

No. 51272-6-II

FILED
COURT OF APPEALS
DIVISION II
2018 AUG 16 AM 10:39
STATE OF WASHINGTON
BY [Signature]

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN THE MATTER OF

DARYL LANTZ,
Petitioner/Appellee

v.

DAWN R. LANTZ,
Petitioner/Appellant

BRIEF OF APPELLEE

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WSBA #19321
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Puyallup, Washington 98372
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INTRODUCTION & BACKGROUND FACTS

The Final Order of Child Support was entered April 17, 2015. (*See* Appendix). The Order was specifically for post-secondary support of the Parties' daughter – Sheridan who was 19 at the time. (Appendix- Order of Child Support- Final dated April 17, 2015, page 2, section 3.1). That order requires Sheridan to pay one-third of her post-secondary education support and reasonable necessities of life. Appellee was ordered to pay 33.7% of the remaining 2/3 of these expenses; Appellant was ordered to pay 66.3% of the remaining 2/3. (Appendix- Order of Child Support- Final dated April 17, 2015, page 4, section 3.14)

2014/2015: Sheridan enrolled in college and was attending full-time beginning fall 2014. (CP 107-160). She was and continues to be dependent upon Appellee (and her mother) for her living expenses. (CP 107-160). Sheridan began attending WSU -Vancouver campus the fall of 2015. (CP 107-160). The tuition for WSU in 2015 was \$5441.50 (without books, housing or meals). (CP 107-160). Her housing for 2015 was \$550.00 per month, utilities were \$55.00, phone/internet \$80.00, food 260.00. (CP 107-160). Total room and board expense for 2015-16 was \$7,230.00. (CP 107-160). Transportation expenses (gas & parking) \$276.00, books were \$804.00 and her personal expenses for the 2015-16 year were \$1,510.00. (CP 107-160). The total for tuition, books, and living expenses for 2015 was \$15,261.50. (CP 107-160).

Sheridan also received a Stafford Loan in the amount of \$5,500.00 which she will need to pay back. (CP 107-160). She received the following grants and assistance: Pell grant \$2,012.00, SEOG \$50.00 and Washington Need grant

\$5,178.00. (CP 107-160). The total grants and assistance she received for this period of time was \$7,241.00. (CP 107-160).

Sheridan paid her portion, but Appellee was forced to pay the balance of these expenses because Appellant refused to pay her Court Ordered post-secondary support. (CP 107-160). Appellee provided Appellant, as did Appellee's mother, a breakdown of the expenses and asked for Appellant to pay her portion which she refused to do. (CP 107-160). Appellant paid a total of \$1,500.00 for Sheridan's post-secondary support for this semester. (CP 107-160). Appellant has not contributed a dime for post-secondary support since this one-time payment in 2015. (CP 107-160).

2016 Sheridan attended UW-Tacoma Spring Quarter: Sheridan attended UW Tacoma spring quarter of 2016. (CP 107-160). Sheridan was unable to attend college winter semester because she had to transfer to U.W. Tacoma due to Appellant's refusal to pay any portion of her post-secondary expenses. (CP 107-160). Sheridan has been doing very well in college and has had to work part-time to make ends meet. (CP 107-160). Because of Sheridan's issues with her eyes and other health issues, it takes Sheridan longer to do homework than typical college students. (CP 107-160). Appellee and his parents paid all of Sheridan's out-of-pocket expenses and tuition, etc. for this period. (CP 107-160).

Fall 2016 and Winter and Spring 2017 Sheridan attended UW Tacoma: For the 2016/2017 school year Sheridan attended UW Tacoma. (CP 107-160). Her post-secondary costs for the full year (3 quarters) she attended UW were as follows: tuition was \$10,831.00, books were \$825.00, room and board was

\$10,230.00, transportation expense was \$1,524.00 and personal expenses were \$2,265.00. (CP 107-160).

Sheridan again received Pell grants for the year totaling \$3,265.00 and a Washington Need Grant in the amount of \$8,513.00 for a total credit of \$11,778.00. (CP 107-160). Appellee and his parents again paid all of Sheridan's out-of-pocket expenses and tuition, etc. for this period. (CP 107-160).

