

WSR 22-08-067

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Division of Child Support)

[Filed April 4, 2022, 4:26 p.m., effective May 5, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The establishment of a joint and several administrative child support order does not work well when the goal of family reunification and the fluid nature of reunification plans are taken into account. Married parents often choose to separate (or are required to separate) so that the child can return to the home of one of them. The obligation of the parent with physical custody is suspended by WAC 388-14A-3810, leaving the parent out of the home bearing the full brunt of the joint and several administrative order, further impacting reunification efforts. When the parent out of the home seeks to modify the joint and several order, it is sometimes modified only as to that particular parent, leaving the first parent still subject to the joint and several order if the child ever leaves the first parent's custody. This result does not align with the division of child support's (DCS) efforts to establish and enforce right size orders and can result in harm to families. To resolve this, DCS is changing its policy and will no longer be setting up joint obligations for married parents living together where the child is not living in the home.

Citation of Rules Affected by this Order: Amending WAC 388-14A-3140, 388-14A-8100, and 388-14A-8130.

Statutory Authority for Adoption: RCW 26.09.105, 26.18.170, 26.23.050, 26.23.110, 34.05.220, 74.08.090, 74.20A.055.

Adopted under notice filed as WSR 22-03-005 on January 6, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: April 4, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4901.3

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

- WAC 388-14A-3140 What can happen at a hearing on a support establishment notice?** (1) When a party requests a hearing on a notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical responsibility (NFMR), the hearing is limited to:
- (a) Resolving the current and future support obligation and the accrued support debt of the noncustodial parent (NCP); and
 - (b) Establishing the medical support obligations of both the NCP and the custodial parent (CP), if the CP is the legal or biological parent of the ~~((child(ren)))~~ child or children.
- (2) The hearing is not for the purpose of setting a payment schedule on the support debt.
- (3) The NCP and the CP each have the burden of proving any defenses to their own liability. See WAC 388-14A-3370.
- (4) The NCP and/or the CP must show cause why the terms in the NFFR, NFPR, or NFMR are incorrect.
- (5) The administrative law judge (ALJ) has authority to enter a support obligation that may be higher or lower than the amounts set forth in the NFFR, NFPR, or NFMR, including the support debt, current support, and the future support obligation.
- (a) The ALJ may enter an order that differs from the terms stated in the notice, including different debt periods, if the obligation is supported by credible evidence presented by any party at the hearing, without further notice to any non-appearing party, if the ALJ finds that due process requirements have been met.
 - (b) Any support order entered by the ALJ must comply with the requirements of WAC 388-14A-6300.
- (6) The ALJ has no authority to determine custody or visitation issues, or to set a payment schedule for the arrears debt.
- (7) When a party has advised the ALJ that they will participate by telephone, the ALJ attempts to contact that party on the record before beginning the proceeding or rules on a motion. The ALJ may not disclose to the other parties the telephone number or the location of the party appearing by phone.
- (8) In support establishment hearings, both the NCP and CP may participate in the hearing. However, in certain cases, there is no "custodial parent" because the child or children are in foster care.
- (a) If the NCP and CP both fail to appear for hearing, see WAC 388-14A-3131.
 - (b) If only one of the parties appears for the hearing, see WAC 388-14A-3132.
 - (c) If the NCP and CP both appear for hearing, see WAC 388-14A-3133.
- (9) In some cases prior to May 1, 2022, there ~~((can))~~ could be two NCPs, called "joint NCPs." This ~~((happens))~~ happened when DCS ~~((serves))~~ served a joint support establishment notice on the marital community made up of ~~((a husband and wife))~~ spouses who ~~((reside))~~ resided together, or on the domestic partnership community made up of two registered domestic partners who ~~((reside))~~ resided together, seeking to establish a support obligation for a child in common who ~~((is))~~ was not residing in their home.
- (a) If both of the joint NCPs fail to appear for hearing, see WAC 388-14A-3131;

(b) If both of the joint NCPs appear for hearing, see WAC 388-14A-3133; or

(c) Prior to May 1, 2022, one joint NCP ((may)) could appear and represent the other joint NCP.

(10) When a CP is granted good cause level B (see WAC 388-422-0020), DCS notifies the CP that the CP will receive documents, notices, and orders. The CP may choose to participate at any time. Failure to appear at hearing results in a default order but does not result in a sanction for noncooperation under WAC 388-14A-2041.

(11) If any party appears for the hearing and elects to proceed, the ALJ hears the matter and enters a final order based on the evidence presented, unless the ALJ grants a continuance. The ALJ includes a party's failure to appear in the initial decision and order as an order of default against that party. The direct appeal rights of the party who failed to appear are limited to an appeal on the record made at the hearing.

