

Subcommittee on Children from Other Relationships
Report to the 2011 Child Support Workgroup
August 12, 2011

Note: this report reflects a summary of the subcommittee's activities and discussions and is not intended to be a full report w/ recommendations to the Workgroup. Any errors in these summary representations are the author's.

The following represents the current position of our Subcommittee as of our last meetings on August 2, 8 and 10. For the sake of continuity I have repeated certain information that we have presented in our four previous reports to the Workgroup.

CNBC are defined as those children:

- a. born during marriage, domestic partnership, or otherwise consistent with the provisions of RCW 26.26.116 (and the presumption of paternity under Chapter 26.26 RCW has not been rebutted),*
- b. who have been adopted,*
- c. born outside a marriage but for whom paternity has been established by either a registered acknowledgment of paternity or a court order, and*
- d. for whom the parent has been established as a de facto parent pursuant to In Re: Parentage of L.B., 155 Wn. 2d 679, 122 P. 3d 161 (2005).*

The following four sections relate to our most recent efforts at further refining the subcommittee's positions with respect to the application of the adjustment to the standard calculation for CNBC.

A: Standard and Presumptive Calculation

Generally, under the "new" system the subcommittee contemplates a worksheet where there is a clearly identified standard calculation – the same as we have currently at line 7 of the worksheet. Then there would a presumptive calculation – this is the transfer payment that results after consideration of the obligor's CNBC using the Whole Family Formula method.

Subject to the limitations set forth in RCW 26.19.065, the court or administrative tribunal shall set support based upon the presumptive calculation (which includes the obligor's CNBC) using the Whole Family Formula unless:

- 1) the presumption has been rebutted; or*

2) *the presumptive support calculation would result in insufficient funds to meet the basic needs of the CBC in the obligee's household and when taking the totality of the circumstances of both parents into account, including the obligee's CNBC, the application of the presumptive calculation would be unjust.*

The presumption may be rebutted by a showing that the obligor has paid no support in the prior 12 month period for non-residential CNBC without reasonable justification.

The obligee shall be determined to have insufficient funds to meet the basic needs of the obligee's household if the obligee's gross income before the transfer payment is at or below 125% of the federal poverty level for the obligee's household size, including both CBC and CNBC.

If the tribunal does not set support at either the standard calculation or the presumptive calculation, the tribunal shall set forth specific reasons for this deviation.

[For examples of the application of this process, please see Attachment A beginning on page 4 of this Report.]

B: The Self-Support Reserve

Should we consider a clarification to 26.19.065(2)(a) and (b) which deals with the self support reserve? The previous statute limited the transfer payment by prohibiting a support order from reducing the obligor's income below the need standard for one person. The subcommittee believes that this should be clarified in the statute so that the reference to the federal poverty level includes similar language, *i.e.*,

(a) When a parent's monthly net income is below [125%] of the federal poverty guideline for a one person household, a support order of not less than

(b) The basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child-rearing expenses, shall not reduce his or her net income below the self-support reserve of [125%] of the federal poverty level for a one person household, except for the presumptive minimum payment of

The Division of Child Support is currently staffing a change in their child support rules (Chapter 388-14A WAC) to effect just such a change with respect to the administrative determination of support obligations.

C: The "Stacking" Issue

We have talked about this in our subcommittee and it needs to be discussed in the larger workgroup as well. There is a legitimate concern that if the presumptive calculation would include CNBC, and we also adopt a residential credit, and either or both of these are combined with our existing limitations in 26.19.065, the transfer payment would be dramatically reduced in a significant number of cases, especially in those cases where the parents have middle income and above. Is the above proviso (tribunal should make sure the transfer payment does not result in insufficient funds to the obligee) enough to avoid this or do we need to be more directive? If we need to be more directive, here is a suggestion to mull over:

The tribunal should not permit more than one of the following factors to reduce the obligor's transfer payment:

- *The 45% limitation as defined by RCW 26.19.065(1); or*
- *The residential credit as defined by RCW 26.19.075; or*
- *The presumptive calculation that includes both children before the court and children not before the court.*

If we go in this direction, we could add something like:

Whenever the obligor could claim more than one of the above factors, the obligor may indicate or elect which factor the obligor prefers be adopted by the tribunal.