Amounts owed for post-secondary by Sheridan, Appellant and Appellee through Spring Quarter 2017. (CP 222-225). To date, through Spring 2017, the amount owed by Appellant for post-secondary support is \$20, 276.85. (CP 222-225).

On July 28, 2017, Appellee filed his Motion, in part, regarding Contempt on Post-Secondary. (CP 88-94). In support of Appellee's motion, his declaration included a spreadsheet of post-secondary expenses through spring 2017; 2014 school year expenses were not included as these were paid from the Waddell Reed account. (CP 107- 160). The Waddell Reed Account was an account created for Sheridan's education. (CP 107- 160).

The 2014-15 school year was not included on the spreadsheet because that year of post-secondary expenses were paid using the Waddell funds. (CP 107- 160). The receipts were filed under sealed source in Superior Court and the 53 pages of post-secondary documents filed by Appellee were actual receipts – not estimates and were given the weight the court felt needed to render a decision regarding post-secondary expenses. (CP 1-53).

STANDARD OF REVIEW

The standard of review for Child Support decisions is whether the Court abused its discretion. *In re Marriage of Fiorito*, 112 Wash. App. 567, 663-664, 50 P. 3d 298 (2002). A trial court abuses its discretion only when its decision is manifestly unreasonable or based on untenable grounds. *Id.* A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *Id.*

QUESTION PRESENTED

- I. Whether RCW 26.19.090(4) requires a student who is receiving post-secondary support to give access, including consent, to each parent for all academic records and grades as a condition of receiving post-secondary support?

ARGUMENT

- I. THE COURT DID NOT ERROR IN GRANTING APPELLEE'S REQUEST FOR AN AWARD FOR PAST DUE POST-SECONDARY SUPPORT.

RCW 26.19.090 sets conditions for receiving postsecondary educational support. RCW 26.19.090(4) requires a child to "make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records." The phrase "make available" is not defined by the legislature. *See* RCW 26.19.090(4). When statutory language is left undefined, the Court will apply the common meaning as defined by the dictionary. *In re Marriage of Drlik*, 121 Wn. App. 269, 277, 87 P.3d 1192

(2004). The term “available” is defined by the dictionary as “accessible or may be obtained.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 150 (1993).

The April 17, 2015, Order of Child Support requires Post-Secondary Educational Support as long as the child is enrolled in Post-Secondary Education under RCW 26.19.090 and is in fact dependent and is relying upon the parents for the reasonable necessities of life, the responsibility for Post-Secondary Support was to be allocated as follows:

“The child shall pay 1/3 of her post-secondary education support and reasonable necessities of life. The parties split the remaining two-thirds as follows: one-third (of the 2/3’s) to Appellee and two-thirds (of the two-third balance) to Appellant.” (Appendix- Order of Child Support- Final dated April 17, 2015, page 4, section 3.14)

Furthermore, the October 17, 2017, Order on Motion for Contempt Re: Post-Secondary Expenses (CP 229-230) and November 22, 2017, Order on Motion for Reconsideration on Court’s Order on Motion for Contempt Re: Post-Secondary Expenses (CP 245-246) are consistent with the April 17, 2015, Order of Child Support and further state that “both parents shall have access to post-secondary records pursuant to RCW 26.19.090(4)”. (See Appendix).

Similar to the case at hand, *In re Marriage of Jess*, a divorced mother and her adult son sought to recover for son’s father’s unpaid educational support that the father was required to provide pursuant to the child support order. *In re Marriage of Jess*, 136 Wash. App. 922, 924, 151 P.3d 240, 241 (2007). Both parents were required to provide postsecondary educational support, which was conditioned on the son’s making available all academic records and grades to both parents. *Id.* The son was also required to provide both parents with written

notice of his intent to attend three or four quarters per year and the actual cost of tuition, books, supplies and room and board so the parents could calculate, divide, and pay their support obligations. The father never requested his son's academic records and grades and he did not provide the required support. *Id.* The Court of Appeals held that son was not required to provide all academic records and grades to his father as a condition of receiving support on the absence of a request for such information; that the son was not required to provide his father with written notice of his intent to attend three or four quarters per year and the actual cost of tuition, books, supplies, and room and board as a condition of receiving support; and that the father's support obligation was not contingent on proof of the mother's support payments. *In re Marriage of Jess*, 136 Wash. App. 922, 924, 151 P.3d 240, 241 (2007).

