

## **Child Support Orders and Child Care Costs**

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December 2013

The research reported in this paper was supported by the Child Support Research Agreement between the Wisconsin Department of Children and Families and the Institute for Research on Poverty. The views expressed here are those of the authors and not necessarily the sponsoring institutions. The authors thank Emma Caspar, Dawn Duren and Lynn Wimer for assistance with this report.

## INTRODUCTION

For working parents of young children, child care expenditures can be a substantial proportion of their budgets. The most recent national data show that among families with employed mothers who pay for care, average child care payments in 2011 were \$143 per week, which is more than \$7,000 per year, and represents on average 7.9 percent of income (Laughlin, 2013).<sup>1</sup> However, the burden of payments was not evenly distributed, and child care expenses are a particular problem for low-income families. Among these families who were paying for care, child care payments averaged 7.6 percent of income for those at or above poverty, compared to 30.1 percent of income for those below poverty (Laughlin, 2013). Another study reports that families with incomes under \$18,000 spend nearly one quarter of their income on child care (Durfee & Meyers, 2006).

Child care expenses could be especially problematic for single-parent families. Children who live primarily with one parent often face economic difficulties; the poverty rate for children living with only one parent are 42 percent, compared to 11 percent for children living with married parents (U.S. Census Bureau, 2013). Moreover, single parents may have more difficulty without another parent to provide child care or assist with negotiating care.

How do single parents pay for care? Some do receive child care subsidies from the state, but others do not. One potential source of assistance with the costs of care could be the other parent. Financial obligations for children when parents do not live together can be assigned by family courts. This is typically seen in the establishment of child support orders, which determine whether there is an obligation by one parent to pay the other parent for child-rearing expenditures. Because child care costs could be substantial, family courts could also explicitly assign these costs to one parent or the other at the same time they assigned a child support order, or they could explicitly adjust the child support order to account for child care costs. Yet even though child care expenses could be quite important, especially for low-

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<sup>1</sup>Because of difficulties in determining income among those who are self-employed, self-employed individuals are excluded from all statistics.

income families, we know very little about how often child care costs are considered or assigned by the courts. This report begins to address this gap.

In this report we first examine Wisconsin child support guidelines to understand what is suggested by the guideline in terms of child care costs. Then, using Wisconsin Court Record Data (CRD), we analyze how often and in what ways child support orders acknowledge child care costs. We also examine the relationship between selected case characteristics and court acknowledgement of child care costs.

## CHILD CARE COSTS IN THE CHILD SUPPORT GUIDELINES

The Wisconsin child support guidelines (child support percentage-of-income standard) explicitly mention child care costs in two main situations.<sup>2</sup>

The first is whether the percentage-of-income standard needs to be used in a particular case. The standard sets child support orders using a relatively simple formula based primarily on the noncustodial parent's gross income and the number of children covered by the order (with modifications based on previous child support obligations, low-income and high-income cases, and shared and split placement). However, Wisconsin statutes allow for orders to deviate from the standard. Specifically, they say "the court may modify the amount of child support payments determined under [the standard] if, after considering [several] factors, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties" (Wis. Stat. § 767.511(1m)). The statutes then specify the factors that can be considered, and one of them includes "the cost of child care if the custodian works outside the home" (Wis. Stat. § 767.511(1m)(e)). No explicit guidance is given in this part of the statutes as to how child care costs might affect orders, although the implication seems to be an acknowledgment that these costs could be substantial and need to be explicitly considered.

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<sup>2</sup>There are also more minor mentions of child care costs. The guidelines refer to whether one of the parents had child care responsibilities in a discussion of income imputation and earnings capacity (DCF § 150.03(3)) and to the "additional variable day care costs that would be incurred if the parent worked more" in a discussion of the determination of income in shared-placement cases (DCF § 150.04(2)(b)1).

