

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE CHIEF JUSTICE
BOSTON, MASSACHUSETTS

CHILD SUPPORT GUIDELINES

The attached CHILD SUPPORT GUIDELINES supersede any previous Guidelines and are effective August 1, 2013.



Robert A. Mulligan
Chief Justice of the Trial Court

June 12, 2013

Preamble

These guidelines shall take effect on August 1, 2013 and shall be applied to all child support orders and judgments entered after the effective date. There shall be a rebuttable presumption that these guidelines apply in all cases establishing or modifying a child support order.

In recognition of the priority of the interests of the children of the Commonwealth, these child support guidelines are formulated to be used by the justices of the Trial Court, whether the parents of the children are married or unmarried, in setting temporary, permanent or final orders for current child support, in deciding whether to approve agreements for child support, and in deciding cases that are before the court to modify existing orders. The guidelines are intended to be of assistance to members of the bar and to litigants in determining what level of payment would be expected given the relative income levels of the parties. In all cases where an order for child support is requested, a guideline worksheet must be filled out, regardless of the income of the parties.

Principles

In establishing these guidelines, due consideration has been given to the following principles:

- 1) to minimize the economic impact on the child's standard of living;
- 2) to promote joint parental responsibility for child support in proportion to, or as a percentage of, income;
- 3) to meet the child's survival needs in the first instance, but to the extent either parent enjoys a higher standard of living, to entitle the child to enjoy that higher standard;
- 4) to protect a subsistence level of income of parents at the low end of the income range whether or not they are on public assistance;
- 5) to recognize that the parents should bear any additional expenses resulting from the maintenance of two separate households instead of one, since it is not the child's decision that the parents divorce, separate, or otherwise live separately.
- 6) to recognize the non-monetary contributions and extent of involvement of both parents;
- 7) to recognize the monetary and/or in-kind contributions of both parents in addition to the child support order;
- 8) to promote consistency in the setting of child support orders at all income levels whenever appropriate;
- 9) to recognize the importance, availability, and cost of health insurance coverage for the child;

- 10) to allow for orders and wage assignments that can be adjusted as income increases or decreases; and
- 11) to minimize problems of proof for the parties and to streamline administration for the courts.

I. INCOME DEFINITION

A. Sources of Income

For purposes of these guidelines, income is defined as gross income from whatever source regardless of whether that income is recognized by the Internal Revenue Code or reported to the Internal Revenue Service or state Department of Revenue or other taxing authority. Those sources include, but are not limited to, the following:

- 1) (a) salaries, wages, overtime and tips,
(b) income from self-employment;
- 2) commissions;
- 3) severance pay;
- 4) royalties;
- 5) bonuses;
- 6) interest and dividends;
- 7) income derived from
businesses/partnerships;
- 8) social security excluding any benefit due to a child's own disability¹;

¹ If a parent receives social security benefits or SSDI benefits and the child(ren) of the parties receives a dependency benefit derived from that parent's benefit, the amount of the dependency benefit shall be added to the gross income of that parent. This combined amount is that

- 9) veterans' benefits;
- 10) military pay, allowances and allotments;
- 11) insurance benefits, including those received for disability and personal injury, but excluding reimbursements for property losses;
- 12) workers' compensation;
- 13) unemployment compensation;
- 14) pensions;
- 15) annuities;
- 16) distributions and income from trusts;
- 17) capital gains in real and personal property transactions to the extent that they represent a regular source of income;
- 18) spousal support received from a person not a party to this order;
- 19) contractual agreements;
- 20) perquisites or in-kind compensation to the extent that they represent a regular source of income;
- 21) unearned income of children, in the Court's discretion;
- 22) income from life insurance or endowment contracts;
- 23) income from interest in an estate, either directly or through a trust;

parent's gross income for purposes of the child support calculation.

If the amount of the dependency benefit exceeds the child support obligation calculated under the guidelines, then the Payor shall not have responsibility for payment of current child support in excess of the dependency benefit. However, if the guidelines are higher than the dependency benefit, the Payor must pay the difference between the dependency benefit and the weekly support amount under the guidelines. *Rosenberg v. Merida*, 428 Mass. 182 (1998).

- 24) lottery or gambling winnings received either in a lump sum or in the form of an annuity;
- 25) prizes or awards;
- 26) net rental income;
- 27) funds received from earned income credit; and
- 28) any other form of income or compensation not specifically itemized above.

Income derived from a means-tested public assistance program (for example, TAFDC, SNAP and SSI benefits) shall not be counted as income for either party.

