

20-131

COUNTY OF MILWAUKEE
Inter-Office Communication

DATE: January 15, 2020

TO: Finance and Audit Committee, Milwaukee County Board of Supervisors

FROM: Jim Sullivan, Director, Department of Child Support Services

SUBJECT: Resolution 19-969 – A resolution authorizing and requesting the Milwaukee County Department of Child Support Services to review the Wisconsin Department of Children and Families Birth Costs Recovery policy to help determine the fiscal and racial equity impacts of discontinuing the practice in Milwaukee County and how BCR elimination can be implemented in the County

Resolution 19-969 requires Child Support Services (CSS) to provide a written report to the County Board for consideration and possible action in the January 2020 meeting cycle. This report begins with a summary of Wisconsin law regarding setting and collecting birth expenses, along with the policies developed by the Department of Children and Families (DCF) based upon that law. It then provides an assessment of actual birth cost orders in the County, showing how that law and those policies are applied by CSS in its cases. Finally, it addresses the fiscal impacts on CSS should the Board determine that birth cost reimbursement should end in the County.

The Law in the State of Wisconsin

The Child Support Program was founded upon the principle that parents, not taxpayers, have the primary responsibility for supporting their children. Paying for a child's birth is one of the many responsibilities of parenthood. Married parents share that responsibility by virtue of their marriage.¹ When parents are not married, the father has no legal responsibility for the pregnancy and birth expenses unless and until he is legally adjudicated as the father. Wisconsin law addresses this responsibility in Wis. Stat. §767.80(3)(e), which mandates reimbursement for birth costs whenever a child is born outside of marriage.² This requirement applies to high-, middle-, low- and no-income fathers, and to births that were paid for by private insurance or by Medicaid.

The statute expressly limits, however, fathers' potential reimbursement to one-half of the actual cost, and then, for low-income fathers, requires courts to consider whether the father can pay such costs prior to making its birth cost order.

Wisconsin's Department of Children and Families (DCF) has promulgated regulations that further define how far courts can go in ordering birth cost reimbursement. DCF 150.05(2)(b) is very clear in limiting birth cost orders for low-income fathers:

(2) Birth Cost Judgment. (b) The court shall include in a paternity judgment or order a birth cost judgment that does not exceed one-half of the actual and reasonable cost of the mother's pregnancy and child's birth and shall 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 income is between 75% and 150% of the federal poverty guidelines, an amount that does not exceed the maximum birth cost judgment amount provided in the schedule in Appendix D.³
3. If 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.

In addition to abiding by these restrictions, county child support agencies (CSAs) are required by their contract with DCF to follow all DCF child support policies. One of those policies places additional limits on how much CSAs may seek in birth cost orders, along with limits as to how those amounts are to be repaid.⁴

3.1 Requirements for Setting Judgment Amounts

- The CSA must **not** seek a judgment amount for birth costs that exceeds 5% of the payer's income over a three-year period. This amount is further restricted by § 767.89(3)(e), Wis. Stats., which specifies that the judgment amount for birth costs may not exceed one-half of the actual and reasonable cost of pregnancy and the child's birth.
Note: Medicaid uses HMOs to cover birth costs in most counties. Therefore, BCS defines "actual and reasonable cost" as one-half the regional HMO average. These regional HMO averages are provided to CSAs annually.
- At county option, the CSA may obtain actual birth cost from DHS and calculate one-half of the actual birth-cost amount. Under BCS policy, if the CSA uses the actual birth costs, the judgment amount may not exceed the full regional average amount or the amount the father has the ability to pay, whichever is less.

3.2 Setting Periodic Payments on Birth Cost Judgments

The CSA must first determine if the father has the ability to repay birth cost. If the father has the ability to pay, the CSA may request a very low monthly payment in consideration of the father's financial situation.

Although the judgment amount is determined based on a 36-month period, the periodic payment should be based on the father's full economic circumstances. There is no set time period for repaying the judgment amount.

If there is no current ability to pay, the CSA must not seek a judgment for birth costs.

The average HMO cost in Milwaukee County is \$6,312.29, and half of that is \$3,156.14.⁵

Birth Expense Orders in Milwaukee County

Every day CSS balances the principle of holding parents primarily responsible for their children with our mission to promote family stability and to create a better quality of life for the children of Milwaukee County. In light of that mission, not only do we require our attorneys to

request birth expense orders that comply with the law and policy, but we go one step further. We encourage them to exercise discretion in making sure that such orders are appropriate considering fathers' total economic circumstances in every case, not just cases in which the father earns less than 75% of the federal poverty level. This includes requesting birth expenses be set at zero if that is what is appropriate under the circumstances.

To assess the impact of our birth expense orders on the fathers in our cases, we examined a summary of birth expense orders from last May 2019, and then we reviewed paternity judgments entered in the first three weeks of November 2019. We found that we very rarely request the maximum (only once during these periods), and regularly request that birth expenses be set at zero. All our orders are for amounts lower than the limits in DCF's regulations and policies, and most are well below those limits.

We reviewed the 117 paternity judgments which were ordered between April 25 and May 14, 2019.⁶ All were set based upon the income of the father, the support obligations he had in this and any other cases he might have, his current living situation (with or without the mother and child) and his ability to make payments on his case(s). Of those judgments:

- 55 cases had birth costs set at zero (47%)
- 25 had birth costs between \$100 and \$450
- 21 had birth costs between \$500 and \$900
- Eight had birth costs set at \$1,000
- Seven cases had birth costs set between \$1,250 and \$2,000
 - \$1,250 was ordered in two cases where one father earned \$26,000 annually and the other earned \$35,000
 - \$1,500 was ordered in three cases, where one father earned \$36,000 annually and the other two earned \$40,000 each
 - \$1,750 was ordered on one case where the father earned \$44,000 annually
 - \$2,000 was ordered on one case where the father earned \$66,000 annually
- \$3,100 was ordered on one case where the father earned \$141,000 annually.