The second situation where the Wisconsin guideline says child care costs can be considered is when the child support order is determined in shared-placement cases or the cases that combine shared placement and other placement types. In the context of determining the appropriate amount of child support in these cases, the court can also assign responsibility for payment of the child's "variable costs." The Wisconsin administrative code defines "variable costs" in DCF §150.02(29) as "the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child's special needs, and other activities that involve substantial cost." Then when the courts are considering obligations in a shared-placement case, the code states that "In addition to the child support obligation determined under [the shared-placement formula], the court shall assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' income" (DCF § 150.04(2)(b)6). This is an even clearer recognition of the importance of child care costs in that the language is stronger ("the court *shall* assign responsibility").

In the following sections, we analyze how often child care costs are considered in the court decisions for child support among Wisconsin divorce and paternity cases that involve young children (those under age 13). Specifically, we examine how often child support orders deviate from the percentage-of-income standard in consideration of child care costs, and we examine how often the courts acknowledge or assign responsibility for the payment of child care costs to mothers or fathers. We then examine how case characteristics are associated with responsibility for the payment of child care costs, differentiating who is responsible for the costs. We focus on case type (paternity or divorce), placement type, employment and income level of both parents, age of the youngest child, and county. Since there is no previous research in this area, these characteristics are largely chosen with an exploratory purpose.

## DATA AND METHODS

### Data and Sample

This report uses Wisconsin Court Record Data (CRD). The data include information from court records on child support orders from a sample of paternity and divorce cases with child support potential in 21 Wisconsin counties.<sup>3</sup> In this report we examine cases that filed original petitions with the court from July 2002 to June 2007 (cohorts 23–27). Data are weighted to account for different sampling proportion across counties.

There are 8,549 cases in this time period of the CRD. From these, we exclude 34 cases where the final judgment was dismissed. We then exclude an additional 632 cases where the youngest adjudicated child is 13 years old or older, since these cases are not likely to have child care needs. This leaves us with 7,883 cases. We select one court action in each case. Specifically, we select the action involving paternity establishment or acknowledgement for paternity cases, and the action involving the final judgment for divorce cases (except for 38 divorce cases that do not have a final judgment, where we use the first action with a temporary order). When weighted, these represent 52,749 cases in our final data.

### Measures

Our first analysis is how common it is for the court record to mention child care. For this analysis, data collectors were instructed to code any mention of child care expenses or costs, regardless of whether an actual determination was made about how child care expenses should be paid. We then examine whether the court order deviates from the percentage-of-income standard in consideration of child care costs. When courts deviate from the standard, they are required to state in writing or on the record the reasons for finding that the use of the standard is unfair, the reasons for the amount of modification and the basis of the modification. When the courts issue such written reasons, the record is available for CRD

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<sup>3</sup>These are the cases in which the parents were separated for at least 12 months and had at least one child who did not reach the age of majority during those 12 months.

data collectors to code the reasons for deviation. There could be multiple reasons listed for deviation; we examine all reasons to see if the consideration of child care costs is mentioned. This includes not only explicit mentions of deviation, but also implicit mentions. For example, there may be notes on the cost of child care, a lower-than-expected child support order, and notes linking these two facts; the data collector may then infer that child care costs are the reason for deviation. Note that if reasons for deviation are stated in the courtroom but not included in the written record, then this information will not be in our data. In this sense, the numbers shown in the results are probably an underestimate of how often child care costs are involved in a deviation.

Our next analysis examines whether the court record shows that child care costs have been assigned or acknowledged by the court. These are not necessarily deviations, but include indications in the court record that a party (or combination of parties) has been assigned to pay child care costs (or is currently paying child care costs). Unfortunately, the data do not distinguish between cases in which the court *assigned* costs and those in which the court merely *acknowledged* who was paying costs. This variable therefore represents both whether costs were assigned and whether they were acknowledged. In the remainder of this report, we typically describe this situation as reflecting an acknowledgement of who is paying for costs, although an unknown percentage of them reflect court assignment.