B. Overtime and Secondary Jobs

If the Court disregards income, in whole or in part, from overtime or a secondary job, due consideration must first be given to certain factors including but not limited to the history of the income, the expectation that the income will continue to be available, the economic needs of the parties and the children, the impact of the overtime on the parenting plan, and whether the extra work is a requirement of the job. The Court may consider none, some, or all overtime income even if overtime was earned prior to entry of the order.

If, after a child support order is entered, a Payor or Recipient obtains a secondary job or begins to work overtime, neither of which was worked prior to the entry of the order, there

shall be a presumption that the secondary job or overtime income should not be considered in a future support order.

C. Self-Employment or Other Income

Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely-held corporation, is defined as gross receipts minus ordinary and necessary expenses required to produce income. In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine the appropriate level of gross income available to the parent to satisfy a child support obligation. In many cases this amount will differ from a determination of business income for tax purposes. The calculation of income for purposes of this section may increase gross income by certain deductions or other adjustments taken for income tax purposes.

Expense reimbursements, in-kind payments or benefits received by a parent, personal use of business property, payment of personal expenses by a business in the course of employment, self-employment, or operation of a business may be included as income if such payments are significant and reduce personal living expenses.

D. Unreported Income

When the Court finds that either parent's gross income, in whole or in part, is undocumented or unreported for tax or other governmental purposes, the Court may reasonably impute income to the parent based on all the evidence submitted, including but not limited to evidence of the parent's ownership and maintenance of assets, and the parent's lifestyle, expenses and spending patterns.

In circumstances where the Court finds that a party has unreported income, the Court may adjust the amount of income upward by a reasonable percentage to take into account the absence of income taxes that normally would be due and payable on the unreported income.

E. Attribution of Income

Income may be attributed where a finding has been made that either party is capable of working and is unemployed or underemployed. The Court shall consider all relevant factors including without limitation the education, training, health, past employment history of the party, and the availability of employment at the attributed income level.

The Court shall also consider the age, number, needs and care of the children covered by this order. If the Court makes a determination that either party is earning less

than he or she could through reasonable effort, the Court should consider potential earning capacity rather than actual earnings in making its order.

F. Non-Parent Guardian

The income of a non-parent guardian shall not be considered for purposes of calculating a child support obligation.

II. FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER

A. Relationship to Alimony or Separate Maintenance Payments

These guidelines have been developed with the understanding that child support is non-deductible by the Payor and non-taxable to the Recipient. These guidelines do not preclude the Court from deciding that any order be designated in whole or in part as alimony without it being deemed a deviation provided the tax consequences are considered in determining the order and the after-tax support received by the Recipient is not diminished. It is the responsibility of the parties to present the tax consequences of proposed orders to the Court.

Chapter 124 of the Acts of 2011 (An Act Reforming Alimony in the Commonwealth) amended G. L. c. 208 and now prohibits the use of gross income which the Court has

already considered in making a child support order from being used again in determining an alimony order. See G. L. c. 208, § 53(c)(2). Consideration may be given by the parties to preparing alternate calculations of alimony and child support to determine the most equitable result for the child and the parties. Depending upon the circumstance, alimony may be calculated first, and in other circumstances child support will be calculated first. Judicial discretion is necessary and deviations should be considered.

B. Claims of Personal Exemptions for Child Dependents

In setting a support order, the Court may make an order regarding the claims of personal exemptions for child dependents between the parties to the extent permitted by law.

C. Minimum and Maximum Levels

These guidelines are intended to protect a minimum subsistence level for those parents obligated to pay child support whose gross income is \$150 per week or less. However, it is the obligation of all parents to contribute to the support of their children. To that end, a minimum order of \$80 per month (\$18.46 per week) should enter. This minimum should not be construed as limiting the Court's discretion to set a higher or lower order, should

circumstances warrant, as a deviation from the guidelines.

These guidelines are calculated up to a maximum combined available annual gross income of the parties of \$250,000. In cases where combined available income is over \$250,000, the guidelines should be applied on the first \$250,000 in the same proportion as the Recipient's and Payor's actual income as provided on line 1h of the child support guidelines worksheet. In cases where income exceeds this limit, the Court should consider the award of support at the \$250,000 level as the minimum presumptive order. The child support obligation for the portion of combined available income that exceeds \$250,000 shall be in the discretion of the Court.

D. Parenting Time

These guidelines recognize that children should enjoy parenting time with both parents to the greatest extent possible consistent with the children's best interests.

These guidelines are based upon the child(ren) having a primary residence with one parent and spending approximately one-third of the time with the other parent. If parenting time is less than one-third for the parent who is not the residential parent, the Court may consider an upward adjustment to the amount provided under the child support guidelines.

