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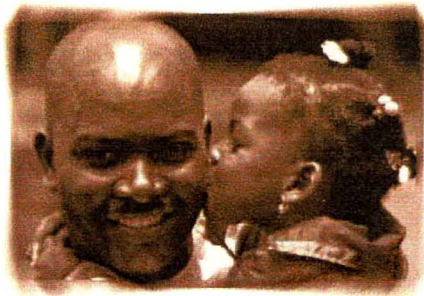
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State of Colorado Child Support Commission Report



December 2000

CHILD SUPPORT COMMISSION

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Chapter 1: INTRODUCTION

This report contains the findings of the Colorado Child Support Commission in its review of the Colorado child support guidelines. Based on this review the Colorado Child Support Commission has six recommendations to the Governor and to the General Assembly relative to child support issues and child support guidelines.

Purpose of the Colorado Child Support Commission

The Colorado Child Support Commission was created pursuant to section 14-10-115 (18)(a), Colorado Revised Statutes. The statute states that the Commission is to review the child support guidelines and general child support issues and make any recommendations for changes to the Governor and to the General Assembly. The statute also states that the Commission must consider economic data on the cost of raising children and analyze case data on the applications of, and deviations from the guidelines to be used in the Commission's review to ensure that deviations from the guidelines are limited.

The review conducted by the Colorado Child Support Commission also must meet the requirement of the "Family Support Act of 1988" Public Law 100-485 which mandates that states must review their guidelines every four years. Furthermore, the review must be consistent with Title 45, Code of Federal Regulations 302.56, which requires that the review must include an assessment of the most recent economic data on child-rearing costs and a review of case data to ensure that deviations from guidelines are limited.

Organization of the Colorado Child Support Commission

The state statute mandates that the Commission shall consist of no more than fifteen members. Governor Owens appointed fourteen members to the Commission on June 20, 2000. One position on the Commission has not been filled. The first meeting of the Commission was held on September 5, 2000. The Commission met twice a month from October through December 15, 2000 in Denver. This report is an interim report that represents the issues covered by the Commission in 2000. The topics covered include the attachment of workers' compensation benefits for child support, the guideline treatment of other children for whom a parent is responsible and the guideline forms, schedules and instructions. The Commission will continue to meet in 2001.

Chapter 2: ISSUES AND RECOMMENDATIONS

Given the short time frame that the Commission had to review the issues before it and to make recommendations to the Governor and General Assembly, the Commission focused its attention on the following:

- o A review of deviations from the guidelines
- o Treatment of other children for whom a parent is legally responsible
- o Direct income withholding of workers' compensation benefits
- o Attachment, assignment and garnishment of permanent partial disability workers' compensation benefits for the payment of child support
- o Attachment of workers' compensation lump sum settlement awards for child support
- o Child support guideline forms, schedule and instructions

The Commission will continue to meet in 2001 to consider economic data on the cost of raising children (new data is scheduled to be published in 2001), low income obligor issues, welfare reform issues, tax exemptions for child(ren) due support, health care expenditures on child(ren), judgment issues and other matters.

Issue #1:

Review of Guidelines

Section 14-10-115(18)(a), Colorado Revised Statutes provides that as part of its review, the Child Support Commission must

"analyze case data on the application of, and deviations from, the guidelines to be used in the commission's review to ensure that deviations from the guidelines are limited".

In accordance with this requirement the Commission reviewed data from two sources. First, the Commission reviewed data collected by the Colorado Department of Human Services, Division of Child Support Enforcement with regard to deviations on cases handled by the division under Title IV-D¹ of the "Social Security Act". The division collects data regarding deviations from the child support guidelines for both the initial establishment of a child support order and for subsequent modifications of child support orders. The data collected includes whether or not a deviation from the guidelines occurred, the dollar amount of the deviation and the reason for the deviation. This data is collected and entered into the statewide Automated Child Support Enforcement System (ACSES) by the caseworker assigned to the IV-D case in each of Colorado's 63 counties.

The Commission reviewed a report provided by the division that analyzed child support orders established and modified on IV-D cases for the period from January 1, 1999 through December 31, 1999. During this time period there were 7890 orders statewide establishing child support of which 240 orders or 3% deviated from the child support guidelines.

¹ Cases handled by state and county child support offices are referred to as "IV-D" cases because authority for this activity is granted in Title IV-D.

Of the 240 orders that deviated from the guidelines, 22 were higher than the guideline amount and 218 were lower than the guideline amount. During the same period of time, 4134 child support orders were modified statewide, of which 273 or 6% deviated from the child support guidelines. Of the 273 modification orders that deviated from the guidelines, 37 were higher than the guideline amount and 236 were lower than the guideline amount.