[Statutory Authority: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055(9), and 74.20A.056(11). WSR 11-12-006, § 388-14A-3140, filed 5/19/11, effective 6/19/11. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.160. WSR 06-09-015, § 388-14A-3140, filed 4/10/06, effective 5/11/06. Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 34.05.220(1), 74.20A.055, 74.20A.056. WSR 03-20-072, § 388-14A-3140, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 00-15-016 and 00-20-022, § 388-14A-3140, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-400 and 388-11-425.]

AMENDATORY SECTION (Amending WSR 06-16-073, filed 7/28/06, effective 8/28/06)

WAC 388-14A-8100 Are there special rules for setting child support for children in foster care? (1) Child support obligations for children in foster care are set according to the Washington state child support schedule (the WSCSS), found in chapter 26.19 RCW.

(2) When a child or children are placed in foster care, DCS may use the administrative process to set a support obligation:

(a) ~~((As a joint obligation for married parents who reside together;~~

~~(b))~~ As ~~((two))~~ a separate ~~((obligations))~~ obligation for ~~((parents who do not reside together))~~ each parent; or

~~((c))~~ (b) For just one parent, if:

(i) There is already a court or administrative order setting the support obligation of the other parent;

(ii) The other parent is dead; or

(iii) The other parent is unknown.

(3) When setting a support obligation for only one parent, DCS follows the procedure set out in WAC 388-14A-8125.

(4) ~~((When setting))~~ Prior to May 1, 2022, DCS used the administrative process to set a joint support obligation for parents who are married or in a registered domestic partnership and residing together. When setting a joint obligation, DCS ((follows)) followed the procedures set out in WAC 388-14A-8130.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 06-16-073, § 388-14A-8100, filed 7/28/06, effective 8/28/06. Statutory Authority: RCW 13.34.160(3), 13.34.270(7), 74.08.090, 74.13.031(11), 74.13.350, 74.20A.030(4), and 74.20A.310. WSR 05-12-135, § 388-14A-8100, filed 6/1/05, effective 7/2/05. Statutory Authority: RCW 74.08.090. WSR 01-03-089, § 388-14A-8100, filed 1/17/01, effective 2/17/01.]

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-8130 How ((does)) did DCS complete the WSCSS worksheets when setting a joint child support obligation for a child in foster care prior to May 1, 2022? (1) ((When)) Prior to May 1, 2022, the division of child support (DCS) ((is preparing)) prepared an administrative support notice to establish a joint support obligation for the parents of a child in foster care, DCS ((follows)) followed the steps set out in this section for completing the worksheets under the Washington state child support schedule (WSCSS).

(2) DCS ((establishes)) established a joint support obligation when, at the time of order establishment, the parents ((reside)) resided together and ((are)) were either married or in a registered domestic partnership, unless a child support order covering current support for that child ((has)) had already been established for one of the parents.

(3) DCS ((calculates)) calculated each parent's income under the rules set out in WAC 388-14A-3205, and then ((calculates)) calculated the income of the marital or domestic partnership community by combining both parents' income in one column of the worksheet and ((does)) did not put any income or other information in the other column.

(4) DCS ((calculates)) calculated the joint support obligation using the limitations contained in RCW 26.19.065:

(a) The joint child support obligation ((may)) could not exceed ((forty five percent)) 45% of the net income of the community except for good cause.

(b) DCS ((follows)) followed WAC 388-14A-3410 when calculating and applying the self-support reserve limitation.

(c) Even though there ((are)) were two parents involved, and despite the application of any limitations, the presumptive minimum obligation of ((fifty dollars)) \$50 per month per child ((applies)) applied when DCS ((sets)) set a joint child support obligation.

(d) If DCS or the administrative law judge (ALJ) ((may find)) found reasons for deviation ((and must support those)), the reasons were supported with appropriate findings of fact in the support order.

(5) As described in subsection (3) of this section, the support obligation in the column of the WSCSS worksheet which contains information regarding both parents is the joint support obligation of the parents.

(6) DCS ((determines)) determined the joint support obligation of the parents without regard to the cost of foster care placement, as provided in WAC 388-14A-8105.

(7) The rules in this section still apply if parties request modification of joint noncustodial parent (NCP) obligations established by administrative orders prior to May 1, 2022.

[Statutory Authority: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055(9), and 74.20A.056(11). WSR 11-12-006, § 388-14A-8130, filed 5/19/11, effective 6/19/11. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 06-16-073, § 388-14A-8130, filed 7/28/06, effective 8/28/06.]