

How to determine CHILD SUPPORT in New Jersey

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It is the law that both parents contribute to the support of children that they bring into this world. New Jersey has promulgated guidelines for the Court's use in determining the amount of child support. As a result, the Family Part judges now set child support in a uniform fashion throughout the state. A collateral benefit of the guidelines is that it takes much of the dispute away from the determination of the amount of child support. The theory behind the guidelines is that parents in different income levels spend a certain percentage of their combined incomes or a specific amount of money toward raising their child or children. The statistics were generated by socio-economic studies. R. 5:6A governs the use of guidelines. The Rule applies to initial determinations of child support, as well as modifications. The Court may modify the guidelines or disregard the guidelines only when good cause is shown or otherwise provided in Appendix IX-A 21.

1. Child Support Guidelines for Net Combined Income of \$150,800 or Below.

Child Support Guidelines are mandatory in all cases for the initial application or modification of child support when the combined net income of the parents is \$150,800 or less. Recognizing that both parents are responsible for the financial needs of their children, New Jersey's guidelines were developed to provide a fair and uniform method of establishing child support. They reflect the marginal cost of raising children. The guidelines are derived from the Consumer Expenditure Survey (CEX) which is a source of national data on household expenditures and how they vary by family composition, size, geographic location and socio-economic characteristics. Dr. David Betson of the University of Notre Dame developed the guidelines based on his analysis of CEX data and estimates of standards of well being developed by Rothbarth.

The guidelines create a rebuttal presumption. R. 5:6A permits the Court to modify or disregard them where good cause is shown. Good cause may be established as set forth in Appendix IX-A or other relevant factors, which may make the guidelines inapplicable if an injustice would result.

a. Basic Child Support Obligation.

Appendix IX-F sets forth the scheduled child support awards for varying incomes and number of children. The parent's responsibility for meeting the basic child support award is in proportion to their net incomes. Theoretically, parents of equal income would equally share the award set forth in this schedule. For combined net incomes that are less than \$170 per week, the child support amount should be established at the discretion of the Court based upon the obligor's net income and living expenses and needs of the child at a minimum of \$5 per week and as much as the support provided for combined net incomes of \$170 per week.

b. Definition of Income for Use with the Child Support Guidelines.

In order to utilize Appendix IX-F, Basic Child Support, it is necessary to establish the gross income and net income of the parents. Appendix IX-B defines gross income as all earned and unearned income that is recurring or will increase the income available to the recipient over an extended period of time. The rule provides some direction to the Court and states that the Court should consider if the gross income would have been available to pay expenses related to the child if the family would have remained intact and how long that source would have been available to pay those expenses. Gross income includes, but is not limited to, wages, fees, tips, commission, operation of a business (minus ordinary and necessary operating expenses), gains derived from dealings in property, interest and dividends, rents (minus ordinary and necessary expenses), bonuses, royalties, alimony and separate payments received from the current or past relationships, annuities or an interest in a trust, life insurance and endowment contracts, distributions from retirement plans, deferred compensation Keoghs, IRAs, personal injury awards or other civil lawsuits, interest in a decedent's estate, disability grants, profit sharing plans, worker's compensation, unemployment compensation benefits, overtime, part-time and severance pay, net gambling winnings, sale of investments, income tax credits or rebates, unreported cash payments, "in-kind" benefits, and imputed income.

If the Court finds that either parent is, without just cause, voluntarily underemployed or unemployed, the Court will impute income. The Court can impute income based on the potential employment and earning capacity using the parent's work history, occupational qualifications, educational background, and prevailing job opportunities in the region. The Court may use a parent's former income at that parent's usual or former occupation or may utilize average earnings for that occupation as reported by the New Jersey Department of Labor (NJDOL). If potential earnings cannot be determined, the Court may impute income based on the parent's recent wage or benefit record or full-time employment of 40 hours per week at the New Jersey minimum wage, which is presently \$5.15 per hour.