The *Jess* case is similar to the circumstances here. First, as in *Jess*, the post-secondary support order incorporates the statutory conditions in RCW 26.19.090, which require Sheridan to "make available" her academic records and grades to both parents. RCW 26.19.090(4) explains "[e]ach parent shall have full and equal access to the postsecondary education records." According to the dictionary, the phrase "make available" does not require the daughter to actually "provide" or "give" Appellant the information without being requested to do so. RCW 26.19.090(4); WEBSTER'S, *supra*, at 150. As in *Jess*, there is no evidence here showing Appellant ever requested grades, transcripts or enrollment information, or that Sheridan withheld consent for the information. *See In re Marriage of Jess*, 136 Wash. App. 922, 928, 151 P.3d 240, 243 (2007) (Court found son was not required to provide actual costs of tuition, books, or

room and board as a condition of receiving support). Thus, without a request by Appellant, Sheridan is not required to provide such information.

Moreover, Appellant is trying to lead this court to believe that for the daughter to comply with RCW 26.19.090(4), she is also required under the Family Educational Rights and Privacy Act (FERPA) to give written permission to her post-secondary institution for Appellant to have access to her academic records. Appellant makes this argument without any supporting case law or Court Order laying out this as a requirement to comply with RCW 26.19.090(4). Appellant fails to cite such authority because it is not an actual requirement under RCW 26.19.090(4).

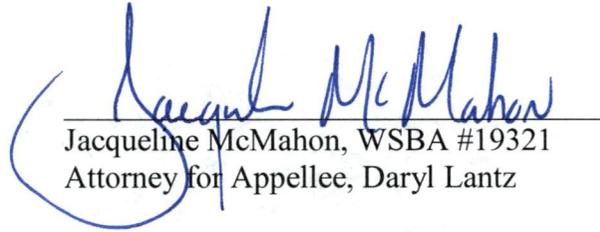
Furthermore, RCW 26.09.225 states in pertinent part that parental access to postsecondary educational records is “limited to enrollment and academic records *necessary to determine, establish, or continue support ordered pursuant to RCW 26.19.090.*” RCW 26.09.225(3) (emphasis added). Reading the statutes together it is clear the requirement is only to provide those records necessary to determine, establish, or continue Sheridan’s postsecondary support. Appellee provided actual receipts – not estimates – which the Court weighted and felt were extensive enough to render the decision regarding Appellant owing the past due post-secondary expenses. (CP 1-53).

CONCLUSION

The Court did not abuse its discretion in its finding that Appellant was required to pay the past due post-secondary support. The trial court’s findings of facts were supported by substantial evidence in the record. As a result, Appellee respectfully requests this court to affirm the trial Court’s Order, and to

award attorney's fees and costs to the Appellee for this appeal and to award any other relief the court deems appropriate and just.

Respectfully submitted this 12th day of August 2018


Jacqueline McMahon, WSBA #19321
Attorney for Appellee, Daryl Lantz

CERTIFICATE OF SERVICE

I do certify that on this 14th day of August 2018, I caused to be delivered a true and correct copy of the foregoing Brief of Appellee by method indicated below and addressed to the following:

Desmond Kolke
Attorney for Dawn R. Lantz
Law Offices of Desmond Kolke
1201 Pacific Ave., #600
Tacoma, WA. 98402

By: United States Mail [] Facsimile Email [] Hand Delivered at:
am/pm

Emailed to: deskolke@gmail.com

I CERTIFY under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: August 14, 2018 at Puyallup, Washington.

Lisa M. Pence
Lisa M Pence

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STATE OF WASHINGTON
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APPENDIX

In re Marriage of Lantz – “Order of Child Support – Final”
Dated April 17, 2015

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Superior Court of Washington
County of PIERCE

In re Marriage of:	No 12-3-04740-4
DARYL LANTZ	Order of Child Support
vs.	[] Temporary (TMORS)
DAWN LANTZ	[X] Final Order (ORS)
Petitioner,	
Respondent.	Clerk's Action Required

I. Judgment Summary

- 1.1 Judgment Summary for Non-Medical Expenses
[X] Does not apply.
- 1.2 Judgment Summary for Medical Support
[X] Does not apply.