The Commission also reviewed data collected by the State Court Administrator's Office for non IV-D cases that are not handled by the Division of Child Support Enforcement. Because the automated system in the courts does not currently collect data regarding deviations from the guidelines, the data was collected by means of an informal survey of judges and magistrates who hear child support cases in each of Colorado's judicial districts. The survey covered the same time frame as the data collected for IV-D cases. For the initial establishment of child support orders on non IV-D cases the average percent of cases deviating from the child support guidelines was estimated to be between 4.7% and 4.9%. For modification of child support orders on non IV-D cases the average percent of cases deviating from the child support guidelines was estimated to be between 4.7% and 4.9%.

Conclusion

Based upon the data reviewed, the Commission is persuaded that the legislative intent that the child support guidelines be applied uniformly throughout the state and that deviations from the guidelines be "limited" is being fulfilled. The data suggests that the child support guidelines are being applied in the vast majority of cases and that deviations are a small percent of both initial child support orders established and those modified. Accordingly, the Commission is satisfied that there is no need for legislative change to the statute setting forth the reasons and circumstances under which a court may deviate from the child support guidelines.

There is no data to suggest that these reasons are being used in a manner to thwart the legislative intent that deviations be limited.

However, the Commission notes that the data supplied for its review is limited in its usefulness and the Commission does have several recommendations regarding the collection of data so that the required review of deviations by future child support commissions might be more meaningful.

Recommendation #1:

Review of Guidelines

The State Court Administrator's Office enhance its automated system to collect the same data elements on guideline deviation on non IV-D cases as collected by the Division of Child Support on IV-D cases.

The Division of Child Support Enforcement modify its automated system to more accurately capture the reason for deviation and the addition of a reason for "other dependents" to track how often deviation occurs for this reason.

Issue #2:

Treatment of other children for whom a parent is legally responsible

The subject of which children for whom parties are legally responsible should be included in the guideline calculation and how this should be done is a complex issue that the legislature and the Guideline Commission have frequently considered.

During the 1989 legislative session, HB89-1180 amended section 14-10-115, (7) (d.5) (I) Colorado Revised Statutes. The amendment authorized an adjustment to each responsible parent's gross income for children for whom each parent was legally responsible. The adjustment was determined from the Schedule of Basic Support Obligation. One hundred percent of the amount reflected on the Schedule was deducted from the responsible parent's gross income. This amendment was determined to be a balanced compromise in its treatment of first families and subsequent children.

The 1991 Commission reviewed the guideline treatment of other children for whom a parent is legally responsible. The Commission supported the statute as written determining that the statute provided that the needs of subsequent children were not given precedence over the needs of prior born children. The Commission concluded that this approach allowed parents to plan for new children but not at the expense of decreasing support to the first children.

During the 1998 legislative session, SB98-139 amended section 14-10-115, (7) (d.5) (I), Colorado Revised Statutes. The amendment authorized only an adjustment to a parent's income prior to the calculation of the basic child support obligation if that parent is legally responsible for children BORN PRIOR TO THE CHILDREN WHO ARE THE SUBJECT OF THE CHILD SUPPORT ORDER.

Since the July 1, 1998 implementation of SB98-139, the Colorado Child Support Commission, the Division of Child Support Enforcement (CSE), the county CSE units, and the Judiciary have received numerous complaints regarding the hardships of supporting secondary families as a result of the change in the law. Seventy-five percent of divorced persons remarry and have additional children after they remarry.²

The 2000 Child Support Commission reviewed the written complaints and heard public testimony from two citizens who expressed the hardships to their families as a result of the current law.

In its review of the guideline treatment of other children for whom a parent is legally responsible, the 2000 Commission reviewed other states' statutory language concerning adjustments to a parent's income in the guideline calculation for children for whom the parties are legally responsible. South Carolina's guideline schedule uses a 75 percent adjustment, North Carolina's guideline schedule uses a 50 percent adjustment, Vermont's guideline schedule uses a 100 percent adjustment. Colorado's 2000 Commission concluded that an amount that equalizes support between two sets of children is the most fair. Various statistical scenarios were reviewed. The 50 percent adjustment favors the children subject to the order. Higher amounts work in situations where the obligee has no or low income. Lower amounts work in situations when the obligee's income is equal to or greater than the obligor's income or when the obligor's income is high. The relative number of dependents had a smaller impact than income. Lower amounts work better with more additional dependents. After careful consideration, the 2000 Commission agreed on a 75

² *Final Report, "Evaluation of Child Support Guidelines" OCSE, 3/96*

percent adjustment to the responsible parent's gross income. It is the most fair and it treats all children equally.

