

Maintenance & Child Support

4th Judicial District Family Law Day

July 16, 2021

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

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 (in addition to full time 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
- Deferred compensation - not income until received
- 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 generally not count unless condition of primary employment
- VA disability/CRSC counts as income
- Post-9/11 GI Bill - the monthly stipend (based upon E5 BAH) is income, but not tuition or book stipend.

Self-Employed

- Gross receipts minus ordinary and necessary 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

Underemployment - Impute Income

- Impute income if voluntarily underemployed or unemployed
- What income should be imputed?
 - Employment and earning history, job skills, education, ge, literacy, assets, barriers to employment such as a criminal record, the local job market, etc.
- Impute minimum wage \$12.32/hr (\$2135.42 per mo) if parent in CO and 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 & capable of working - impute

Underemployment - No Imputation?

- Court may find a parent is not voluntarily underemployed if (each of these has a list of factors for the court to consider):
 - Parent is enrolled in school full-time or in school part-time and working part-time
 - Employment is temporary
 - Employment is a good faith career choice
- Court can't impute if:
 - Parent is physically or mentally incapacitated
 - Primary care for joint child < 24 mos
 - Parent has been sentenced to 180 or more days

Maintenance (aka “Alimony”)

- Support to help former spouse with own needs, not to care for children
- Available to either spouse
- 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

Limitations on Advisory Maintenance

- **Advisory only**, not legally binding.
- **Court Cannot Blindly Apply**. Judges are required to consider advisory guidelines, but only as one of the maintenance factors.
- **No Applicability Above \$240K/yr**. Zero. OK to end up in ballpark, but cannot use statutory guidelines as basis for ruling.

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 Factors

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

- Gross Income, including maintenance
- # Children the parties share
- Overnights (93+ for Worksheet B)
- Non-Joint Children
- Day Care for the parents' shared children
- Health Insurance costs for the shared children
- Child's Income, if reduces household expenses. Rare

Child Support for Shared Custody

Worksheet B is used when both parents have more than 92 overnights per year with the child or children.

If there is more than one child, and the children have different parenting time schedules, to calculate the number of overnights for the child support worksheet, the overnights are averaged: add everything up and divide by # of children.

Example: Mother has equal time (50%) with two children, 100 with third. Total overnights = 465 nights, divide by 3 = 155 averaged overnights

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	

“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!

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.

Guidelines Are a “Must”

- Unlike maintenance, child support guidelines are presumptive
- The Court is required to review the guidelines & the parties' financial affidavits before approving any agreements.
- Required to follow unless the Court finds cause to deviate from the guidelines. The court must make findings on the record. For example, a minimal order.
- Cannot permanently waive child support, nor limit future modification

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
- If you are paying child support directly, you *must* keep records of every payment made. Consider making payments to the Family Support Registry which maintains a permanent record.