II. Basis

- 2.1 Type of Proceeding
This order is entered under a petition for dissolution of marriage or domestic partnership, legal separation, or declaration concerning validity:
[X] Trial
- 2.2 Child Support Worksheet
Not applicable as this order of Child Support pertains to Post Secondary Support only and is based on Findings of the Court at Trial.

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2.3 Other

III. Findings and Order

It Is Ordered:

3.1 Child(ren) for Whom Support is Required

Name (first/last)	Age
Sheridan	19

3.2 Person Paying Support (Obligor)

Name (first/last): Darryl Lantz
 Birth date:
 Service Address: (You may list an address that is not your residential address where you agree to accept legal documents.)

The Obligor Parent Must Immediately File With the Court and the Washington State Child Support Registry, and Update as Necessary, the Confidential Information Form Required by RCW 26.23.050.

The Obligor Parent Shall Update the Information Required by Paragraph 3.2 Promptly After any Change in the Information. The Duty to Update the Information Continues as long as any Support Debt Remains due Under This Order.

For purposes of this Order of Child Support, the support obligation is based upon the following income:

A. Monthly Net Income Imputed at : \$ 2,500.00. See Court findings.

3.3 Person Receiving Support (Obligee)

Name (first/last): Dawn Lantz
 Birth date:
 Service Address: (You may list an address that is not your residential address where you agree to accept legal documents.)

The Obligee Must Immediately File With the Court and the Washington State Child Support Registry and Update as Necessary the Confidential Information Form Required by RCW 26.23.050.

4/21/2015 64690157

The Oblige Shall Update the Information Required by Paragraph 3.3 Promptly After any Change in the Information. The Duty to Update the Information Continues as Long as any Monthly Support Remains Due or any Unpaid Support Debt Remains Due Under This Order.

For purposes of this Order of Child Support, the support obligation is based upon the following income:

Monthly Net Income : \$ 4,912.23. See Court findings

The obligor may be able to seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080.

3.4 Service of Process

Service of Process on the Obligor at the Address Required by Paragraph 3.2 or any Updated Address, or on the Oblige at the Address Required by Paragraph 3.3 or any Updated Address, may Be Allowed or Accepted as Adequate in any Proceeding to Establish, Enforce or Modify a Child Support Order Between the Parties by Delivery of Written Notice to the Obligor or Oblige at the Last Address Provided.

3.5 Transfer Payment

See 3.11 and 3.14 below.

The Obligor Parent's Privileges to Obtain or Maintain a License, Certificate, Registration, Permit, Approval, or Other Similar Document Issued by a Licensing Entity Evidencing Admission to or Granting Authority to Engage in a Profession, Occupation, Business, Industry, Recreational Pursuit, or the Operation of a Motor Vehicle may Be Denied or may Be Suspended if the Obligor Parent is not in Compliance With This Support Order as Provided in Chapter 74.20A Revised Code of Washington.

3.6 Standard Calculation

Does not apply.

3.7 Reasons for Deviation From Standard Calculation

Does not apply.

3.8 Reasons why Request for Deviation Was Denied

Does not apply.

3.9 Starting Date and Day to Be Paid

May 1, 2015

3.10 Incremental Payments

Does not apply.

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3.11 Making Support Payments

Both parents' payments for postsecondary educational expenses shall be made directly to the educational institution if feasible. If direct payments are not feasible, then both parents' payments shall be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents then the parent making the support transfer payments shall make the payments to the child or to the parent with whom the child is living with.

3.12 Wage Withholding Action

Withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the obligor parent at any time after entry of this order unless an alternative provision is made below:

3.13 Termination of Support

Does not apply

3.14 Post Secondary Educational Support

As long as the child is enrolled in Post-Secondary Education under RCW 26.19.090 and is in fact dependent and is relying upon the parents for the reasonable necessities of life, the responsibility for Post Secondary Support shall be allocated as follows.

The child shall pay 1/3 of her post secondary education support and reasonable necessities for life.

Obligor shall pay 33.7% of the remaining 2/3 required for post secondary support and reasonable necessities of life.

