MONTANA DPHHS Healthy People. Healthy Communities.

**Department of Public Health and Human Services (DPHHS)**
**Child Support Services Division (CSSD) ♦ PO Box 202943 ♦ Helena, MT 59620**
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Greg Gianforte, Governor
Adam Meier, Director

**To** Temple McLean, Guidelines Coordinator | Facilitator for Guidelines Review and Oversight Committee (GROC) of Child Support Services Division (CSSD) [406-655-5531 | guidelines@mt.gov]

**Cc** GROC participants ("x" = attendees):

| | Community reps | (aka) | Role | Title & county(ies) represented | | Site |
|---|---|---|---|---|---|---|
| -- | Cromwell, Audrey | (AC) | At-large | ATTY | Gallatin | Bozeman |
| x | Reuss, J. | (JR) | At-large | ATTY | Yellowstone (retired) | Billings |
| x | Williams, Beckie | (BW) | At-large | ATTY | Yellowstone, Fergus, other rural areas | Lewistown |

| | State workers | (aka) | Role | Title | | Region:Site |
|---|---|---|---|---|---|---|
| x | Chaffey, Casse | (CC) | *Member | CSSD | Investigator / caseworker | 5:Missoula |
| -- | Clinch, Francis | (FC) | Liaison | OAH | Administrative law judge (ALJ) | 8:Helena |
| x | Gilbert, Nikki | (NG) | *Member | CSSD | Investigator / caseworker | 2:Great Falls |
| x | Helman, Dena | (DH) | *Member | CSSD | Investigator / caseworker | 4:Butte |
| x | Hochhalter, Priscilla | (PH) | Recorder | CSSD | Career development specialist (writer) | 8:Helena |
| x | McLean, Temple | (TM) | *Member | CSSD | **Chair / facilitator** & guidelines coordinator | 3:Billings |
| -- | O'Connor, Iryna | (IO) | Liaison | OAH | Attorney | 8:Helena |
| x | Probasco, Peg | (PP) | At-large | OLA | Staff attorney (retired) | 4:Butte |
| -- | Quinn, Patrick | (PQ) | *Member | OLA | Staff attorney | 5:Missoula |
| x | Rohrdanz, Vaughn | (VR) | *Member | CSSD | Investigator supervisor | 3:Billings |
| -- | Strandell, Lori | (LS) | [was:] | CSSD | Bureau chief of field services (former) | 8:Helena |
| x | Twardoski, Christine | (CT) | Guest | CSSD | Administrator | 8:Helena |
| x | Watne, Kim | (KW) | *Member | CSSD | Investigator / caseworker | 8:Helena |
| x | Wigen, Micheale | (MW) | At-large | CSSD | Regional manager (retired) | 2:Great Falls |

* voting role

**From** Priscilla Hochhalter, Writer | Recorder for GROC

**Date** 2022 Feb 25

**Re** MINUTES + supplemental materials for this meeting:
2022 Feb 08 Tue., 1:00–4:00p U.S. Mountain time – via videoconference

**Text**
- Please see relevant materials, attached.
- See the Resources section for attached resources.
- See the Definitions section for help in understanding terms and abbreviations used.
- GROC regular meetings currently are held quarterly – the second Tue. of Feb., May, Aug., Nov., 1:00–4:00p U.S. Mountain time – via videoconference.