Wisconsin has a child care subsidy program in which most child care costs are paid by the state for low-income families, with the family being required to pay the remaining costs as a copayment. The court can acknowledge that costs are being paid by: (a) the father; (b) the state with the father paying the copayment; (c) the mother; (d) the state with the mother paying the copayment; (e) both parents, generally with the amount or percentage specified; (f) the state, with both parents responsible for the copayment; (g) the state (without specifying which parent is to pay the copayment); or (h) another party. Although all of these combinations are possible, there are no cases in our data in which costs are acknowledged to be the responsibility of the state with the father paying the copayment. Moreover, to simplify the presentation of results, because there are only two cases in which the state is to provide child care with both parents responsible for the copayment, we combine these with both parents being responsible for

child care, and because there are only two cases in which another party was acknowledged to be responsible for costs, we do not show this category of cases separately.

## RESULTS

The first column of Table 1 shows the extent to which child care costs were mentioned in the case. Even though child care costs could be a significant expense, only about one in ten cases have a mention of child care costs. The mention of child care costs is more common for divorce cases, for cases with shared placement (either mother-primary or equal), when parents are employed or have higher earnings, and in counties outside of Milwaukee. Perhaps not surprisingly, it is most common when the youngest child is age 3 to 5, and least common when the youngest child is age 10 to 12. The analysis of the cohorts separately in the bottom panel shows that there is no strong time trend.

The next column shows deviations from the percentage standard in consideration of child care costs. Consistent with previous research showing that it is rare for there to be written deviations for any reason (e.g., Cook and Brown, 2013), there are few cases that have deviations related to child care expenses. Of the 7883 cases, only 2.8 percent (1.4 percent each for both explicit and implicit deviations) include an indication that the order deviates from the percentage standard in consideration of child care costs. As noted above, there could be more cases in which the deviation occurs in consideration of child care costs if the courts do not record them in writing. While a child care deviation is not common, Table 1 shows that it is somewhat more likely for cases with shared placement (either mother-primary or equal, around 7.3 percent), for mothers with income \$50,000 or more (10 percent), and when both parents are employed and have shared placement (8 percent).

The next column shows the likelihood of child care costs being acknowledged or assigned, which is about 8 percent overall. Similar to our analysis of any mention of child care costs, the acknowledgement of costs is more common in divorce cases than paternity cases (16.5 percent compared to 3.5 percent), and more common in cases with shared placement (21 to 23 percent). The acknowledgement of costs is also more common for mothers with higher income (24 percent for mothers

**Table 1: Child Care Costs in the Court Record**

	N	Child Care Costs Included in Court Action	Deviation from Child Care	Child Care Costs Assigned or Acknowledged
<b>All</b>	7,883	9.2%	2.8%	8.3%
<b>Case Type</b>				
<i>Paternity</i>	4,472	4.0%	1.0%	3.5%
<i>Divorce</i>	3,411	17.9	5.9	16.5
<b>Placement Type</b>				
<i>Mother sole</i>	5,199	5.7%	1.7%	5.0%
<i>Mother primary</i>	602	22.6	7.7	21.1
<i>Equal shared</i>	1,162	24.8	7.3	23.1
<i>Father sole and primary</i>	343	4.6	0.5	4.6
<i>Split and others</i>	95	12.8	4.9	11.4
<b>Mother's Employment</b>				
Employed	6,226	11.5%	3.6	10.5%
Not employed	1,621	2.4	0.6	2.0
<b>Mother's Income</b>				
0	961	1.6%	0.3%	1.2%
\$1–\$10k	2,383	2.9	0.6	2.5
\$10k–\$30k	2,946	10.2	2.6	9.1
\$30k–\$50k	1,115	21.7	7.7	20.1
\$50k and higher	504	24.8	10.1	23.5
<b>Father's Employment</b>				
Employed	6,131	11.4%	3.7%	10.4%
Not employed	1,687	3.5	0.6	3.1
<b>Father's Income</b>				
0	1,160	3.1%	0.5%	2.9%
\$1–\$10k	1,267	2.6	0.6	2.3
\$10k–\$30k	2,348	7.7	2.0	7.1
\$30k–\$50k	1,696	16.6	6.3	14.9
\$50k and higher	1,313	19.3	6.2	17.5
<b>Parents' Employment and Placement Type</b>				
Both parents employed, placement shared	1,551	26.6%	8.4%	25.0%
Others	5,787	6.1	1.8	5.4
<b>County</b>				
Milwaukee	1,910	5.5%	1.2%	5.0%
others	5,973	12.6	4.3	11.4
<b>Age of the Youngest Child</b>				
Age 0–2	4,837	7.6%	2.3%	6.7%
Age 3–5	1,376	16.1	5.7	14.9
Age 6–9	1,109	11.1	2.9	10.6
Age 10–12	561	3.6	0.4	3.2
<b>Cohort</b>				
23	1,586	10.5%	2.9%	9.
24	1,588	5.7	3.1	5.3
25	1,572	9.8	3.0	8.9
26	1,552	8.8	3.0	8.0
27	1,585	11.0	2.0	10.0