Sporadic income is included. The past three years' average of seasonal work, dividends, bonuses, royalties, or commissions will be included. The average over the previous twelve months overtime or income from a second job is included.

Net income is then calculated by subtracting from gross income the following: (1) all applicable taxes utilizing Appendix IX-H, (2) mandatory union dues, (3) mandatory retirement, (4) previously ordered child support orders, and (5) when appropriate, a theoretical child support obligation for other dependents. Although considered income for child support computation, the following should not be considered in calculating the withholding or income taxes: accident and health insurance proceeds, black lung benefits, child support payments, Federal Employees Compensation Act payments, interest on state or local obligations, scholarships and fellowship grants, veteran's benefits, worker's compensation, welfare and other public assistance benefits, life insurance proceeds, social security benefits, casualty insurance and other reimbursements, earnings from tax-free government bonds or securities, federal and social security benefits, railroad retirement benefits, proceeds of life insurance contracts payable by reason of death, employee's death benefits, the value of property acquired by gift bequeath, devise or inheritance (except the income derived therefrom), worker's compensation, compensation paid by the US armed forces performed by an individual not domiciled in New Jersey, grants or scholarships received from educational institutions, certain annuity, endowment or life insurance contract or payments of such

amounts received as pensions, disability or retirement benefits for persons at least 62 years old or disabled under Social Security, New Jersey lottery winnings, permanent and total disability payments under public or private plans including veteran's benefits, unemployment insurance benefits and employer contributions to 401Ks.

Gross income is adjusted by alimony paid by the obligor to the obligee. Thus, the custodial parent's gross income will be increased and the non-custodial parent's income will be decreased if alimony is awarded. Alimony from past relationships is also included.

If either parent requests an adjustment for a secondary family and the income of the other parent of the secondary family is provided to the Court, an adjustment to gross income is provided in the guidelines. The purpose of this adjustment is to apportion a parent's income to all of their legal dependents regardless of the timing of their birth or family association. Legal dependents include adopted or natural children of either parent who are less than 18 years of age or more than 18 years of age and still attending high school or other secondary education. Stepchildren are not considered legal dependents unless a Court has found that a legal responsibility exists. Thus, the adjustment is computed by establishing a child support for the secondary family and subtracting the child support amount from the first family obligor's income to calculate the support. The child support is then the average of the child support without the adjustment and with the adjustment. The secondary family adjustment should be calculated on a separate Sole Parenting Worksheet.

c. Expenses Added to the Basic Child Support Obligation.

After determining net income and the basic child support obligation from Appendix IX-F, certain expenses may be added to the basic child support amount. The net cost (after tax credits) of work related childcare is added to the basic obligation. Appendix IX-E provides a Child Support Guidelines Net Child Care Cost Worksheet which calculates the net childcare after the appropriate federal child care tax credit. The marginal cost of adding a child to a health insurance premium should also be added to the basic child support amount. Predictable and recurring unreimbursed health care expenses in excess of \$250 per child per year are added to the child support basic amount. Also added are other expenses approved by the Court, which are predictable and recurring such as private elementary or secondary education, special needs of gifted or disabled children, and visitation transportation expenses.

d. Government Benefits Paid to or for Children.

If a parent receives non-means-tested government benefits that are meant to reduce the cost of raising children, the basic child support will be reduced by that amount. The deduction is provided because the receipt of such benefits reduces the parent's contributions toward the child's living expenses. However, Supplemental Social Security Income (SSI) and welfare payments received for or on behalf of a child are not deducted since they supplement parental income based on financial need.

e. Adjustment for Co-Parenting Time (Visitation)

The basic child support award is adjusted downward to reflect the degree of co-parenting time of the non-custodial parent. The basic child support award is broken down into three categories. Thirty-eight percent (38%) of the award is allocated to fixed costs which are incurred even when the child is not residing with the custodial parent such as housing, utilities, furnishings and household care items. Thirty-seven percent (37%) are variable costs, which include transportation and food. Twenty-five percent (25%) are controlled costs, which are costs over which the primary care taker has direct control such as clothing, personal care, entertainment and miscellaneous expenses. While there is no adjustment for controlled costs, there are downward adjustments for fixed and variable costs.

