

Maintenance & Child Support

4th Judicial District Family Law Day

May 10, 2019

Award of Maintenance & Child Support

- Nothing is automatic! Need agreement or court order
- Request temporary orders hearing for maintenance or support while case pending, typically takes 2-3 mos
- Retroactive maintenance/support available in court discretion back to date of service (usually considered at dissolution hearing)
- Pay through FSR?

Modification

- Nothing is automatic! Need agreement or court order
- Never reduce payments w/o written agreement approved by court, probably OK to increase payments w/o order
- No automatic CS termination until last/only child turns 19
- CS may be modified if 10% difference in support owing

Maintenance (aka “Alimony”)

- Support to help former spouse with expenses, not to care for children
- Available to husband or wife
- No-fault: “Without regard to marital misconduct”

Maintenance Threshold for Award

Threshold Factors to Decide Whether to Award Maintenance:

- Incomes
- Marital property awarded to each spouse, but cannot be required to spend down property to get maintenance
- Financial resources
- Reasonable needs during marriage

Maintenance Factors

Factors to determine amount & duration:

- Each spouse's financial resources, need, ability to pay
- Lifestyle during marriage
- Marital property
- Incomes & historical earnings
- Duration of marriage
- Age & health of spouses
- Contributions during marriage, advancement of a spouse's education, etc.

ADVISORY Maintenance Formula

1. Applies when combined incomes below \$240,000/yr
2. Add up both gross monthly incomes from all sources
3. Multiply combined total by 40%. This is lower income earner's "share" of that total
4. Subtract lower earner's income from that 40%
5. If not taxable, see next slide

Non-Taxable Maintenance

- Effective decrees issued 1/1/2019 and beyond.
- < \$10K/mo combined: reduce by 20% if tax-free
- > \$10K/mo combined: reduce by 25% if tax-free
- “Grosses up” by 25% non-taxable maintenance for purpose of calculating support
- Uncertain if after 1/1/2019 modify decree from before that date

Maintenance Formula Examples

H earns \$6000, W earns \$2000. Combined = \$8000

W 40% share = \$3200. Subtract \$2000 income, result is \$1200. Multiply by 0.8, non-taxable maint = \$960

W earns \$8000, H earns \$6000. Combined = \$14,000

H 40% share = 5600. H earns more, no maint

Downloadable Forms & calculator. Search “colorado maintenance calculator”, or:

www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=71

Maintenance Advisory Duration

< 3 yrs marriage: No maintenance

3-12½ yrs marriage: Sliding scale starting at 31% x length of marriage, adding months until reach 50%. Chart in CRS

14-10-114

12½-20 yrs marriage: 50% length of marriage

20+ yrs marriage: 10 yrs to indefinite

Maintenance Misc

- Terminates upon death of either party
- Typically life insurance from payor
- Terminates upon payee's remarriage, absent agreement
- Cohabitation NOT end maintenance
- Modify (unless non-modifiable) based upon "substantial and continuing change in circumstances"

Child Support

- Support for minor children
- Payable to children under 19
- Earlier emancipation - marry, work, join military
- Later emancipation - still in high school, disabled

Child Support for Shared Custody

If multiple children shared on different schedules, add everything up and divide by # of children. Example:

Mother has equal time with two children, 100 with third. Total overnights = 465 nights, divide by 3 = 122 adjusted overnights

Child Support for Split Custody

If children live with different parents, use offsetting child support worksheets. Example: Two children live with mother, one child lives with father.

1. Calculate Father's obligation to Mother based upon 2 children with her
2. Calculate Mother's obligation to Father based upon 1 child with him
3. Offset the two worksheets for the net support owing.

This Worksheet is for 2 children living most of the time with: Mother. Overnight time with Father: 140 (38.356%)