Recommendation 2:

Treatment of other children for whom a parent is legally responsible

Amend section 14-10-115, (7) (d.5) (I), Colorado Revised Statutes, to allow a deduction in the amount of 75 percent of the amount listed on the Schedule for other children for whom the parent is legally responsible and for whom the parents do not share joint legal responsibility.

Proposed language:

14-10-115 (7)(d.5) (I), C.R.S., At the time of the initial establishment of a child support order, or in any proceeding to modify a support order, if a parent is also legally responsible for the support of other children ~~born prior to the children~~ for whom the parents do not share joint legal responsibility, an adjustment shall be made revising such parent's income prior to calculating the basic child support obligation for the children who are the subject of the support order if the children are living in the home of the parent seeking the adjustment or if the children are living out of the home, and the parent seeking the adjustment provides documented proof of money payments of support of those children. The amount shall not exceed the guidelines listed in this section. An amount equal to **SEVENTY FIVE PER CENT OF** the amount listed under the schedule of basic child support obligations in paragraph (b) of subsection (10) of this section which would represent a support obligation based only upon the responsible parent's gross income, without any other adjustments, for the number of such other children for whom such parent is also responsible shall be subtracted from the amount of such parent's gross income prior to calculating the basic child support obligation based on both parents' gross income as provided in subsection (10) of this section.

(II) The adjustment pursuant to this paragraph (d.5), based on the responsibility to support other children, shall not be made to the extent that the adjustment contributes to the calculation of a support order lower than a previously existing support order for the children who are the subject of the modification hearing at which an adjustment is sought.

Issue #3:

Direct Income withholding of workers' compensation benefits

Permanent total disability workers' compensation benefits are subject to the following for purposes of child support:

- ✓ garnishment for the payment of child support pursuant to section 13-54.5-101(2)(a)(I), Colorado Revised Statutes;
- ✓ income assignment pursuant to section 14-14-111.5(17), Colorado Revised Statutes, and generally as a "payor of funds", pursuant to section 14-14-102(9), Colorado Revised Statutes, and pursuant to section 8-42-124(6), Colorado Revised Statute;
- ✓ administrative lien and attachment pursuant to section 26-13-122, Colorado Revised Statutes, and section 8-42-124 (6), Colorado Revised Statutes.

Whether the authority exists to use direct income withholding to attach permanent total disability benefits for the payment of child support is unclear. An income withholding order issued in another state may be sent to the persons or entity defined as the obligor's employer under the income withholding law of this state pursuant to section 14-5-501, Colorado Revised Statutes, the "Uniform Interstate Family Support Act" (UIFSA). All states have adopted the UIFSA model language verbatim, as required by the federal welfare reform legislation of 1996. UIFSA does not include the term "payor of funds" as an entity subject to direct income withholding as does the income assignment statute, section 14-14-111.5, Colorado Revised Statutes.

Instead UIFSA defers to the state's definition of "employer" to make clear who need honor a direct income withholding order. It says "an income

withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under the income withholding laws of this state..." Thus the definition of "employer" needs to include insurance companies paying workers' compensation benefits in order to allow the attachment of all workers' compensation benefits by direct income withholding.

Recommendation #3:

Direct Income withholding of workers' compensation benefits

Section 14-14-102, Colorado Revised Statutes, Definitions (4.3) be amended to clarify that the definition of employer would include insurance companies paying workers' compensation benefits.

Proposed language

14-14-102. Definitions. (4.3) "Employer", ~~for income assignments pursuant to section 14-14-111.5 and for~~ purposes of income withholding pursuant to section 14-5-501, includes any person, company, corporation, the Colorado compensation insurance authority, or **OTHER** insurance carrier paying ~~amounts as temporary total disability or temporary partial disability workers'~~ compensation benefits pursuant to ~~section 8-42-105, C.R.S. or section 8-42-106, C.R.S. respectively~~ 8-42-101, et seq. C.R.S.

Issue #4:

Attachment, assignment and garnishment of permanent partial disability workers' compensation benefits for the payment of child support

Section 8-42-124(1), Colorado Revised Statutes protects all workers' compensation benefits from assignment, levy, execution or attachment except for amounts due under court-ordered support. This language implies that all workers' compensation benefits may be attached, assigned, levied, etc., for support. However, section 8-42-124(6), Colorado Revised Statutes, protects employees receiving permanent partial and permanent total disability awards from any limitation to the full award, except that permanent total disability awards are subject to attachment, assignment, and garnishment for support.