Where two parents share equally, or approximately equally, the financial responsibility and parenting time for the child(ren), the child support shall be determined by calculating the child support guidelines twice, first with one parent as the Recipient, and second with the other parent as the Recipient. The difference in the calculations shall be paid to the parent with the lower weekly support amount.²

Where parenting time and financial responsibility are shared in a proportion greater than one-third, but less than 50%, the child support guidelines shall be calculated first with one parent as the Recipient, and second as if the parties shared custody equally. The average of the base child support and the shared custody cross calculation shall be the child support amount paid to the Recipient.

Where there is more than one child covered by this order and each parent provides a primary residence for one or more of these children, child support shall be determined by calculating the child support guidelines twice, first with one parent as the Recipient using the number of children in his or her care, and second with the other parent as the Recipient using the number of children in his or her care. The difference in the calculations shall

² For purposes of these calculations, no deductions on line 1e of the Guidelines Worksheet shall be made.

be paid to the parent with the lower weekly support amount.³

E. Child Care Costs

Reasonable child care costs for the child(ren) covered by the order and due to gainful employment of either party are to be deducted from the gross income of the party who pays the cost. In appropriate circumstances, child care costs may include those due to training or education reasonably necessary to obtain gainful employment or enhance earning capacity. The Court may consider a deviation where the child care cost is disproportionate to income.

F. Age of the Children

These guidelines create a rebuttable presumption that the dollar amount provided for under the guidelines shall apply in all cases establishing or modifying a child support order involving children entitled to support from ages 0-18 and children over 18 who are still attending high school. Payment of child support for children over the age of 18 is established by statute.⁴ In establishing support orders for children over age 18, to the extent permitted by law, the Court shall exercise its discretion in ordering support and/or college contribution. The Court shall

³ For purposes of these calculations, no deductions on line 1e of the Guidelines Worksheet shall be made.

⁴ See G. L. c. 208, § 28, G. L. c. 209C, § 9 and G. L. c. 209, § 37.

consider the reason for the continued residence with and dependence on the Recipient, the child's academic circumstances, living situation, the available resources of the parents, the costs of post-secondary education for the child, the availability of financial aid and the allocation of those costs, if any, between the parents. Contribution to college costs is not presumptive, but is based upon the above factors. If a specific college contribution is ordered, this contribution shall be considered by the Court in setting the weekly support order, if any.

G. Health Insurance, Uninsured, and Extraordinary Medical Expenses

1) Health Insurance

Each party may deduct from gross income the reasonable cost of individual or family health insurance actually paid by that party.

However, if there is an additional cost to insure a person not covered by this order, and the Court determines that such additional cost would unreasonably reduce the amount of child support, then some or all of such additional cost shall not be deducted.

When the Court makes an order for child support, the Court shall determine whether health insurance is available through an employer or otherwise available at a reasonable cost that may be extended to

cover the child. When such insurance is available, the Court shall include in the support order a requirement that such insurance for the child be obtained or maintained. The Payor and Recipient must agree in writing that such insurance will be provided by other means not including MassHealth.

Health care coverage shall be deemed available to the Payor at reasonable cost if it is available through an employer. The Court may determine that the cost of health care coverage is unreasonable if it creates an undue hardship on the Payor. If the Court determines that health care coverage is not available to the Payor at a reasonable cost, then the Court shall enter an order requiring the Payor to obtain and maintain health care coverage for the child if and when the parent has access to such coverage at a reasonable cost.⁵

2) Dental/Vision Insurance

Each party may deduct from gross income the reasonable cost actually paid by that party of dental/vision insurance insuring the children covered by this order.

⁵ Current statutory language permits the Recipient of child support to provide health insurance if there is agreement, but absent agreement the Court lacks authority to require the Recipient to provide health insurance. At such time as the legislature amends the law, the Guidelines should be construed, to the extent possible, consistent with any amendments to Massachusetts law and federal regulations (45 C.F.R. parts 302, 303, 304, 305, and 308).

If there is an additional cost to insure a person not covered by this order, and the Court determines such additional cost would unreasonably reduce the amount of child support, then some or all of such additional cost shall not be deducted from gross income.

3) Routine Uninsured Medical and Dental Expenses

The Recipient shall be responsible for payment of the first \$250 each year in combined routine uninsured health and dental/vision expenses for all the children covered by this order. For amounts above that limit, at the time of entry of establishing or modifying the support order, the Court shall allocate expenses between the parties without adjustment to the child support order.

4) Uninsured Extraordinary Medical and Dental Expenses

The payment of uninsured extraordinary medical and dental expenses incurred for the children, absent agreement of the parties, shall be treated on a case-by-case basis. (Example: orthodontia, psychological/psychiatric counseling, etc.) Where the Court makes a determination that such medical and dental services are necessary and are in the best interests of the child(ren), the Court shall allocate such expenses between the parties.

