(3)(a) (a) Determine each parent's monthly income available for child support under s. DCF 150.03 (1). If a parent has one or more previous child support obligations, determine the parent's monthly income available for child support adjusted for the previous obligations as provided in sub. (1).

DCF 150.04(3)(b) (b) Multiply the amount determined in par. (a) by the pro rata percentage standard for the number of children in split placement who are placed with the other parent. The pro rata percentage standard for the number of children in split placement who are placed with the other parent is calculated by determining the appropriate percentage standard under s. DCF 150.03 (1) for the total number of children, dividing by the total number of children, and adding together the percentages for the children in split-placement who are placed with the other parent.

DCF 150.04 Note Note: The pro-rata percentage standards for the number of children for whom support is being established are as follows:

DCF 150.04 Note2 children 12.5% for each child ( $25\% \div 2$ )

DCF 150.04 Note3 children 9.67% for each child ( $29\% \div 3$ )

DCF 150.04 Note4 children 7.75% for each child ( $31\% \div 4$ )

DCF 150.04 Note5 children 6.8% for each child ( $34\% \div 5$ )

DCF 150.04(3)(c) (c) Offset resulting amounts under par. (b) against each other. The parent with a greater child support obligation is the split-placement payer.

DCF 150.04 Note Note: The following example shows how to calculate the amount of child support for split-placement parents:

DCF 150.04 Note Assumptions:

DCF 150.04 NoteParent A and B have 3 children.

DCF 150.04 NoteParent A has placement of 2 children and Parent B has placement of one child.

DCF 150.04 NoteParent A's monthly income available for child support is \$2,000.

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DCF 150.04 Note Parent B's monthly income available for child support is \$3,000.

DCF 150.04 Note Calculation:

DCF 150.04 Note Applicable percentage: 29%. Pro rata percentage is 9.67% per child.

DCF 150.04 Note Parent A:  $2,000 \times 9.67\%$  (income x applicable pro rata % for one child placed with Parent B) = 193.40

DCF 150.04 Note Parent B:  $3,000 \times 19.34\%$  (income x sum of pro rata % for 2 children placed with Parent A) = 580.20

DCF 150.04 Note Parent B is the payer. Obligation following offset = 386.80

DCF 150.04(4) (4) Determining the child support obligation of a low-income payer.

DCF 150.04(4)(a)(a) The court may use the monthly support amount provided in the schedule in Appendix C as the support amount for a payer with a monthly income available for child support at a level set forth in the schedule if the payer's total economic circumstances limit his or her ability to pay support at the level determined under s. DCF 150.03 (1). If a payer's monthly income available for child support is below the lowest income level in Appendix C, the court may set an order at an amount appropriate for the payer's total economic circumstances. This amount may be lower than the lowest support amount in Appendix C.

DCF 150.04(4)(b) (b) The department shall revise the schedule in Appendix C every 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.

DCF 150.04 Note Note: The schedule in Appendix C provides reduced percentage rates that may be used to determine the child support obligation for payers with an income below 150% of the federal poverty guidelines. If a payer's monthly income available for child support is below 75% of the federal poverty guidelines, the court may order an amount appropriate for the payer's total economic circumstances. For monthly income amount for child support between 75% and 150% of the federal poverty guidelines, the percentage rates in the schedule gradually increase as income increases. The percentage rates used in s. DCF 150.03 (1) apply to payers with income greater than or equal to 150% of the federal poverty guidelines.

DCF 150.04(5) (5) Determining the child support obligation of a high-income payer.

DCF 150.04(5)(a)(a) The payer's full monthly income available for child support shall be considered in determining the payer's child support obligation. The court may apply the reduced percentages under pars. (c) and (d) to income at the indicated levels.



DCF 150.04(5)(b) (b) The court shall apply the percentages in s. DCF 150.03 (1) to a payer's monthly income available for child support that is less than \$7,000.

DCF 150.04 Note Note: A monthly income of \$7,000 is an annual income of \$84,000.

DCF 150.04(5)(c) (c) The court may apply the following percentages to the portion of a payer's monthly income available for child support that is greater than or equal to \$7,000 and less than or equal to \$12,500:

DCF 150.04(5)(c)1. 1. 14% for one child.

DCF 150.04(5)(c)2. 2. 20% for 2 children.

DCF 150.04(5)(c)3. 3. 23% for 3 children.

DCF 150.04(5)(c)4. 4. 25% for 4 children.

DCF 150.04(5)(c)5. 5. 27% for 5 or more children.

DCF 150.04 Note Note: A monthly income of \$7,000 is an annual income of \$84,000 and a monthly income of \$12,500 is an annual income of \$150,000. The percentages that apply to income between \$84,000 and \$150,000 are approximately 80% of the full percentage standards.

DCF 150.04(5)(d) (d) The court may apply the following percentages to the portion of a payer's monthly income available for child support that is greater than \$12,500:

DCF 150.04(5)(d)1. 1. 10% for one child.

DCF 150.04(5)(d)2. 2. 15% for 2 children.

DCF 150.04(5)(d)3. 3. 17% for 3 children.

DCF 150.04(5)(d)4. 4. 19% for 4 children.