Variable costs are adjusted in every case where the non-custodial parent (NCP) exercises co-parenting time on a regular schedule of visitation. The Court should consider whether the non-custodial parent has incurred variable expenses for the child during visitation and if visitation has reduced the other parent's variable expenses for the child. The reduction in the award is equivalent to the percentage of time that the non-custodial parent spends with the children applied against the 37% variable expense component of the basic child support amount. The percentage of time spent with the children is calculated on the number of overnights spent with the child. Overnight means the majority of a twenty-four(24) hour day, which is defined as more than twelve hours. For example, if the sole parenting basic support award is \$100 and the non-custodial parent spends 20% of the time with the child, the maximum visitation credit is \$7.40 calculated as follows: \$100 (basic award) x 0.37 (variable costs) x 0.20 (percent time.) Extended visitation in excess of five consecutive overnights that represents a single event or intermittent occurrence such as vacation and holiday time is not used to determine the non-custodial parent's annual percentage of overnight time. Appendix IX-C Sole Parenting Worksheet is used for this adjustment.

Adjustment for fixed costs (housing related expenses) are mandated when the non-custodial parent exercises overnight visitation equivalent to two or more overnights per week or at least 28% of the time and that parent can show an expense for separate living accommodations. In these shared parenting arrangements the custodial parent is designated as the parent of primary residence (PPR) and the non-custodial parent is designated the parent of alternate residence (PAR). Appendix IX-D is utilized and the parent of alternate residence, (PAR) receives a downward adjustment to the 38% fixed costs and 37% variable costs by the percentage of overnights. Shared parenting adjustments or awards are not presumptive. The Court may grant the shared parenting adjustments if it is appropriate and the following are established: (1) a parenting plan is filed with or ordered by the Court; (2) the PAR has a substantial equivalent of two or more overnights per week and there is evidence of separate living accommodations maintained specifically for the child; (3) the PPR's weekly household net income including means-tested-income and net income of other adults living in the household plus the shared parenting child support award is greater than two times the US poverty guideline for the number of persons in the household; (4) the Court finds that the net income of the primary household after the calculation of the shared parenting award is sufficient to maintain the household for the child considering the cost of living in the region where the child resides.

If the Court does not find that the shared parenting arrangements are appropriate, the Court will grant a credit for variable expenses on the sole parenting worksheet.

f. Controlled Expenses Adjustment

In shared parenting situations, it is presumed that the parent of alternate residence (PAR) is not entitled to a credit for controlled expenses such as clothing, personal care and entertainment. However, if the parent of alternate residence routinely incurs controlled expenses for the child, either in addition to or as a substitution for a controlled expense item assumed to be unilaterally provided by the parent of primary residence (PPR), the parent of alternate residence may rebut the controlled expense assumption. The Court must decide whether the dual expense is appropriate and necessary and how much of the 25% component representing controlled expenses should be adjusted.

g. Obligor's Net Income Less than the US Poverty Guideline

If the obligor's net income after the support award is less than 105% of the US poverty guideline for one person (net income of \$173 per week as of February 16, 2001 or as published annually in the Federal Register,) the Court may lower the award after taking into consideration the obligor's income and living expenses so as not to deny the obligor the means of self-support at a minimum subsistence level. If the obligee's (custodial parent) income is less than 105% of the poverty guideline, no self-support reserve adjustment shall be made regardless of the obligor's income. In no event should the amount be less than \$5 per week.

h. Abatement for Extended Visitation

A non-custodial parent may motion the Court for an abatement of a percentage of variable expenses (food and transportation) and/or other special expenses included in the child support award not incurred during extended visitation by the custodial parent. Abatement may be specified prospectively in an agreement between the parties.