**Note:** Percentages are weighted. A few cases are missing in some characteristics and not shown in the table.



with income \$50,000 or more) and when both parents are employed and have shared placement (25 percent).

In Table 2 we examine these cases in which child care costs were acknowledged or assigned, showing which party has responsibility for child care costs. The top row shows that the most common division of responsibility, in more than half the cases, is between both parents. Fathers have sole responsibility somewhat less often than mothers, nine percent compared to thirteen percent, especially if one considers the additional eight percent of cases in which the mother has responsibility for the copayment, with the state providing the remainder through the child care subsidy. In an additional nine percent of cases, the state is to provide a child care subsidy, but the party responsible for the copayment is not identified.

The remaining panels examine the acknowledgement or assignment of child care cost responsibility for cases with different characteristics. There is a large difference between paternity and divorce cases, with divorce cases much more likely to have both parents sharing responsibility for child care costs, and paternity cases much more likely to receive child care subsidies. Mothers with higher income are more likely to have responsibility than mothers with lower income, but the same pattern does not hold for fathers. The bottom panel shows that in the most recent cases, when an acknowledgement or assignment was made, more than 80 percent of the time it was the responsibility of both parents.

Child care costs are not necessarily stable; sometimes the custodial parent begins to work or stops or changes the number of hours, and sometimes the child care provider changes. In theory, if these cost changes are significant, they could lead to parents coming back to court to adjust either the child support order, or who is to pay for child care. In the CRD, cases are followed for up to 3 to 4 years after the initial petition, with data collected on whether cases return to court, why, and what the outcome was. In fewer than 50 cases (less than 1 percent) do we see a return to court in which child care costs were mentioned as the reason for the return; this number of cases is insufficient for additional analysis.