# Definitions

GROC materials may use the below terms and/or abbreviations …

| Item | Definition |
|---|---|
| [State initials:] | States often are identified by their two-character postal abbreviations – e.g., DE (Delaware), GA (Georgia), ND (North Dakota), Oregon (OR). |
| ACA | Affordable Care Act |
| ACF | Administration for Children & Families (ACF), a division of the U.S. Department of Health & Human Services (HHS). |
| ADA | Americans with Disabilities Act and its requirements – e.g., certain public resources must be accessible to users with low vision, and so on. |
| ALJ | Administrative Law Judge. |
| ARM | Administrative Rules of Montana – especially ARM 37.62.106 (https://rules.mt.gov/gateway/RuleNo.asp?RN=37.62.106). |
| BAH | Basic allowance – housing (in military benefits). |
| BAS | Basic allowance – subsistence (in military benefits). |
| CCR | Central Case Registry (of Montana). |
| CEX | Consumer Expenditure Survey. |
| CFR | Code of Federal Regulations; see also [E]CFR, which is the electronic version. |
| CSSD | DPHHS's Child Support Services Division. |
| CTC | [Federal] Child Tax Credit. |
| DOD | [Federal] Department of Defense |
| DPHHS | [Montana's] Department of Health and Human Services. |
| [E]CFR | [Electronic] Code of Federal Regulations (https://ecfr.federalregister.gov/current/title-45/subtitle-B/chapter-III/part-302/section-302.56). |
| EI[T]C | [Federal] Earned Income Tax Credit. |
| ENF | Enforcement of a child support case in SEARCHS. |
| EST | Establishment of a new child support case in SEARCHS. |
| FEM | Flexibility, efficiency, and modernization. |
| GLW | Screens in SEARCHS encompassing the internal calculator that produces child support guidelines worksheets (GLW). |
| GROC guidance | An instruction from the GROC to CSSD workers on how to handle a specific issue in the guidelines calculations. |
| JIRA | Software that receives and tracks requests ("JIRA tickets") for SEARCHS programming changes and/or fixes. |
| MAC | Montana advisory council (in particular the one on child support, chartered in 1984 by Governor Schwinden, which later led to GROC). |
| MCA | Montana Code Annotated (the statutes of Montana). |
| MJA | Montana Judges Association. |
| MLSA | Montana Legal Services Association (https://www.mtlsa.org/). |
| Mobius | CSSD system used to generate reports from SEARCHS; replaced DocDirect. |
| MOD | Modification of an existing child support case in SEARCHS. |
| MSU | Montana State University. |
| MT | Either Montana (state of), or Mountain Time (time zone). |
| MTCS | Montana Child Support (formerly "Bourdeau" for its creator) – private child support software designed for attorneys and judges outside CSSD. |
| NOCS | Notice and Order Concerning Support. |
| NRC | National Research Council. |
| OAH | [State] Office of Administrative Hearings (formerly the Office of Fair Hearings). |
| OCSE | [Federal] Office of Child Support Enforcement. |
| OFH | [State] Office of Fair Hearings (changed in about 2020 to Office of Administrative Hearings). |
| OLA | [State] Office of Legal Affairs. |
| OPA | [State] Office of Public Assistance. |
| PAT | Paternity in a child support case in SEARCHS. |
| PDF | Portable document format, often used to prepare documentation for electronic publication (via web, email, etc.). |
| PIG | [Federal] Poverty Index Guidelines. |
| PJR | Petition for Judicial Review. |
| PII | Personally identifiable information |
| PPC | Policy and Procedure Committee |
| S/E | Self-employment (for income calculations). |
| SEARCHS | System for the Enforcement and Recovery of Child Support (internal system CSSD uses to perform calculations for child support); see GLW. |
| SNOCS | Subsequent Notice and Order Concerning Support – a followup order, used if the same two parties have an additional child. |
| SOS | Secretary of State |
| TNOCS | Temporary Notice and Order Concerning Support – a temporary order to establish child support while action is pending in court. |
| UM | University of Montana. |
| WC | Worker's Compensation. |

# Minutes

*Note: The main body of the minutes is divided into three parts (reflecting TM's three-part job description as guidelines coordinator). Part 1 is meant to cover topics related to the quadrennial review / report, while our community representatives are present; afterward, they are free to leave.*

**I Call to order / General business**

- Add / delete: LS has left CSSD for new opportunities; Audrey Cromwell (AC), attorney, will join us next time as a new community representative.
- Absences today: AC, FC, IO, PQ.

**PART 1 – Child Support Guidelines**

**II 2020 Quadrennial Review / Report – remaining issues**

This 2020 report was submitted to OCSE last fall (per 2021Nov09 GROC minutes); however, they required more work on the points below.

**A** Per OCSE [this is done]: On incarcerated obligors, delete Addendum 'I' and references to it (e.g., State Plan page 3.11). This has been done, and a corrected version is posted on the CSSD website; however, for 2024 this issue might need more work.

Background:

- In 1993's Mooney v Brennan (https://casetext.com/case/mooney-v-brennan), MT's Supreme Court said incarceration doesn't qualify obligors for modified (reduced) support obligations; however, the 2016 FEM said it does, and incarceration can't be considered involuntary unemployment.
- As a result: In 2017, ARM 37.62.106 was changed to recognize incarceration is not involuntary unemployment, but the rule is still vague. Also, the issue of modification due to incarceration is addressed only in rule and in policy—not yet in our statutes.

* PQ—absent today—was asked last month by the GROC chair, and agreed, to work on this issue with CT and/or others as needed.

**B** Per OCSE [not yet done]: Add the single word "residence" (**resource 3**) under imputed income (ARM 37.62.106) per 45 CFR 302.56(c)(1)(iii).

