

**9550.6230 VARIANCE FOR UNDUE HARDSHIP.**

Subpart 1. **Definition; limitations on variance.** For purposes of this part, "variance" means any modification of the parental fee as determined by Minnesota Statutes, section 252.27, subdivision 2a, when it is determined that strict enforcement of the parental fee would cause undue hardship. All variances shall be granted for a term not to exceed 12 months, unless otherwise determined by the department or county board. The parents' liability to pay under Minnesota Statutes, section 252.27, subdivision 2a, shall be modified only by the provisions in subparts 1a and 2.

Subp. 1a. **Variance for undue hardship.** A variance of the parental fee determined according to Minnesota Statutes, section 252.27, subdivision 2a, and parts 9550.6220 to 9550.6240 may be requested when expenditures for items A through D are made by the parents and the expenditures are not reimbursable by any public or private source. Each expenditure may be the basis for a variance only one time. The total amount of items A, B, C, and D shall be deducted from income as defined in part 9550.6210, subpart 9.

A. Payments made since the last review of the fee or within the last 12 months for medical expenditures for the child receiving services or for that child's parents and parents' other dependents when the medical expenditures are not covered by medical assistance or health insurance and are a type, irrespective of amount, which would be allowable as a federal tax deduction under the Internal Revenue Code.

B. Expenditures since the last review of the fee or within the last 12 months for adaptations to the parents' vehicle which are necessary to accommodate the child's medical needs and are a type, irrespective of amount, which would be allowable as a federal tax deduction under the Internal Revenue Code.

C. Expenditures since the last review of the fee or within the last 12 months for physical adaptations to the child's home which are necessary to accommodate the child's physical, behavioral, or sensory needs and are a type, irrespective of amount, that would be allowable as a deductible medical expense under the Internal Revenue Code. A variance for physical adaptations to the child's home will be granted only for that portion of the adaptation that does not increase the value of the property.

D. Unexpected, sudden, or unusual expenditures by the parents since the last review or within the past 12 months that are not reimbursed by any type of insurance or civil action and which are a type, irrespective of amount, which would be allowable as a casualty loss deduction under the Internal Revenue Code.

Subp. 2. **Variance for tax status.** A variance shall be granted, in the form of a deduction from income, as defined in part 9550.6210, subpart 9, if the parents can show that, as a result of the parents' peculiar tax status, there is a gross disparity between the

amount of income, as defined in part 9550.6210, subpart 9, allocated to the parents and the amount of the cash distributions made to the parents.

- A. The disparity must adversely affect the parents' actual ability to pay.
- B. A variance shall not be granted in cases where the tax status was created in whole or in part for the purpose of avoiding liability under parts 9550.6200 to 9550.6240.
- C. Income to be deducted under this subpart shall be deducted only if:
  - (1) the income has never been legally available to the parents as a cash distribution; and
  - (2) the parents have no authority to alter the amount of cash distributed during a given year, or the method whereby the cash is distributed.
- D. A variance granted under this subpart shall only be made on the recommendation of the department or county board according to subpart 5.
- E. Parents who are granted a variance under this subpart must sign a written agreement in which the parents agree to report any change in the circumstances which gave rise to the tax status variance, such as an increased distribution, a sale, transfer, or any other transaction affecting the parents' ability to pay within 30 days of that change.

Subp. 3. **Exceptions.** The following expenses shall not be considered to constitute undue hardship and shall not reduce the parental fee or income as defined in part 9550.6210, subpart 9:

- A. new home purchases, other than that portion of the cost of a new home that is directly attributable to the physical, behavioral, or sensory needs of the child receiving services and that is a type, irrespective of amount, which would be allowable as a deductible medical expense under the Internal Revenue Code;
- B. college education expenses;
- C. clothing and personal expenses, other than expenses allowed in subpart 1a such as specialized clothing needed by the child receiving services due to their disability; or
- D. any expenditures that are usual and typical, other than those which are allowable under subpart 1a.

Subp. 4. **Procedures for requesting a variance.** Parents may request a variance from parts 9550.6200 to 9550.6240 by submitting a written request to the department or county board that states why compliance with parts 9550.6200 to 9550.6240 would cause undue hardship.

The department or county board shall forward to the parents a request for financial information within ten calendar days after receiving a written request for a variance.

Parents must provide the department or county board with the requested financial information, including the previous year's tax forms, and verification of any physical adaptations to the home or vehicle, medical expenditures, casualty losses, or peculiar tax status. The information supplied must be sufficient to verify the existence of undue hardship necessitating a variance. Parents must cooperate by completing and returning all information requested by the department or the county board as necessary to determine or review the parental fee. If parents fail to cooperate by providing this required information, part 9550.6226, subpart 4, applies.

**Subp. 5. Department and county authority to grant variances.**

A. The commissioner shall delegate to the county board the authority to grant variances according to parts 9550.6200 to 9550.6240 for children in 24-hour care outside the home, other than a state facility, where only social services funds are expended for the cost of services.

B. The department shall grant variances according to parts 9550.6200 to 9550.6240 for parents of children who have a developmental disability, a severe emotional disturbance, or a physical disability and who are:

- (1) residing in state facilities;
- (2) residing outside the home where medical assistance funds are expended for the costs of services;
- (3) residing outside the home when both medical assistance and social services funds are expended for the cost of services; and
- (4) determined eligible for medical assistance without consideration of parental income or assets.

**Subp. 6. Payment pending determination of variance request.** Those parents requesting a variance from a notice of an increase in the amount of the parental fee shall continue to make monthly payments at the lower amount pending determination of the variance request. Those parents requesting a variance from an initial determination of the parental fee amount shall not be required to make payment pending determination of the variance request. However, these parents may make payments as desired during the determination. If the variance is granted, any payments made pending outcome of the request that result in overpayment, shall be: (1) reimbursed to the parents if the child is no longer receiving services; or (2) applied to the parental fees remaining in the current fiscal year and the remainder of the excess amount applied to the parental fees due starting in the next fiscal year, if the child is still receiving services. If the variance is denied, the parents shall pay to the department or county board:

A. the additional amount due from the effective date of the increase in the parental fee; or

B. the total amount due from the effective date of the original notice of determination of the parental fee as specified in part 9550.6235, subpart 3.

Subp. 7. **Insurance settlements; settlements in civil actions.** Parents who are granted a variance under subpart 1a, item D, shall sign a written agreement in which the parents agree to report to the department or the county board any changes in circumstances that gave rise to the undue hardship variance, such as subsequent payment by the insurer on a medical or casualty claim or receipt of settlement in a civil action. Failure by the parents to sign this agreement will result in denial of the variance. The variance shall terminate or be adjusted effective on the date of the parents' receipt of any such settlement.

Subp. 8. **Grant or denial of variance.** When the department or county board receives a request for a variance, written notice of a grant or denial of the variance shall be mailed to the parents within 30 calendar days after the department or county board receives the financial information required under subpart 4. A grant will necessitate a written agreement between the parents and the department or county board with regard to the specific terms of the variance. The variance will not become effective until the written agreement is signed by the parents. If the department or the county board denies in whole or in part the parents' request for a variance, the denial notice shall set forth in writing the reasons for the denial that address the specific hardship raised by the parents and of the parents' right to appeal under part 9550.6235.

**Statutory Authority:** *MS s 246.511; 252.27; 256B.14*

**History:** *10 SR 2005; 16 SR 2780; L 2005 c 56 s 2*

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