D: Bottom Line Recommendation

Although the subcommittee believes that much progress has been made with respect to the original tasks to which we were set, we also realize that not all of our recommendations may be able to garner the necessary consensus from the Workgroup.

But even if not all of the subcommittee's recommendations end up being adopted, there are at least two items that ought be recommended to the Legislature:

(1) RCW 26.19.075(1)(d) should be amended to change "children from other relationships" to "children not before the court" and then have our definition of CNBC adopted.

(2) The statute should also be changed to adopt the Whole Family Formula method whenever a tribunal has to determine a presumptive calculation for CNBC.

Respectfully submitted,

Edward F. Pesik, Jr.

Attachment A:

CNBC Subcommittee Transfer Payment Scenarios based on CNBC Presumptions

Last week, after our Workgroup meeting in Spokane, Kevin sent out for our use four different scenarios using the various income splits used by the other subcommittees when illustrating the effects that certain policies might have on child support orders. Kevin also sent out a table with all of the monthly income figures calculated for a determination of 125% of the Federal Poverty Level for the various family sizes.

Scenario A used a combined monthly net income of \$2600 with the net being split equally between the parents. The application of the self-support reserve “trumps” any issues of CNBC in either parent’s household (HH) in this scenario.

Scenario B used a combined monthly net income of \$4000 with a 60/40 split: \$2400 net for father and \$1600 net for mother:

Scenario C used a combined monthly net income of \$7000 with a 70/30 split: \$4900 for father and \$2100 for mother:

Scenario D used a combined monthly net income of \$3000 with the net being split equally between the parents.

#B: Father is obligor. One CNBC 12 years old. Standard calculation transfer payment = \$452.

Add a CNBC to father’s HH. CNBC is 2 years old. Presumptive transfer payment = \$350 using Whole Family Formula (WFF) [unless otherwise rebutted].

Now add a CNBC to mother’s HH. No other rebuttal to father’s CNBC. Now we have to review the mother’s income: her income is \$1600. Compare that to the table that shows 125% of the monthly FPL for a three person family – in this case that is \$1930. Since mother’s income is less than the poverty level for her family size (including the one CNBC in her HH), the court should not adjust father’s transfer payment based on the WFF for the CNBC in his HH.

Questions raised by this treatment include how the court would address the issue if either parent were receiving support for the CNBC in their HH, or whether “the other parent” (of the CNBC) was in the HH and presumably supporting the child. At least some discretion seems to be necessary.

#C: Father is obligor. One CBC 12 years old. Standard calculation transfer payment = \$853.

Add a CNBC to father's HH. CNBC is 2 years old. Presumptive transfer payment = \$662 using WFF [unless otherwise rebutted].

Now add a CNBC to mother's HH. No other rebuttal to father's CNBC. Now we have to review the mother's income: Her income is \$2100, family size is still 3 total and so her income is more than 125% of the FPL. Thus, all other things being equal, the court is very likely to grant the adjustment based on the WFF for the father's CNBC in his HH – and so transfer payment might remain at the presumptive level of \$662.

Same questions arise, however, for the various permutations possible in the two parent's circumstances. The situations that present themselves both in the courts and the administrative process are not always so neatly circumscribed.

Some thought has been given to limiting in some fashion the court's exercise of discretion to the limits of the \$350 to \$452 range in example B and the \$662 to \$853 range in example C to account for those cases where the parents might be receiving child support payments for the CNBC or where the other responsible parent for the CNBC resided in the HH.

This would allow the court to take into account all the circumstances surrounding CNBC from both households and fashion a child support transfer payment within the limits set forth between the standard calculation and the WFF presumptive transfer payment using obligor's CNBC.