The issue for consideration by the Commission is to understand the reason for the exclusion of permanent partial disability awards from attachment for child support.

An independent study of the Colorado's Workers' Compensation System was completed January 1, 1989.

In 1990, HB90-1160, which repealed and re-enacted the entire workers compensation law, was adopted. The act included seemingly contradictory language regarding attachment of workers' compensation benefits for the payment of child support. Section 8-42-124(1), Colorado Revised Statutes, has remained unamended. It states that workers' compensation benefits are attachable for support. But paragraph (6) of the same section stated that

nothing can limit the employee's right to receipt of the full award for permanent partial and permanent total disability.

Paragraph (6) has been amended several times to provide for the collection of permanent total disability benefits for payment of child support.

- ✓ HB92-1232: included language amending paragraph (6) which allowed the garnishment and assignment of permanent total disability payments for court-ordered child support.
- ✓ SB94-141: amended paragraph (6) and allowed for administrative attachment of permanent total disability payments for purposes of child support payment.
- ✓ SB96-2: added the phrase "income assignment" to paragraph (6) to recognize the change from the phrase "wage assignment" previously used.

Legislation continued to exclude permanent partial disability payments from attachment for payment of child support. One of the reasons articulated was that the changes in the law that resulted from SB91-218 greatly restricted the ability of an injured employee to qualify for permanent total disability benefits. Permanent total disability was defined in that 1991 bill as the inability to earn any wages in the same or other employment. Also a presumption of permanent total disability due to the loss of both hands, both arms, both feet, both legs, or both eyes, or any two of these was eliminated in that bill. Caps of \$60,000 for a disability of 25% or less and \$120,000 for a disability of more than 25% were enacted. In deliberations in 1994, because the resulting benefits for a finding of permanent partial disability were considered inadequate, attachment for the payment of child support was not supported.

In recent conversations with workers' compensation attorneys, this argument has been called invalid. Changes to the benefits determination for permanent partial disability in 1994 and 1995 are deemed to have improved the benefit structure for this injury type.

A comparison of Colorado's benefits to those of other states for permanent partial disability would be helpful in resolving this issue of adequacy. Unfortunately, it is very difficult to find a source of data to compare states' workers' compensation benefits.

Analysis of data in the National Council on Compensation Insurance (NCCI) Annual Statistical Bulletin for 2000 shows Colorado ranking #12 among 43 states in the total average cost per case for all injury categories. A great limitation of this data is that it apparently does not reflect limitations in the states' payments, but is, instead, a projection of ultimate total average costs per case based upon the benefit formula without regard to the caps placed on benefits.

A recent study prepared by the Oregon Department of Consumer and Business Services compares states on permanent partial disability "scheduled" and "unscheduled" benefits using a construct called "benefit level index". This index allows for the interaction of benefit levels and state average wage rates. Colorado's average weekly wage ranks 13th of 51 (50 states plus the District of Columbia), which, in this formula, will necessitate higher benefits to maintain parity. Scheduled benefits are those benefits that are specified in law for a certain number of injured or lost body parts. Unscheduled benefits are determined based on the percent of the "whole

person” which is considered disabled. In this study, Colorado ranks 38th out of 43 states on scheduled benefits and 35th out of 35 on unscheduled benefits, which supports the position that Colorado’s permanent partial disability payments are low when average wage is considered in the benefit formula.

A second reason for not attaching permanent partial disability payments has been advanced. That reason is that permanent partial disability payments are solely based on medical impairment and there is no consideration for wage replacement. That argument is countered by others who point out that 1) unscheduled benefits are paid out at the temporary total disability rate; 2) case law supports the position that medical impairment benefits are to compensate for loss of earning capacity and that permanent partial disability payments are designed to compensate for present or future possible wage loss.

Seventeen states were contacted regarding the issue of permanent partial disability payments and child support. They were Arizona, Connecticut, Delaware, Florida, Georgia, Idaho, Maine, Maryland, Massachusetts, Montana, New Mexico, North Dakota, Oregon, South Dakota, Texas, Washington, and Wyoming. Five of these states rank above the median in the Oregon study for permanent partial disability scheduled benefits and ten (including Colorado) rank below the median. Four of these states rank above the median for unscheduled benefits in this study and eight (including Colorado) rank below the median. None of these states is restricted from attaching permanent partial disability payments for child support.

Recommendation #4:

Attachment, assignment and garnishment of permanent partial disability workers' compensation benefits for the payment of child support

Section 8-42-124, Colorado Revised Statutes, be amended to allow permanent partial disability payments to be attached for payment of child support.