Sample Child Support Worksheet

	Mother	Father	Combined
1. MONTHLY GROSS INCOME	\$ 2,000.00	6,000.00	
a) Plus maintenance received from spouse of this marriage	+ 1,200.00	.00	
b) Less support ordered for children not of this relationship	- .00	.00	
c) Less Sec. (6)(b)(I) deduction for non-joint children	- .00	.00	
d) Less maintenance paid to spouse of different relationship	- .00	.00	
e) Less maintenance paid to spouse of this marriage	- .00	1,200.00	
2. MONTHLY ADJUSTED GROSS INCOME	= 3,200.00	4,800.00	8,000.00
3. Each parent's PERCENTAGE SHARE OF INCOME	40.00%	60.00%	
4. Amount from Guideline Schedule			1,631.00
5. BASIC CHILD SUPPORT OBLIGATION (1.5 x line 4)			2,446.50
6. Each parent's proportional share of basic support obligation (% Share of income of each [line 3] x Basic support obligation [line 5])	= 978.60	1,467.90	
7. OVERNIGHTS with each parent	225	140	
8. PERCENTAGE TIME with each parent	61.644%	38.356%	
9. Portion of own share owed to other (overnights adjustment) (Each parent's support share [line 6] x Other parent's time percentage [line 8])	= 375.35	904.87	
10. ADJUSTMENT EXPENSES paid (or to be paid) by each parent			
a) Work related child care (Before tax credit: 200 / 0)	\$ 154.00	.00	
b) Education related child care	+ .00	.00	
c) Health insurance (children's share)	+ .00	300.00	
d) Extraordinary medical expenses	+ .00	.00	
e) Other extraordinary expenses	+ .00	.00	
f) Items that reduce need (e.g. child income)	- .00	.00	
Total Adjustment Expenses (Total of Line 10(a) through Line 10(f) above)	= 154.00	300.00	454.00
11. Fair share of adjustment expenses (% Share of income of each [line 3] x Total adjustment expenses [line 10])	- 181.60	272.40	
12. Adjustment expenses paid in excess of fair share (Expenses paid by each [line 10] minus Fair share of such expenses [line 11])	= N/A	27.60	
13. Total owed by each to other (Support owed to other [line 9] minus expenses paid in excess of fair share [line 12])	\$ 375.35	877.27	
14. Recommended Support Order (Father pays Mother)	=	\$501.92	

Child Support Factors

C.R.S. 14-10-115 formula based upon:

- Income, including maintenance
- Non-Joint Children
- # Children
- Overnights (93+ for Worksheet B)
- Day Care
- Health Insurance
- Child's Income, if reduces household expenses. Rare

Guidelines Are a “Must”

- Unlike maintenance, child support guidelines are presumptive
- Should follow, unless result is minimal support (under \$100?), or recite very good reasons for deviation
- Cannot permanently waive child support, nor limit future modification

“Crazy” Outcome?

Guidelines may result in majority parent paying support.

Example:

Mother \$8000/mo, Father \$2000/mo. No maintenance

2 children, Mother has 245 nights, Father has 120

Result: Mother owes Father \$356/mo support!

Other Child Expenses

These expenses are *typically* shared “off worksheet”:

- Unreimbursed medical expenses over \$250/child/year (% to income)
- Transportation costs (% to income)
- Extracurricular activities (sports, vehicle?)
- College - only if agreement
- NEVER WITHHOLD CHILD SUPPORT FOR UNPAID EXPENSES.

Child Support Misc

- Support belongs to payee, no right to earmark or demand accounting
- Not taxable
- No more dependency exemptions, now HoH
- Exchange financial information annually
- Life insurance vs social security survivor benefits

What is Income?

- In short, almost everything a person receives, including salary from primary employment, commission/bonuses, dividends, royalties, rent, interest, trust income, capital gains, social security, unemployment benefits, pensions, gifts, maintenance, etc.
- Colorado uses gross monthly income, not net

What is Not Income?

- 2nd job or voluntary overtime
- Child support received
- Means-tested public benefits
- Social security benefits received on behalf of child as result of death/disability of parent or stepparent (but obligor disability payments may offset support)
- Retirement account growth, unless distribution taken

Employee Benefits

- Bonuses, commissions, etc - Use average
- Company car when personal use or commute
- Housing
- Employer 401(k) & health contributions are not income, but employee deferrals are income
- Per diem/expense reimbursement - depends if reduce living needs. Probably not for casual travel, but maybe so if receive it regularly

Military

- All pay and allowances (BAS, BAH, COLA, flight pay, etc), even if not taxable.
- Impute BAH if live in on-post housing
- Reserves/Guard not count unless condition of primary employment
- VA disability/CRSC counts as income

Self-Employed

- Gross receipts minus reasonable business expenses
- Add back expenses that reduce living costs (car, mobile phone, home office)
- Add back accelerated depreciation
- All earnings from small business count as income, even if undistributed

Unemployment/Underemployment

- Impute income if voluntarily unemployed, unless in school
- Impute based upon potential, look to earning history
- Impute minimum wage \$11.10/hr (\$1924/mo) if no work history or education
- Standard is “shirking”, not simply being able to earn more
- Involuntary layoff, even for cause, not shirking
- Need good faith job search
- Early retirement under SSA age - impute
- No impute if primary care for joint child < 30 mos