We also reviewed the 158 paternity judgments ordered between November 1 and November 19, 2019.⁷ Again, all were set based upon the income of the father, his support obligations, his living situation and his ability to make payments. Of those judgments:

- 107 cases had zero birth costs (67%)
- 13 had birth costs between \$200 and \$400
- 25 had birth costs between \$500 and \$900
- Eight had birth costs set at \$1,000
- Five cases had birth costs set between \$1,200 and \$2,000
 - \$1,200 was ordered where a father earned \$46,000 annually
 - \$1,500 was ordered where a father earned \$36,000 annually
 - \$1,800 was ordered in two cases where one father earned \$36,000 annually and the other earned \$66,000
 - \$2,000 was ordered where a father earned \$41,850 annually.

We also evaluated the rates at which the fathers were ordered to repay their birth expenses. Of the 113 cases in which birth expenses were ordered in May and November, the fathers were ordered to make weekly payments as follows:

- In two cases, no weekly payment was ordered
- \$1 per week was ordered in 65 cases
- \$1.15 per week was ordered in five cases (\$5 per month)
- \$2 per week - 21 cases
- \$2.31 per week - one case (\$10 per month)
- \$5 per week - 17 cases
- \$10 per week - one case
- \$23 per week was ordered in the case in which the father earned \$141,000 annually (\$100 per month)

These judgments do not identify the race of the father, but DCF identifies the Milwaukee County’s child support participants overall as follows:

- 49.2% Black
- 13.5% White
- 12.12% Hispanic
- 22.17% No data is available – given the relatively high percentage of participants with no racial or ethnic data, we estimate that our participants may be up to 65% African American.

Given this evidence that birth expenses are set at zero in a large proportion of our paternity cases and that fathers’ actual income is consistently used to determine the amount of birth expenses that are requested, birth expense assessment in Milwaukee County does not appear to have a disparate impact on communities of color.

Fiscal Impact of the Potential Elimination of BCR on CSS

Should the Board choose to eliminate birth cost reimbursement in Milwaukee County, over time CSS would face an annual budgetary hole of approximately \$300,000.

	Total birth expenses collected	Reimbursement to Medicare	Reimbursement to Child Support
2018	\$2,451,833	\$2,084,058	\$367,775
2019 (est.)	\$2,300,000	\$1,955,000	\$345,000
2020 (est.)	\$2,166,666	\$1,841,666	\$325,000

Using \$48,000 as our average salary within CSS, this means that we would lose an additional six positions as a result of such a funding loss. As 60% of our staff in CSS are individuals of color, this loss of jobs is likely to have a disparate impact on people of color.

Another impact of such a budgetary loss would be felt by those who use our services. Should we lose six positions, our current caseload of 925 cases per full-time equivalent would increase

to 969 cases per FTE. For comparison purposes, the average caseload for the rest of the CSAs in the State of Wisconsin is 309 cases per FTE. Any reduction in staffing in CSS is likely to have a disparate impact on communities of color in Milwaukee County, as it would reduce the resources we have to provide services to such communities.

In case it is of interest, the issue of birth cost reimbursement came before Wisconsin's 2018 Legislative Council Study Committee on Child Placement and Support. At that time, the Wisconsin Child Support Enforcement Association (WCSEA) produced a fact sheet regarding some of the misunderstandings being communicated regarding Wisconsin's policy. It is attached for your information.⁸

I am happy to provide any additional data or information needed by the Board on this issue.

Respectfully submitted,



Jim Sullivan, Director
Department of Child Support Services

cc: Chris Abele, Milwaukee County Executive
Raisa Koltun, Chief of Staff, Milwaukee County
James "Luigi" Schmitt, Chair, Finance and Audit Committee
Willie Johnson, Jr., Vice Chair, Finance and Audit Committee
Lindsey Peterson, Fiscal & Budget Analyst, Department of Administrative Services
Shanin Brown, Committee Coordinator
Steve Cady, Director of Research and Policy

¹ See Wis. Stat. §766.55

² Wis. Stat. §767.80 (3) Content of Judgment or Order. A judgment or order determining paternity shall contain all of the following provisions:

(e) 1. An order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and birth. The amount established may not exceed one-half of the total actual and reasonable pregnancy and birth expense. The order also shall specify the court's findings as to whether the father's income is at or below the poverty line established under 42 USC 9902 (2), and shall specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses.

2. If the order does not require periodic payments because the father has no present ability to pay or contribute to the expenses, the court may modify the judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

³ See Attachment #1, Chapter DCF 150 Appendix D. The federal poverty guideline for 1 person living in the 48 contiguous states is \$12,490 annually, or \$1,078 per month.

⁴ Wisconsin Bureau of Child Support Policy Manual, Birth Costs Policy

⁵ DCF's Bureau of Child Support Fact Sheet: Average Birth Costs – Maternity “Kick” Payments

⁶ *See Attachment #2, Milwaukee County Birth Expense Orders – 10 Days, May 2019*

⁷ *See Attachment #3, Milwaukee County Birth Expense Orders – Nov. 1 thru Nov. 26, 2019*

⁸ *See Attachment #4, WCSEA Birth Cost Reimbursement in Wisconsin – Myths vs. Facts*