

2011 Guidelines Review
Child Support Guidelines Advisory Committee

Thursday, October 27, 2011, 9 AM to Noon, Siuslaw Conference Room
Capitol City Business Center, 4600 25th Ave. Ste 180, Salem, OR 97301

SUMMARY

FACILITATOR: Kate Cooper Richardson

MINUTES: Susan Baker

Members in attendance: Donna Brann, Lisa Buss, Vonda Daniels, Claire Anderson, Kelly Evans, Jean Fogarty, Laurie Hart, Martin Herbest, Jonathan Ramberg, Carol Anne McFarland, Mike Ritchey, Linda Scher, Judge Susan Tripp, Robin Selig, Concetta Schwesinger, and Brenda Wilson.

Support Staff: Barb Bellek, Jeremy Gibons, Tom Hedberg, Vince Hill, Julie McNeal, Melissa Park, and Charissa Self.

Absent: Chris Eggert, Professor Kathy Graham, Lorrin King, Jack Lundeen, and Shelly Matthys.

Minutes Review and Approval	Kate Cooper Richardson
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The committee approved the minutes of the September 29, 2011, meeting with minor corrections.

Charissa Self was introduced, the newest Policy Team member for the Division of Child Support. She is filling in for Claire Anderson on the Income Workgroup.

The four guiding principles were re-stated for the workgroups:

1. The guidelines produce fair awards.
2. The rules are understandable to families and practitioners.
3. The calculation required to implement the rule is not complex.
4. The outcomes are enforceable.

Miscellaneous Issues Workgroup Report	Brenda Wilson
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Updates and clarifications were made to the first half of the report, previously shared at the September meeting.

Issue 4: The Department of Human Services still considers child support payments in the child care subsidy and co-pay. A change in child support could result in a change in the benefit.

Issue 2: Provide information from a survey of practitioners' use of rebuttals from the Oregon State Bar Family Law Section conference earlier this month. More information is available on Basecamp.

Issue 7: Clarify in rule who is the obligor

Recommendation: Do not amend rule. Consider adding commentary to the rule to explain that the obligor may change depending on income and parenting time of both parents.

The workgroup decided that the obligor is the parent who owes support at the end of the calculation. The workgroup recognized that the parent with more parenting time can be the obligor in several circumstances, including:

- A parent with slightly more parenting time has much higher income
- A parent with more parenting time is owed a substantial spousal support award; these effects are amplified when the other parent in the same calculation is the spousal debtor
- A parent with less parenting time pays the child's daycare expenses

Issue 8: Social Security/veterans benefits credit is applied to cash support, not medical support, leading to situations in which an obligor is required to pay cash medical even when the benefits paid to the child far outweigh the total cash child support and medical support that would be owed.

Recommendation: The workgroup considered recommendation to draft a legislative concept to allow credit against both child support and cash medical support.

Additional issues (referred during the process of the Advisory Committee)

Additional Issue 2 (from Income Workgroup Issue 14): Should payment from the body of a trust be referenced specifically in the rebuttal rule?

Recommendation: No. Rebuttal rule (p), return of capital, includes payments from the body of a trust. We would explain in commentary.

Additional Issue 3 (from Income Workgroup Issue 18): Restore treatment of overtime income removed in the 2010 guidelines?

Recommendation: Reinstate commentary to help explain when overtime income may be used as gross income.

After discussing and reading the prior commentary, the workgroup decided to reinstate commentary to describe when overtime income may be considered as gross income.

Additional Issue 4 (from June meeting): Obligor parent is underemployed, custodial parent has good job/income, calculator may reflect that the custodial parent pay support.

Recommendation: No recommendation.

The workgroup considers this situation a potential income issue rather than a "flip," and recognizes that the situation may occur but will happen less often with the new parenting time formula.

Additional Issue 5: Expand 10% consent amount

Recommendation: Revise language in rule 137-050-0765(3) to read “may consent to a support amount that is within 15% percent” of the amount determined under the guideline rules.

Additional Issue 6: Why is there no non-joint child deduction for an adult child attending school who resides in one’s own home? (An issue was raised on the listserv and referred to the Miscellaneous Issues Workgroup from the Income workgroup):

Recommendation: Suggest that the Income Workgroup apply rebuttal factor (e) – the number and needs of other dependents of a parent. Consider adding commentary that helps explain why the parent does not qualify for the “additional child credit” for the Child Attending School in this situation.