i. Split Parenting Arrangements

When there are multiple children and each parent has physical custody of at least one child, a separate sole parenting award must be calculated considering each parent as the non-custodial parent for the number of children in the custody of the other parent. The difference of the two awards of the child support order to be paid by the parent with the higher sole parenting award. If both parents serve as the parent of primary residence (PPR), for at least one child of the relationship, and the children share time with the other parent, the Court should adjust each parent's award to accommodate shared parenting costs.

j. Child in Custody of a Third Person

The Court must order both parents to pay child support to the party having custody of the child.

k. Age Adjustment

Initial awards for children in their teens are underestimated because the basic child support award is the average cost through age 17. Because it costs less to raise a young child, an initial

award of a teenage child is insufficient, and an adjustment is appropriate. When the initial award is for a younger child, the custodial parent receives more than is necessary when the child is young and less when the child is older and it averages out. Appendix IX-A (17) suggests that the cost of children age 12 through 17 was 14.6% above the average expenditures.

1. Other Factors at the Discretion of the Court.

The basic child support award, at the discretion of the Court may be modified based on the best interest of the child and the following considerations:

- a. equitable distribution of property;
- b. income taxes;
- c. fixed direct payment (e.g. mortgage payments);
- d. unreimbursed medical/dental expenses for either parent;
- e. educational expenses for children (i.e. for private, parochial, or trade schools, or other secondary schools, or post-secondary education);
- f. educational expenses for either parent to improve earning capacity;
- g. single family units (i.e. one household) having more than six children;
- h. cases involving the voluntary placement of children in foster care;
- i. special needs of gifted or disabled children;
- j. ages of the children;
- k. hidden costs of caring for children such as reduced income, decreased career opportunities, loss of time to shop economically, or loss of savings;
- l. extraordinarily high income of a child (e.g. actors, trusts);
- m. substantiated financial obligations for elder care that existed before the filing of the support action;
- n. the tax advantages of paying for a child's health insurance; and

2. Child Support Guidelines for Net Combined Income Exceeding \$150,800.

Appendix IX-A of the Court Rules specifically provides that when the combined net family income exceeds \$150,800, the Court shall apply the guidelines up to that amount and supplement the guidelines award with an additional support amount based on the remaining family income and the factors enumerated in N.J.S.A. 2A:34-23a.

- a. In determining the amount to be paid by a parent for the support of the child and the period during which the duty of support is owed, the court in those cases not governed by the court rule shall consider, but not be limited to, the following factors:

- (1) Needs of the child;
- (2) Standard of living and economic circumstances of each parent;
- (3) All sources of income and assets of each parent;
- (4) Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost for each parent to obtain training or experience for appropriate employment;
- (5) Need and capacity of the child for education, including higher education;
- (6) Age and health of the child and each parent;
- (7) Income, assets and earning ability of the child;
- (8) Responsibility of the parents for the court-ordered support of others;
- (9) Reasonable debts and liabilities of each child and parent; and
- (10) Any other factors the court may deem relevant.

Thus, an award for a family with net income in excess of \$152,800 should not be less than the amount stated on the maximum guideline schedule. The Court is prohibited from extrapolating those schedules beyond the dollar limit.

3. Child Support for Unemancipated Children 18 Years or Older.

The Child Support Guidelines are intended to apply to children who are less than 18 years of age. If more than 18 years of age, but still attending high school or a similar secondary educational institution, the Court must consider the relevant case law and statutes. When the Court considers continued financial support for children attending college and/or parental contributions to college education, the primary consideration shall be given to the continued support of minor children remaining in the residence by reapplying the child support guidelines for those children before determining parental obligations for the cost of post-secondary education and/or continued support for a child attending college. Thus, the guidelines may continue to be used for determining child support for a child who has reached the age of 18 years and who is enrolled in high school or other secondary education and is living at home. However, after a child reaches majority and completes secondary education, a support obligation, if found by the Court to be appropriate, shall be determined in accordance with N.J.S.A. 2A:34-23 and existing case law.

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