Proposed language:

8-42-124. Assignability and exemption of claims – payment to employers when. (6) Nothing in this section shall be construed to limit in any way the right of any employee to full payment of any award which may be granted to said employee for permanent partial or permanent total disability under the provision of articles 40 to 47 of this title; except that benefits for permanent total disability **AND PERMANENT PARTIAL DISABILITY** shall be subject to wage assignment or income assignment as wages pursuant to section 14-14-102(9), C.R.S. and subject to garnishment as earnings pursuant to section 13-54.5-101 (2)(b), C.R.S. and subject to administrative lien and attachment pursuant to section 26-13-122, C.R.S. for purposes of enforcement of court-ordered child support.

Issue #5:

Attachment of workers' compensation lump sum settlements for child support

Claimants may agree to lump sum settlements for their compensation. In negotiating the settlement the insurer and claimant might agree to characterize a portion of the award as medical benefits. Although prevailing practice is to pay a child support attachment on the total lump sum, in a few cases where part of the award is characterized as medical benefits it may be confusing for the insurer to know whether to attach on the entire lump sum. In fact, all of the proceeds in the lump sum settlement are income to the claimant since any payment to the claimant is in fact a payment for the waiver of rights to future medical benefits and, as income, attachable for child support. The absence of clear language in the statute allows for continued confusion or manipulation in order to avoid attachment.

Under the provisions of certain settlements, payment is made to specially created medical set-aside trusts for the payment of medical expenses directly to medical providers. These trusts are created to satisfy Medicare and Medicaid provisions. In these instances, the proceeds of the trusts would not be subject to child support attachment.

A structured settlement is a settlement in which, instead of payment of a full lump sum at the time of settlement, the parties agree to the payment of the settlement value in periodic installments. The structured settlement may also include a provision for the payment of certain lump sum amounts at specified times during the course of the structure. All of these periodic payments to the claimant constitute the indemnity portion of the structured settlement.

Recommendation #5:

Attachment of workers' compensation lump sum settlements for child support

Section 8-43-204, Colorado Revised Statutes, be amended to make it clear that the entire lump sum award or settlement and the indemnity portion of any structured settlement is available for attachment for child support.

Proposed language:

8-43-204. Settlements. (4) **IF AN EMPLOYEE OWES CHILD SUPPORT AND A GARNISHMENT HAS BEEN FILED PURSUANT TO 13-54.5-101, C.R.S., OR THE IV-D AGENCY HAS FILED AN ADMINISTRATIVE LIEN AND ATTACHMENT PURSUANT TO 26-13-122, C.R.S., WITH THE INSURER OR SELF-INSURED EMPLOYER, ALL PROCEEDS OF ANY AWARD, LUMP SUM SETTLEMENT, OTHER NON-PERIODIC COMPENSATION, AND THE INDEMNITY PORTION OF ANY STRUCTURED SETTLEMENT SHALL BE SUBJECT TO SAID GARNISHMENT OR ADMINISTRATIVE LIEN AND ATTACHMENT. PROCEEDS SHALL BE PAYABLE TO THE OBLIGEE OR TO THE IV-D AGENCY ON BEHALF OF THE OBLIGEE TO WHOM PAST-DUE SUPPORT IS OWED.**

Issue #6:

Guideline Forms, Schedules and Instructions

The Commission discussed ideas to improve the Colorado Child Support Guideline forms and instructions as currently published by Bradford Publishing, no. 1174 Rev. 7-97.

Recommendation #6:

Guideline Forms, Schedules and Instructions

- a. The Judicial Department become the official editor and content approval custodian of the Colorado Child Support Guideline forms.

Proposed language: be added to section 14-10-115, Colorado Revised Statute

(19) THE JUDICIAL DEPARTMENT SHALL BE THE OFFICIAL CUSTODIAN TO UPDATE AND PROMULGATE THE COLORADO CHILD SUPPORT GUIDELINE FORMS, SCHEDULES AND INSTRUCTIONS.

- b. The Colorado Child Support Guideline forms, schedule and instructions be made available on the Judicial Department's form WEB page.
- c. The Colorado Child Support Guideline forms, schedule, and instructions be translated and made available in Spanish. The instructions and forms in Spanish would advise that the Spanish forms are for instruction only intended solely to assist in the preparation of the English forms to be completed in English for filing with the Courts.
- d. The Colorado Child Support Guideline includes a definition of gross income that is incorporated into the Colorado Guideline schedule. The purpose of the definition of gross income is to explain the inclusion of the self support reserve and taxes in the guidelines.