Additional Issue 7: Review support worksheet and calculator to determine how to include specific rebuttals

Recommendation: Refer to Design Workgroup to clearly document to the user which rebuttals are applied and to display the rebuttals applied in the “Support Summary.”

Additional Issue 8: Split Custody (clarified and revised from the Miscellaneous Issues Workgroup’s first report).

Recommendation: The final support amount is only for the children not with the paying parent, because the parenting time credit has already removed the portion of the obligation for the children with the paying parent from the transfer payment. Refer to Design Workgroup to clarify in calculation worksheet with resulting support amount reflected in the forms, including the support summary and the money award.

Income Workgroup Report

Robin Selig

There was discussion on the small and medium issues and recommendations in the last Guidelines Advisory Committee meeting. The larger issues required a more in-depth discussion; they are also intertwined with other workgroups’ work and will require some coordination. One of the things the workgroup grappled with was obligors with consistently low incomes. Echoing one of the overarching themes in the Advisory Committee’s meetings, the calculator does not always inform the user about the availability of rebuttals. The income rules mean less flexibility and more steps on the calculator. For many low-income obligors, the presumption of ability to earn full-time minimum wage is unenforceable.

Handouts:

- The Income workgroup’s report and recommendations,
- A draft of amendments to OAR 137-050-0715.

- Sample calculations showing current and proposed non-joint child deductions

Issue 2: Should Social Security benefits paid to the child or representative payee because of the child's disability be considered income to a parent?

Recommendation: No

Action: Draft clarifying rule language. See proposed language at Issue 8.

Issue 4: Should the Earned Income Tax Credit be treated as income?

Recommendation: No

Including the credit is problematic in several ways. It increases the complexity of the calculator, is speculative, is an amount that changes yearly, and is inconsistent with public policy of helping families move out of poverty.

Issue 14: How should we treat payments from the body of a trust?

Decision: Distributions from the body of a trust should be included in the definition of actual income under OAR 137-05-0715(2) (b).

Issue 8: Should we clarify that income does not include food stamp benefits?

Recommendation: Yes

Action: Add clarifying language to OAR 137-050-0715(4).

Note: the language also addresses the recommendation on Issue 2.

Issue 9: Should we clarify whether income includes employer-paid portion of medical premium?

Recommendation: No

Action: The answer is clear from the context: the parent does not receive and cannot use the money. Actual premium costs to parents are handled separately in OAR 137-050-0720 and 0750.

Issue 18: Should we restore treatment of overtime income that was removed in the 2010 Guidelines?

Recommendation: Add overtime provisions to the rule. Overtime income should be counted to the extent it is expected to continue, and may be annualized to account for seasonal variations.

Action: Refer draft commentary to Miscellaneous workgroup.

Issue 7: Should we clarify language regarding deductibility of depreciation from income of self-employed parents?

Recommendation: No

The language in the current rule OAR 137-050-0715(2) (e) is sufficient.

Issue 11: Should we clarify that a self-employed person may deduct one-half of self-employment tax?

Recommendation: Yes, incorporate into rule language from the decision in *Marriage of Cowden*, 172 OR App 343 (2001).

Action: Add language to OAR 137-050-0715(2) (e)

Issue 12: Should we prevent the adjustments from reducing income below zero?

Recommendation: Yes

Action: Refer to the child support program for amendment to OAR 137-050-0720.

Issues 16 and 1: Additional child deduction (formerly referred to as non-joint child credit). The additional child deduction, in combination with the self-support reserve, reduces support orders significantly at low incomes.

Recommendation (Part 1): The term “additional child” should be replaced with the previous language “non-joint child.” Restore “non-joint child” but retain “deduction” rather than the prior, incorrect term “credit.”

Recommendation (Part 2): Provide examples in commentary of when the deduction is appropriate. Refer proposed commentary to Miscellaneous Issues Workgroup.

Recommendation (Part 3): Compute deduction by adding all of the parent’s children and prorating to determine the amount of the total obligation attributable to children not in the current calculation.

Action: The actual dollar impacts need testing through the modeling process.