**Table 2 When Child Care Costs Are Assigned or Acknowledged, Who Is Responsible for Paying Them?**

	N	Father	Mother	Mother & State	Both Father & Mother	Unknown Parent & State
<b>All</b>	711	9.3%	12.8%	7.7%	61.3%	8.6%
<b>Case Type</b>						
<i>Paternity</i>	162	11.1%	13.0%	14.8%	37.6%	23.5%
<i>Divorce</i>	549	10.6	11.5	1.3	73.6	2.7
<b>Placement Type</b>						
<i>Mother sole</i>	275	9.1%	20.7%	9.8%	46.9%	13.1%
<i>Mother primary</i>	122	8.2	9.0	0.8	76.2	5.7
<i>Equal shared</i>	263	12.2	3.8	1.1	80.7	2.3
<i>Split and others</i>	39	20.5	12.8		61.5	2.6
<b>Mother's Employment</b>						
Employed	665	11.1%	11.9%	4.7%	65.0%	7.1%
Not employed	46	4.3	10.9		71.7	13.0
<b>Mother's Income</b>						
\$1–\$10k	61	9.8%	14.8%	8.2%	50.8%	16.4%
\$10k–\$30k	296	11.2	8.4	5.7	63.5	10.5
\$30k–\$50k	228	11.4	11.0	3.9	71.0	2.6
\$50k and higher	113	8.9	21.2		69.9	
<b>Father's Employment</b>						
Employed	651	11.2%	10.9%	3.8%	67.9%	5.8%
Not employed	59	5.1	22.0	10.2	37.3	25.4
<b>Father's Income</b>						
0	38	10.5%	18.4%	10.5%	26.3%	34.2%
\$1–\$10k	31	3.2	25.8	16.1	38.7	16.1
\$10k–\$30k	167	11.4	13.8	8.4	53.3	13.2
\$30k–\$50k	248	9.3	8.5	2.8	74.6	4.0
\$50k and higher	225	12.9	11.1	0.4	74.7	0.9
<b>Parents' Employment and Placement Type</b>						
Both parents employed, placement shared	373	11.0%	5.6%	1.1%	78.8%	3.2%
Others	331	10.6	19.0	8.2	50.5	11.5
<b>County</b>						
Milwaukee	121	7.4%	19.0%	14.9%	52.1%	6.6%
Others	590	11.4	10.3	2.2	68.1	7.6
<b>Age of the Youngest Child</b>						
Age 0–2	355	10.1%	12.7%	5.4%	59.5%	11.8%
Age 3–5	216	11.1	11.6	3.2	69.9	4.2
Age 6–9	122	12.3	9.8	4.1	73.0	0.8
<b>Cohort</b>						
23	171	12.3%	19.3%	3.5%	60.8%	3.5%
24	97	11.3	3.1	2.1	77.3	5.2
25	139	10.1	17.3	3.6	55.4	13.7
26	127	15.0	12.6	11.8	50.4	10.2
27	177	6.2	4.5	1.7	81.9	5.7

**Notes:** Percentages are weighted. Categories in which there are fewer than 30 cases (father sole and primary placement, mother's income of zero, youngest child aged 10–12) are not shown. A few cases are missing in some characteristics and not shown in the corresponding panel. Two cases in which someone other than the parents or the state was responsible to pay for care are not shown separately on this table. Column for "both father and mother" also includes two cases in which the state is to pay child care with both father and mother responsible for the copayment.

## DISCUSSION

Even though child care costs can be substantial and especially important for low-income families, and even though family courts could consider these costs and assign them to one or both of the parents, we have found that this does not typically occur. Child care costs can be a reason to deviate from the percentage standard, but there is little evidence that this occurs very often. It is somewhat more common that the court acknowledges or assigns child care costs, most commonly to both parents.

This exploratory analysis has potential research and policy implications. It would be very useful to be able to distinguish cases in which the court merely acknowledged current child care arrangements from those in which it actually ordered one parent or both of them to be responsible for the costs. Information about actual child care costs and subsidies would also be quite useful; this would help us understand whether most cases with high costs had this reflected in their child support order, or whether there were a significant number of cases with high costs which were neither acknowledged nor assigned. Another issue has to do with the assignment of costs to both parents. In about 30 percent of these cases, the acknowledgement or assignment is to both parents, with no specification of *how* the costs are to be split. If these are cases in which there is an actual assignment, rather than merely an acknowledgement, then qualitative research on what this means and how parents negotiate this potentially ambiguous assignment could be useful. Is there conflict over how much each parent is supposed to pay? Or have parents already agreed to some arrangement, with the assignment merely signaling that child care is both of their responsibilities? Finally, the fact that the courts do sometimes explicitly assign child care costs suggests that noncustodial parents' support in paying child care costs is not necessarily voluntary "informal" support. Researchers thus need to be cautious about designating non-formal cash support from noncustodial parents as voluntary support.

In terms of the percentage-of-income standard, perhaps language should be considered in which courts would be encouraged to assign costs in more cases than just shared-placement cases. Another possibility is that courts could be encouraged to be specific in the assignment of child care costs if it is found that an unspecified assignment of costs to both parents creates difficulty.

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