- TM: The point is to consider obligors' physical abodes in imputed income; it's tricky because they could be, say, in a nice house but just couch-surfing there. Either way, a proposed rule change is needed to add the word "residence," likely in Rule 5(3)(a) or (3)(c).
- [Several preferred amending (3)(a)—not (3)(c)—maybe to something like this: "a) the parent's **residence and** recent work and earnings history."]
- [To clarify the meaning of "residence": TM sent us a post-meeting PowerPoint summary of comments from the 2016Dec20 Federal Register at https://www.govinfo.gov/content/pkg/FR-2016-12-20/pdf/2016-29598.pdf. These comments were received and answered, in the open-comment period, by ACF—the parent organization of OCSE—re. the term "residence" in the proposed FEM changes that were implemented 2017Jan19ff.]
- MW: To further clarify the term "residence," we could suggest adding it to the ARM definitions and also covering it in the policy manual.

* PQ was asked (2021May11 minutes) by the GROC chair, and agreed, to work on this issue; however, CT is here now and may go a different way.

- TM: CT, have you come to a decision about getting an attorney assigned to work on this proposed rule change?
- CT: Not yet; I'll get back to you.

**III 2024 Quadrennial Review / Report – preparing for 2023 legislature**

**A** Removing taxes from calculations: baseline testing to compare tax law changes (2018 v. 2019); possible CTC extension, per Congress.gov.

[Background: TM has pulled 500+ calculations to compare those done before and after the 2018 tax laws took effect in 2019. Taxes should be removed in such a way that the resulting support obligations would be very close to the existing ones. DE excludes taxes, but their guidelines use the cost of raising a child (as do most other states) and the Melson model, while MT uses PIG and a modified Melson model; so MT can't do it quite like they did. PQ has seen nothing so far in the statutes that would need changing—but he'll continue his review of them, and of the rules.]

* PQ has agreed to finish reviewing the statutes and rules (discussed in 2021May11 minutes) by April so we can prepare for the 2023 legislature.

* Today BW and JR agreed to send TM some of their own real-world calculations prior to 2018.

Today we also continued discussing these issues, as below …

- TM asked for historical knowledge re. the Line 7 comparison (Rule 10 is applied at Line 5, and Rule 15 at Line 6)—but no one present knew its full history, or why the figure of 12% (before supplementals) was chosen, or what taxes were like at that time. TM is looking at a "cap."
- JR: I don't know the history. One mom earned ~65K while the dad earned ~16K; he just didn't have enough for the minimum contribution.
- TM: BW/JR, do you think our online guidelines booklet (PDF) of instructions is helpful and understandable?
- JR: You have instructions?!
- TM: Ha!! Yes. [As in below item **IV.D**,] they were in that printed guidelines booklet we no longer distribute; it's now just a PDF on our website.
- JR: Judges would rather not dig into details; they'll say, "You're two smart attorneys; you should be able to arrive at the same dollar amount."
- BW: I agree.
- TM: BW / JR, how often have you seen the effects of supplementals?
- JR: Supplementals have huge impact—e.g., when daycare ends, it's such a big expense that obligors quickly seek relief through modification.
- TM: Yes, since it's out-of-pocket regardless of income. BW, have you seen obligors that just couldn't pay?
- BW: I agree with J. The ending of daycare should auto-trigger a modification. But courts are still leary of variances.
- JR: True. I knew one mom whose monthly daycare expense ranged from $25 [with assistance] to $700 [without it]. How does one calculate that?
- MW: I'd try to come up with an annual average.
- TM: Eliminating some of these big "moving targets" is one of many reasons to keep working to remove tax factor(s)—including the CTC, which may be extended and is fully refundable on tax returns. I think the relevant 2018 tax laws (which took effect in 2019) will expire in 2023.

* - JR will research related rule-change comments from the Montana Administrative Register (MAR) of 1998, when child support moved out of the Department of Revenue and its rules moved from the 46 series to the 37 series (ARM 37.62.101ff).

- TM: For Rules 10 & 15, many changes seem to have originated in the 1988 Family Support Act. Then there were tweaks around 1994.
- PP: Yes. The purpose of tweaks is always to try to make things more equitable between parents while still meeting children's needs.

