

## InterOffice Memo

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### Wisconsin Department of Workforce Development

*Date:* March 7, 2002  
*To:* Attorney Patricia Sandoz  
*From:* Mark T. Shore, ALJ  
*Subject:* Child support liability under §102.27, Wis. Stats.

We have recently received several inquiries regarding the Department's position on liability for child support payments under §102.27, Wis. Stats. While virtually everyone agrees that temporary disability compensation (TTD and TPD) is subject to assignment for court-ordered child support, the specific issue is whether permanent disability compensation is also subject to assignment for this purpose. Unfortunately, this is an unsettled issue and, consequently, is rather controversial.

The statute provides:

102.27 (2)(a) A benefit under this chapter is assignable under s. 46.10 (14)(e), 301.12(14)(e), 767.23(1)(L), 767.25(4m)(c), 767.265 (1), 767.51(3m)(c) or 767.62(4)(b)3.

For purposes of this review, the relevant language is “A benefit under this chapter” . . . . Notably, the statute does not define “benefit” or otherwise differentiate between temporary and permanent disability compensation. Thus, the Department's position is that both TTD/TPD and PPD are subject to assignment.

The problem / confusion, however, arises at the appellate level. The Wisconsin Court of Appeals, in an unpublished decision on a family law matter, distinguished permanent partial disability compensation from “income” or monies intended to replace lost income; noting that the PPD did not qualify as “gross income” subject to child support deductions, the court concluded that permanent partial disability compensation is not subject to the 102.27 child support assignment. *See, [Bottomley v Bottomley](#)*, No. 96-0486-FT (Wis. Ct. App. Oct. 17, 1996). Ergo, child support payments should not be deducted from monies payable as PPD; notably, a careful review of the decision disclosed that the court specifically addressed permanent partial disability compensation and was silent as to compensation for permanent total disability.

LIRC has accepted and abided by that ruling in at least one case, [Thomas v Marigold Foods, Inc.](#), WC Claim No. 98-004945 (LIRC, Dec. 6, 1999); monies were deducted from the TTD portion of the total award and paid toward a child support lien, but not from monies paid as PPD. While the Commission also referred to the subject in a review of compromise decision ([Beaudoin v Rebar Placers](#), WC Claim No. 93-045798 (LIRC, Jan. 15, 1998)), it did not issue specific directives therein.

In short, there is a dichotomy: the Department posits that all monies paid as compensation for temporary and/or permanent disabilities, as well as consideration paid under a compromise, are subject to child support deductions. Conversely, the LIRC and appellate bodies hold a contrary position, to wit, that it is improper to deduct monies for child support from funds payable as permanent partial disability compensation.

Given these circumstances, Chief Judge O'Malley has recommended that a party not deduct child support from monies designated as permanent partial disability compensation; this advice is implicitly predicated on the assumption that the rule stated in the Bottomley case controls as good law. On the other hand, the Bottomley decision was not published and has no precedential value; by implication, LIRC's reliance thereon may be misplaced. Further, one could argue that LIRC's interpretation / adoption of the rule lacks any precedential value as this specific question — whether compensation paid for permanent disability constitutes “gross wages” under Chapter 80 of the Wisconsin statutes and therefore subject to child support deduction — lies outside both its jurisdiction and its area of expertise.

My recommendation would be to deduct child support from any monies paid as compensation, that is, all temporary disability compensation (TTP & TPD), perm total disability compensation, any consideration paid under compromise and, as the subject of this discourse, any and all compensation for permanent partial disability (PPD). Thereafter, a [sufficiently] aggrieved party could challenge the deduction, appeal the matter through the Court of Appeals or even the Supreme Court, and we would eventually receive a dispositive published decision on the issue. My recommendation is premised on the following:

- (1) the failure of the statute to distinguish temporary from permanent disability compensation;
- (2) the notion that a non-custodial parent is obligated to support his/her children as best possible; and
- (3) the premise that monies to be paid for both scheduled and unscheduled permanent disabilities inherently include some amount intended to replace lost future income; indeed, the 1913 Wisconsin Workmen's Compensation Act (Chapter 599, laws of 1913 (Effective Sept. 1, 1913)), at footnote 41, specifically states that “Compensation laws are based upon loss of wage and it is believed that the amount fixed here [the scheduled injury section of the statute, now embodied at §102.52] for minor injuries will substantially take care of the loss of wage.” (While some might argue that the amounts payable for scheduled and unscheduled injuries are insufficient insofar as adequately compensating one for a wage loss attendant to some permanent disability, that criticism pertains more to the amount of money needed to “make one whole” than to the question of whether some additional compensatory wage-loss money is “built into” the total amount of monies currently paid as permanent disability; i.e., whether the current PPD “schedule” includes some compensatory wage loss money.

As a parenthetical comment, child support liens are honored upon timely receipt of a written order from a Circuit Court or Family Court Commissioner. Thus, properly signed written orders should be received by the Department prior to issuance of any order, which should include provisions for child support payments. Out-of-state orders must be properly docketed / registered in the State of Wisconsin.