Issues 5, 13, and 15: The mechanics of using imputed and actual income. These issues raised a variety of concerns including full time employment at less than earning capacity, passive income, unemployment benefits greater than full-time minimum wage and multiple income types together.

Decision: Resolve the various problems in issues 5, 13, and 15 by providing more flexibility in using imputed income, actual income, or a combination of the two to determine income without requiring rebuttal of a presumption. Do not presume full-time work for parents for whom a shorter work week is customary or mandatory. Reduce

application of minimum wage presumption for very low-income parents clearly incapable of earning minimum wage based on employment history. See draft OAR 137-050-0715.

Issues 3 and 10: Confusion resulting from lack of explanation about rule that a parent's portion of the health insurance premium ultimately is deducted only when health care coverage for the child is reasonable in cost based on the amount of a parent's income after deducting the premium.

Recommendation: Make the existing process more transparent in the rules, calculator, and worksheets.

Action Items: Refer to Design workgroup for worksheets and calculator, and Miscellaneous Issues workgroup for commentary.

Review of drafted rule change language for OAR 137-050-0715 by sections.

(2) "Actual Income" we have included the commentary (e) and (f) (see draft)

(2) (b) Will need to be updated in the commentary to clarify capital wording.

(2) (c) and (d) The Social Security Insurance and Inheritances are in the commentary.

(4) Added food stamps and Social Security disability to the list of income exclusions.

(5)(a) Many changes here. Presumptions and rebuttals have been replaced with a system that favors actual income but has provisions for imputation in cases where the parent is voluntarily under-employed. The workgroup considered those parents who will never earn 40 hours a week; or have applied for SSI and keep getting denied but cannot work 40 hours.

(b) Minimum wage is based on the parent's state of residence.

(6) Clarifies that the part-time employee should only be attributed potential full-time income if it is actually available to the parent.

Implementation

Tom Hedberg

Discussion about the implementation phase have begun, and there is a lot of technical work to be done. Historically, members of the Advisory Committee were not involved in implementation. After 2002, the Program took a different approach to help change the process in getting out the word to the Program's partners. In 2006-07, Child Support Program personnel began making presentations throughout the state, to DA offices, practitioners, courts, etc. Program staff prepared online self-study training for Legal Aid and court personnel.

The 2009-10 guideline process also included outreach and partner training. Prior to the changes, Jean Fogarty and Margaret Olney of the Department of Justice presented information and solicited input at several state Bar events. As the new guidelines were rolled out, Jean provided a number of in-person trainings for various county Bar associations on the new guidelines and calculator and the Program made resources

available online. Largely due to the significant changes in the 2010 guidelines, demand for training was and remains strong.

The timing of all the parts of this implementation is important.

The notice of proposed rulemaking must be posted for 45 days for public review and comment before it is filed with the Secretary of State and it can become effective.

The Child Support Program will need at least three months lead time to make changes to its forms and the calculator. It is unknown how long the Oregon Judicial Department would need to update its forms, with its limited resources.

In the current budget environment, the Program does not have resources to offer comprehensive training throughout the state on the guidelines changes. All state agencies are having the same issue.

For the Child Support Program, any change raises the problem of available resources. Some of it is tied to the state budget. Other constraints include other Program projects, and changes required by the state and federal governments.

The Program proposes adoption of a training and outreach model based on the most recent changes to Uniform Trial Court Rules (UTCRC) 2.130 (the family law Confidential Information Form or CIF). The group of stakeholders that collaborated on the CIF changes, including state agency representatives and private practitioners, also collaborated to develop training materials and deliver the information to their respective constituencies. Everybody began with the same material, understanding, presentations, and the materials were customized according to the needs of each constituency. This way, the Child Support Program will not bear sole responsibility for communicating the changes.

The Program has begun its implementation process by creating a project team. The project sponsor is Kate Cooper Richardson, Deputy Director of the Child Support Program, and the project leads are Jonathan Ramberg and Tom Hedberg, project manager and business lead, respectively. The timeframe has not yet been established. It will be shared after Program leadership sets priorities based on the budget and available resources.

Round Table

The next meeting is November 17, 2011, due to the Thanksgiving holiday. We will have a guest at this meeting—our regional representative from the federal Office of Child Support Enforcement for Region 10, David Johnson.