Obligee shall pay 66.3% of the remaining 2/3 required for post secondary support and reasonable necessities for life.

3.15 Payment for Expenses not Included in the Transfer Payment

Does not apply because all payments, except medical, are included in the transfer payment.

3.16 Periodic Adjustment

Does not apply.

3.17 Income Tax Exemptions

The parents shall sign the federal income tax dependency exemption waiver.

3.18 Medical Support - Health Insurance

Each parent shall provide health insurance coverage for the children listed in paragraph 3.1, as follows:

3.18.1 Health Insurance (either check box A(1) or check box A(2) and complete sections B and C. **Section D applies in all cases.**)

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A. Evidence

(1) There is insufficient evidence for the court to determine which parent must provide coverage and which parent must contribute a sum certain. Therefore, the court is not specifying how insurance coverage shall be provided. The petitioner's and respondent's medical support obligations may be enforced by the Division of Child Support or the other parent under RCW 26.18.170 as described in paragraph 3.18.2, below.

OR

(2) There is sufficient evidence for the court to determine which parent must provide coverage and which parent must contribute a sum certain. Fill in B and C below.

B. Findings about insurance:

- Does not apply because A (1) is checked, above
- The court makes the following findings:

Darryl Lantz (Parent's Name)	Dawn Lantz (Parent's Name)	Check at least one of the following findings for each parent.
<input type="checkbox"/>		Insurance coverage for the children is available <u>and</u> accessible to this parent at \$ cost (children's portion of the premium, only).
	<input type="checkbox"/>	Insurance coverage for the children is available <u>and</u> accessible to this parent at \$ cost (children's portion of the premium, only).
<input type="checkbox"/>		Insurance coverage for the children is available <u>but not</u> accessible to this parent at \$ cost (children's portion of the premium, only).
	<input type="checkbox"/>	Insurance coverage for the children is available <u>but not</u> accessible to this parent at \$ cost (children's portion of the premium, only).
<input type="checkbox"/>		Neither parent has available or accessible insurance through an employer or union; but this parent is able to provide private coverage at a cost not to exceed 25% of this parent's basic support obligation.
	<input type="checkbox"/>	Neither parent has available or accessible insurance through an employer or union; but this parent is able to provide private coverage at a cost not to exceed 25% of this parent's basic support obligation.
<input type="checkbox"/>	<input type="checkbox"/>	(Check only one parent) Both parties have available and accessible coverage for the children. The court finds that this parent has better coverage considering the needs of the children, the cost and extent of each parent's coverage, and the

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		accessibility of the coverage.
<input type="checkbox"/>	<input type="checkbox"/>	Other:

C. Parties' obligations:

- Does not apply because A (1) is checked above.
- The court makes the following orders:

Darryl Lantz (Parent's Name)	Dawn Lantz (Parent's Name)	Check at least one of the following options for each parent.
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide health insurance coverage for the children that is available through employment or is union-related as long as the cost of such coverage <u>does not exceed</u> 25% of this parent's basic support obligation.
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide health insurance coverage for the children that is available through employment or is union-related even though the cost of such coverage <u>exceeds</u> 25% of this parent's basic support obligation. It is in the best interests of the children to provide such coverage despite the cost because:
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide private health insurance coverage for the children as long as the cost of such coverage <u>does not exceed</u> 25% of this parent's basic support obligation.
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide private health insurance coverage for the children even though the cost of such coverage <u>exceeds</u> 25% of this parent's basic support obligation. It is in the best interests of the child(ren) to provide such coverage despite the cost because:

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[]	[]	This parent shall pay \$ towards the health insurance premium being paid by the other parent. This amount is this parent's proportionate share of the premium or 25% of this parent's basic support obligation, whichever is less. This payment is only required if this parent is not providing insurance as described above.
[]	[]	This parent's contribution to the health insurance premium is calculated in the Worksheet and included in the transfer payment.
[]	[]	This parent shall be excused from the responsibility to provide health insurance coverage and from the responsibility to provide monthly payment towards the premium because: (Only one parent may be excused.)

D. Both parties' obligation:

If the children are receiving state financed medical coverage, the Division of Child Support may enforce the responsible parent's monthly premium.