**B** Considering a study of the cost of raising a child in MT.
[Background: **MT has never done a study on the cost of raising a child.** At least since the Primer of ~2003, GROC has recommended doing such a study, and comparing the results to the federal poverty index guidelines (PIG) upon which MT relies for its self-support reserve and for the primary support allowance per child. In 2009, MSU-Bozeman allowed Dr. Christiana Stoddard to donate 10 hours to begin this study for CSSD; after the 10 hours were exhausted, the study was discontinued. Last year, GROC invited her to join our November meeting as a guest to discuss continuing this work. She could study PIG vs. the federal Consumer Expenditure Survey (CEX), and PIG vs. a modified National Research Council (NRC) method. (DE's Melson model uses CEX, while MT's modified Melson uses PIG). Estimated work: ~40 hrs (with a state discount from $250 to $200/hr) for a total of $8000, maybe spread over two years at $4,000 each.]
- TM: Does anyone know of another economic study more recent than the 2006 one we still reference? In 2015, the USDA studied household expenditures—but that's still 7 years ago, and it grouped MT with other western states. CT, did the OPA have one?
- CT: I'm waiting to hear back.

**C** Fulfilling federal requirements for external outreach to, and "meaningful input" from, the public—especially low-income families (**resource 2**).
[Per TM, adding community representatives—Audrey Cromwell (absent today), J. Reuss, Beckie Williams—should help us fulfill this requirement.]

**D** Standardizing medical support terminology
[Background: Read about the ~2000-2001 (pre-ACA) federal mandate on medical support at https://www.ecfr.gov/current/title-45/subtitle-B/chapter-III/part-303/section-303.31 and https://www.federalregister.gov/documents/2000/12/27/00-31611/national-medical-support-notice.]
- TM: In our 2020 draft report, without giving us specific examples, OCSE noted our inconsistent use of medical support terms—likely due to our imprecise use of "health" vs. "medical" (needs, care, expenses, coverage, insurance, etc.). So in our 2024 report, they might require consistency. For example, dental can be preventive, or medically necessary, or orthodontia, but all are considered "medical support." We may be able to simply replace "health" with "medical" everywhere, as there's not much difference in practice. BW/JR, your thoughts?
- [BW agreed; she heard it argued in court that dental is not a "health" expense, but she believes (as did the judge) that it is a "medical" expense.]
- [TM would like to see if OCSE continues to consider this an issue that will need to be resolved in our 2024 report.]

→ **NOTE:** At this point, TM said we had finished the part of the meeting that is relevant to our community representatives, and invited BW and JR to feel free to leave the meeting if necessary; JR left, and BW stayed.

**PART 2 – District Court Partnership Project**

**IV External outreach to the community**

**A** [Tabled for now]: Last fall's "variances" survey to judges got a response rate of only ~50%; still, it's progress. We'd like to do this survey annually by email and, per PQ, eventually get the guidelines into a form that is easily usable by the courts.

**B** [Tabled for now:] Proposed update to template verbiage in court orders: Input from the 2021Oct06 Billings MJA conference is helpful.

**C** Adjusting a calculation, without a modification, for simple line-item changes (e.g., parenting days) between TNOCS and final court order.
[Background: PQ gave training on 2021Jul09 (with PP & TM) by Zoom to the standing masters, and on 2021Oct06 (with PP) in-person in Billings to the MJA conference, to explain TNOCS and help courts understand what CSSD can and can't do under its administratively-granted authority.]
- TM: Occasionally I get orders through guidelines@mt.gov for the parties to open a case with CSSD to establish child support. [Note: These orders, with this verbiage, are seen as a successful result of the above 2021Jul09 presentation to the standing masters.]
- PP: One judge issues pretrial orders for the parties not to return until they receive an order from CSSD [also, like the line above, seen as a positive approach], although currently there is a lag time.
- TM: Judges often ask if CSSD can make minor changes to a TNOCS calculation worksheet (e.g., parenting days) that are agreed upon by the parties, or that the court will order. Historically, a final court order often directs CSSD to "perform a calculation"; however, we can't do so just because a court orders it.
- [TM's post-meeting clarification: How can we create a partnership with the courts that offers them a process by which they can order a limited review for specific line items (e.g., parenting days) in the TNOCS calculation worksheet? For example, a court's final order could order the parties to apply, within 30 days, to CSSD for a limited review, The order could give specific direction re. which line items and dollar values (excluding income amounts) to change.]

→ **NOTE:** At this point—after the community representatives had been released to leave if they needed to— a topic was raised, just as an FYI for everyone, about how other states are updating orders regarding incarcerated obligors.