DCF 150.04(5)(d)5. 5. 20% for 5 or more children.

DCF 150.04 Note Note: A monthly income of \$12,500 is an annual income of \$150,000. The standards that apply to income over \$150,000 are approximately 60% of the full percentage standards.

DCF 150.04(6) (6) Combination of special circumstances.

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DCF 150.04(6)(a)(a) General. The court may apply any combination of special circumstance provisions under subs. (1) to (5) to determine a child support obligation if the criteria apply and the combination of provisions is not specifically prohibited.

DCF 150.04(6)(b) (b) Shared and split placement. If the parents have a combination of split-placement and shared-placement, the child support obligation may be determined as follows:

DCF 150.04(6)(b)1. 1. Determine the pro rata percentage standard for the total number of children for whom support is being established. The pro rata percentage standard for the total number of children for whom support is being established is calculated by determining the appropriate percentage standard under s. DCF 150.03 (1) for the total number of children and dividing by the total number of children.

DCF 150.04 Note Note: The pro-rata percentage standards for the number of children for whom support is being established are as follows:

DCF 150.04 Note 2 children 12.5% for each child ( $25\% \div 2$ )

DCF 150.04 Note 3 children 9.67% for each child ( $29\% \div 3$ )

DCF 150.04 Note 4 children 7.75% for each child ( $31\% \div 4$ )

DCF 150.04 Note 5 children 6.8% for each child ( $34\% \div 5$ )

DCF 150.04(6)(b)2. 2. Determine support for the children who are placed with the other parent full-time. First, add together the pro rata percentage standards for the number of children who are placed full-time with the other parent. Then, multiply the sum of the pro-rata percentage standards by the parent's monthly income available for child support, as adjusted for any previous child support obligations, for the parent whose child support obligation is being calculated.

DCF 150.04(6)(b)3. 3. Determine support for the children who are in shared-placement as follows:

DCF 150.04(6)(b)3.a. a. Add together the pro rata percentage standards for the number of children who are in shared-placement.

DCF 150.04(6)(b)3.b. b. Multiply the sum of the pro rata percentage standards by the parent's monthly income available for child support, adjusted for any previous child support obligations.

DCF 150.04(6)(b)3.c. c. Multiply the amount determined under subd. 3. b. for each parent by 150%.

DCF 150.04 Note Note: The 150% accounts for household maintenance expenditures duplicated by both parents, such as a bedroom, clothes, and personal items.

DCF 150.04(6)(b)3.d. d. Multiply each amount determined by the proportion of the time that the child spends with the other parent to determine each parent's child support obligation.

DCF 150.04(6)(b)3.e. e. Offset resulting amounts under subd. 3. d. against each other.

DCF 150.04(6)(b)4. 4. Add or offset the child support obligation for children placed with the other parent full-time under subd. 2. with the child support obligation for children in shared-placement under subd. 3. e. The parent with a greater child support obligation is the payer. The payer shall pay the lesser of the amount determined under this subdivision or the amount determined using the appropriate percentage

standard under s. DCF 150.03 (1). If the payer under this subdivision is also a low-income payer, the child support obligation may be the lesser of the amount determined under this subdivision or under sub. (4).

DCF 150.04(6)(b)5. 5. In addition to the child support obligation determined under subd. 4., the court shall assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third-party service provider. The court shall not direct payment of variable costs to be made to the department or the department's designee, except as incorporated in the fixed sum or percentage expressed child support order.

DCF 150.04 Note Note: Example of a combination of split-placement and shared-placement:

DCF 150.04 Note Assumptions:

DCF 150.04 Note 3 children

DCF 150.04 Note Parent A:

DCF 150.04 Note 2 children full time

DCF 150.04 Note 1 child 30%

DCF 150.04 Note \$2,000/month income

DCF 150.04 Note Parent B:

DCF 150.04 Note 1 child 70%

DCF 150.04 Note \$3,000/month income

DCF 150.04 Note Calculation:

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DCF 150.04 Note Applicable percentage 29%. Pro rata percentage is 9.67% per child.

DCF 150.04 Note Parent A:

DCF 150.04 Note  $2,000 \times 9.67\%$  (income x applicable pro rata % for child shared with Parent B) = 193.40\

DCF 150.04 Note  $\times 1.5$  (150%) = 290.10

DCF 150.04 Note  $\times 70\%$  (% of time child is with parent B) = 203.07

DCF 150.04 Note Parent B:

DCF 150.04 Note  $3,000 \times 19.34\%$  (income x sum of pro rata percentage standards for 2 children who are placed full-time with Parent A) = 580.20

DCF 150.04 Note  $3,000 \times 9.67\%$  (income x applicable % for one child shared with parent A) = 290.10

DCF 150.04 Note  $x 1.5$  (150%) = 435.15

DCF 150.04 Note  $x 30\%$  (Child placed with parent A) = 130.55

DCF 150.04 Note Parent A's obligation = 203.07 (1 shared child)

DCF 150.04 Note Parent B's obligation = 130.55 (1 shared child) + 580.20 (2 children full-time with Parent A) = 710.75

DCF 150.04 Note Parent B is the payer. Total obligation following offset = \$507.68