The parent(s) shall maintain health insurance coverage, if available for the children listed in paragraph 3.1, until further order of the court or until health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

A parent who is required under this order to provide health insurance coverage is liable for any covered health care costs for which that parent receives direct payment from an insurer.

A parent who is required under this order to provide health insurance coverage shall provide proof that such coverage is available or not available within 20 days of the entry of this order to the other parent or the Washington State Support Registry if the parent has been notified or ordered to make payments to the Washington State Support Registry.

If proof that health insurance coverage is available or not available is not provided within 20 days, the parent seeking enforcement or the Department of Social and Health Services may seek direct enforcement of the coverage through the other parent's employer or union without further notice to the other parent as provided under Chapter 26.18 RCW.

3.18.2 Change of Circumstances and Enforcement

A parent required to provide health insurance coverage must notify both the Division of Order of Child Support (TMORS, ORS) - Page 7 of 9
WPF DR 01.0500 Mandatory (6/2010) - RCW 26.09.175; 26.26.132

Law Offices of Desmond Kolke
1201 Pacific Avenue South, #600
Tacoma, WA 98402
(888) 631 - 6957

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Child Support and the other parent when coverage terminates.

If the parents' circumstances change, or if the court has not specified how medical support shall be provided, the parents' medical support obligations will be enforced as provided in

RCW 26.18.170. If a parent does not provide proof of accessible coverage for the child(ren) through private insurance, a parent may be required to satisfy his or her medical support obligation by doing one of the following, listed in order of priority:

- Providing or maintaining health insurance coverage through the parent's employment or union at a cost not to exceed 25% of that parent's basic support obligation;
- Contributing the parent's proportionate share of a monthly premium being paid by the other parent for health insurance coverage for the child(ren) listed in paragraph 3.1 of this order, not to exceed 25% of the obligated parent's basic support obligation; or
- Contributing the parent's proportionate share of a monthly premium paid by the state if the child(ren) receives state-financed medical coverage through DSHS under RCW 74.09 for which there is an assignment.

A parent seeking to enforce the obligation to provide health insurance coverage may apply for support enforcement services from the Division of Child Support; file a motion for contempt (use form WPF DRPSCU 05.0100, Motion/Declaration for an Order to Show Cause re Contempt); or file a petition.

3.19 Uninsured Medical Expenses

Both parents have an obligation to pay their share of uninsured medical expenses.

The petitioner shall pay 33.7% of uninsured medical expenses (unless stated otherwise, the petitioner's proportional share of income from the Worksheet, line 6) and the respondent shall pay 66.3% of uninsured medical expenses (unless stated otherwise, the respondent's proportional share of income from the Worksheet, line 6).

3.20 Back Child Support

Back child support that may be owed is not affected by this order.

3.21 Past Due Unpaid Medical Support

Unpaid medical support that may be owed is not affected by this order.

3.22 Other Unpaid Obligations

Other obligations that may be owed are not affected by this order.

3.23 Other

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Dated: 4-16-17

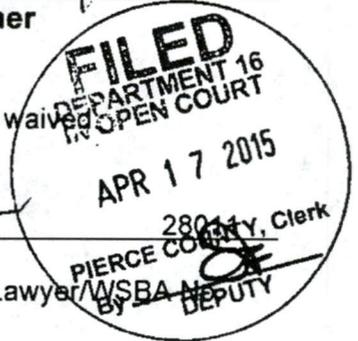
Elizabeth Hale
Judge/Commissioner

Presented by:
[Signature]
23563

Desmond Kolke,
Signature of Party or Lawyer/WSBA No.

Approved for entry:
Notice of presentation waived

[Signature]
Eric Berg
Signature of Party or Lawyer/WSBA No.



I apply for full support enforcement services from the DSHS' Division of Child Support (DCS).3
(Note: If you never received TANF, tribal TANF, or AFDC, an annual \$25 fee applies if over \$500 is disbursed on a case, unless the fee is waived by DCS.)

Stephanie Scanapico

Approval required in Public Assistance cases. The DSHS' Division of Child Support received notice required by RCW 26.23.130. This order has been reviewed and approved as to:

- Current Child Support
- Back Child Support
- Medical Support
- Other:

Deputy Prosecuting Attorney/WSBA No.

Down Lantz
Down Lantz, Respondent