KW: For incarcerated obligors, WY orders now include a reverter clause.
TM: I saw an AZ order that was proactive, but AZ is judicial; is WY? [Yes, it is (verified post-meeting), not administrative / quasi-judicial like MT.]
TM: Per OCSE, upon incarceration both parents must be notified of the opportunity to modify the order; MT does so via our notification postcard.
MW: Court-ordered treatment [for drugs, mental health, etc.], if added to incarceration, can put people over the 180 days.
TM: Re. incarceration and modification: the case events we added in 2021 will help show how income was imputed, to meet OCSE requirements.
[TM then asked if every office now has specialists performing calculations; all regions replied that they do.]

**D** Resources to answer people's questions about the guidelines and their implementation include [not discussed in-depth today]…
- TM's public email (guidelines@mt.gov) and phone (406-655-5531);
- CS 404.1–404.3 in the CS policy manual, now posted on our public website as of last fall (https://dphhs.mt.gov/cssd/PolicyManual);
- the guidelines webpage (https://dphhs.mt.gov/cssd/services/Guidelines)—which includes various resources, including both ARM links below; and
- the ARM itself, posted online in two formats at these URLs…
  - direct link to Secretary of State version of ARM: https://rules.mt.gov/gateway/Subchapterhome.asp?scn=37%2E62%2E1
  - direct link to guidelines booklet version (PDF) of ARM: https://dphhs.mt.gov/assets/cssd/guidelinesandindex20191.pdf. To clarify [as mentioned in above item **III.A**]: Annually through 2016, this handy but costly guidelines booklet was printed, bound, and distributed all over MT. Few hard copies still exist but now a PDF is online—needing a few updates, like adding 37.62.140 to match the official SOS ARM

* TM is working on preparing the missing ARM (37.62.140) for inclusion in this now-PDF-only booklet, so it will match the official SOS ARM.

**PART 3 – Support and Project Management**

**V Internal outreach to state workers**

Update: These items were not discussed today, but are updated here for the record.

**A** ALJs were reminded, when "rounding," to use line 26-B instead of line 27 for per-child amounts, per Natalie Shoemaker.

**B** Self-employment training videos (for state and external users who perform calculations):
- The basic course, by ALJ Robin Hall, is stored in a folder that's confidential due to PII; it is meant to become part of a training module.
- [Update: The advanced course, by TM, is now available and stored in the confidential folder.]

**VII Proposed GROC guidances**

A guidance has been written re. how to handle COVID stimulus payments (**resource 4**).
- TM has received several attorney inquiries (in 2020, 2021, and 2022) seeking guidance on this question.
- BW commented (earlier in this meeting) that she's heard this question raised in both administrative and judicial settings.
- TM: Does this proposed guidance help?
- BW: I think so. In one case I saw, the caseworker seemed to know what to do but the ALJ was pushing for which specific rule covers this situation. If something like this COVID income happens again, maybe there could be a ticker on CSSD's website to explain how to handle it?
- TM: Such answers can be found by contacting me or the caseworker or ALJ, or researched at https://dphhs.mt.gov/cssd/services/guidelines. [See above item **IV.D**, and also note: GROC guidances currently aren't published online because they are contextual and sometimes temporary.]

**VIII Closing business / Reminders**

TM closed with these final notes:
- Keep in mind some key topics needing attention to prepare for the legislature—e.g., studying the cost of raising a child, and removing taxes.
- If you're modifying a zero order and you can tell it was a variance (even if it doesn't say so)—please tell TM the year, the reason, etc.

