

**From:** Kevin Callaghan

**Sent:** Monday, August 08, 2011 1:19 PM

**To:** Janet Skreen; Koptur, Nancy (DSHS/DCS); Nolan, Ellen E. (DSHS/DCS); Angela Gerbracht; Ken Levinson; Kris Amblad; Pesik, Ed (OAH); Kristie Dimak

**Cc:** Smylie, George (DSHS/DCS)

**Subject:** RE: CFOR Meeting today

Since we were unable to meet today, I have a few items for consideration for Wednesday:

A) Regarding the minutes, I thought we agreed to on page 3 of our 7/23 report to change a "shall" to "may" in the following paragraph: "The obligee may be determined to have insufficient funds...".

Therefore, the full recommendation in #4 would read:

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 obligee may 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.

B) 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. Should this be clarified in the statute so that the reference to the federal poverty level includes similar language, i.e., "When a parent's monthly net income is below 125% of the federal poverty guideline FOR A ONE PERSON HOUSEHOLD."

C) Stacking:

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 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. 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 SELF SUPPORT RESERVE LIMITATION AS DEFINED BY 26.19.065(2); 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 SHALL INDICATE WHICH FACTOR THE OBLIGOR PREFERS BE ADOPTED BY THE TRIBUNAL.

4) Bottom line:

We have accomplished a lot in this subcommittee and I would be disappointed to have the larger workgroup not reach a consensus on this recommendation.

But if we can't get our recommendations adopted, do we have a bottom line of a more modest change to the existing statute? At a minimum, I would like to see RCW 26.19.075(1)(d) amended to change

"children from other relationships" to "children not before the court" and then have our definition of CNBC adopted.

I would also like to see the statute changed to adopt the Whole Family Formula when deviating from the standard calculation for CNBC.

Talk to you all on Wednesday.