H. Other Orders and Obligations

When an initial order or a modification of an existing order is sought for a child covered by the order, the following amounts actually paid to support a former spouse or a child not covered by this order shall be deducted from gross income for purposes of calculating the child support amount under this order:

- 1) the amount of prior orders for spousal and child support; or
- 2) voluntary payments to support a child with whom the Payor does not reside, to the extent the amounts are reasonable; or
- 3) a hypothetical amount of child support for a child with whom the Payor resides but for whom no child support order exists, which hypothetical child support amount shall be calculated according to the Guidelines Worksheet using the gross incomes of both parents of the child.

Obligations to a subsequent family may be used as a defense to a request to modify an order seeking an increase in the existing order but such obligations should not be considered a reason to decrease existing orders.

The party seeking to take such deductions from gross income must have a legal obligation or duty to support the former

spouse or child and must provide evidence that such support or voluntary payments are actually being paid.

To the extent that prior orders for spousal and child support are actually being paid, the Court should deduct those payments from the party's gross income before applying the formula to determine the child support order. Voluntary payments for other children a party has a legal obligation to support may be deducted in whole or in part to the extent the amounts are reasonable. It is the party's obligation to provide evidence of the existence and payment of prior orders or voluntary payments.

I. Families with More than Five Children

The guidelines formula applies to families with 1-5 children. For more than five children, the order should be at least the amount ordered for five children.

J. Other Child-Related Expenses

In such cases where the Court makes a determination that there are additional child-related expenses such as extra-curricular activities, private school, post-secondary education or summer camps, which are in the best interest of the child and which are affordable by the parties, the Court may allocate costs to the parties on a case-by-case basis.

III. MODIFICATION

A. A child support order may be modified if any of the following circumstances exist:

- 1) there is an inconsistency between the amount of the existing order and the amount that would result from the application of the child support guidelines;
- 2) health insurance previously available at reasonable cost is no longer available (or if available but not at reasonable cost);
- 3) health insurance not previously available to a party at reasonable cost has become available;
- 4) any other material and substantial change in circumstances has occurred.

B. In the event that the Department of Revenue is providing IV-D services, the provisions of G. L. c. 119A, § 3B(g) appear to apply to modification requests made within 0-3 years from the entry of the last order in which case the requesting party must demonstrate a substantial change in circumstances in addition to an inconsistency. See Morales v. Morales, 464 Mass. 507 (2013).

C. Upon a request for modification of an order that deviated from the guidelines at the time it was entered, the guidelines shall apply unless:

- 1) the facts that gave rise to deviation still exist; and
- 2) deviation continues to be in the child's best interest; and
- 3) the guidelines amount would be unjust or inappropriate under the circumstances.

Paragraph C above does not preclude deviations based on other grounds set forth in Section IV or grounds for modification as set forth in Paragraph A or B above.

IV. DEVIATION

The Court, or the parties by agreement approved by the Court, may deviate from the guidelines and overcome the presumptive application of the guidelines provided the Court enters specific written findings stating:

- 1) the amount of the order that would result from application of the guidelines;
- 2) that the guidelines amount would be unjust or inappropriate under the circumstances;
- 3) the specific facts of the case which justify departure from the guidelines; and

- 4) that such departure is consistent with the best interests of the child.

Circumstances which may support deviation, above or below the Child Support Guidelines include, but are not limited to, the following:

- 1) the parties agree and the Court approves their agreement;
- 2) a child has special needs or aptitudes;
- 3) a child has extraordinary medical or other expenses;
- 4) application of the guidelines, particularly in low income cases, leaves a party without the ability to self support;
- 5) Payor is incarcerated, is likely to remain incarcerated for an additional 3 years and has insufficient financial resources to pay support;
- 6) application of the guidelines would result in a gross disparity in the standard of living between the two households such that one household is left with an unreasonably low percentage of the combined available income;
- 7) a parent has extraordinary medical expenses;
- 8) a parent has extraordinary travel or other expenses related to parenting;
- 9) application of the guidelines may adversely impact re-unification of a parent and child where the child has been temporarily removed from the

- household based upon allegations of neglect;
- 10) absent deviation, application of the guidelines would lead to an order that is unjust, inappropriate or not in the best interests of the child, considering the Principles of these guidelines;
- 11) a parent has extraordinary health insurance expenses;
- 12) one parent is absorbing a child care cost that is disproportionate in relation to their income;
- 13) one parent provides less than one-third of the parenting time for a child or children.

Addendum:

Child Support Guidelines Worksheet

Instructions for Completing Worksheet

Child Support Guidelines Chart