**IX Adjournment / Next meeting**

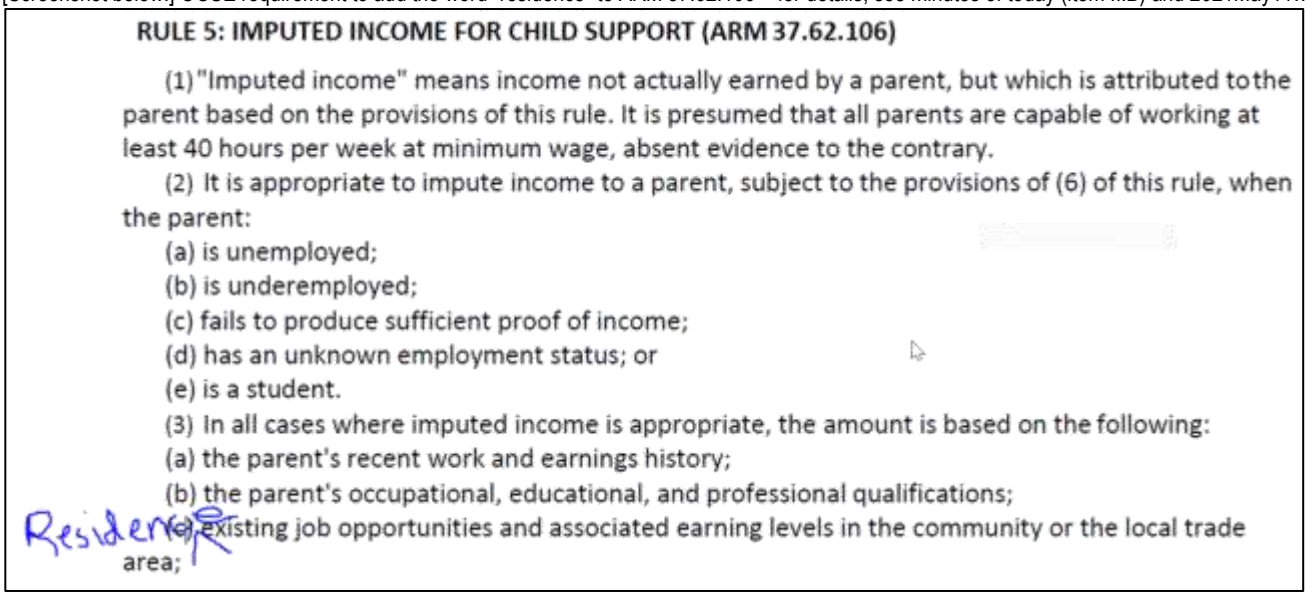
We adjourned at 2:30pm. Upcoming meetings are scheduled as indicated in the text on the cover page.

# Resources

1. Federal regulations on "Guidelines for setting child support orders." Electronic Code of Federal Regulations (ECFR), Title 45, Subtitle B, Chapter III, Part 302, Section 302.56 (https://ecfr.federalregister.gov/current/title-45/subtitle-B/chapter-III/part-302/section-302.56).

2. Federal regulations on "meaningful input" from the public:
   - From (h)(3) in resource 1, above: "Provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives. The State must also obtain the views and advice of the State child support agency funded under title IV-D of the Act."
   - From https://www.federalregister.gov/d/2016-29598/p-519: "[Re.] the composition of the committee or body conducting the quadrennial review…the quadrennial review should provide for a meaningful opportunity for participation by citizens and particularly low-income citizens, representing both custodial and noncustodial parents. The child support guidelines review body should also include participation by the child support agency. While we are not mandating the specific composition of the review body, we are requiring in § 302.56(h)(3) meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives, and the views and advice of the State IV-D agency."

3. [Screenshot below:] OCSE requirement to add the word "residence" to ARM 37.62.106 – for details, see minutes of today (item II.B) and 2021May11…



**RULE 5: IMPUTED INCOME FOR CHILD SUPPORT (ARM 37.62.106)**

(1) "Imputed income" means income not actually earned by a parent, but which is attributed to the parent based on the provisions of this rule. It is presumed that all parents are capable of working at least 40 hours per week at minimum wage, absent evidence to the contrary.

(2) It is appropriate to impute income to a parent, subject to the provisions of (6) of this rule, when the parent:

(a) is unemployed;

(b) is underemployed;

(c) fails to produce sufficient proof of income;

(d) has an unknown employment status; or

(e) is a student.

(3) In all cases where imputed income is appropriate, the amount is based on the following:

(a) the parent's recent work and earnings history;

(b) the parent's occupational, educational, and professional qualifications;

(c) existing job opportunities and associated earning levels in the community or the local trade area;

Residence

4. [Text below:] Proposed guidance on COVID stimulus payments – from T. McLean…

   COVID-19 Economic Impact Payments, also referred to as Stimulus Payments, were issued to citizens as part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and followed by the second round through The COVID-related Tax Relief Act of 2020, and the third round of payments through The American Rescue Plan of 2021. [1]

   Child Support Services Division does not recognize the COVID-19 Economic Impact Payments as Income Available for Child Support for two reasons:
   - First, because of the non-recurring and non-guaranteed source and nature of the stimulus payments. Reference Rule 4(2)(a).
   - Second, the amount of stimulus is an amount that would have minimal effect on any bottom-line obligation.

   If there is concern about the bottom-line obligation effect, exploring placement of the total value of stimulus payments (averaged over three years) in Line 1(h) – other non-taxable -- can prove this point.

   [1] Source: https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-families-and-workers/economic-impact-payments