

Calculating Child Support: Getting the Right Number

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Background of the Guidelines

- Oklahoma instituted child support guidelines in 1988
- Guidelines were significantly modified in 1999
- Oklahoma uses “Income Shares” model
- Child Support based on income of parents and time spent with child
- Last significant revision in 2008, effective July 2009

43 O.S. 118

- Scope and purpose of guidelines
- Sets forth assumptions about what is included in child support

43 O.S. 118A

- Adds definitions
- Includes definition for net income (gross minus credit for other children, support alimony, debt service)
- Current monthly child support = base, medical costs, child care costs
- Defines “overnights” for the purposes of parenting time adjustment as a twelve hour period with the child with reasonable expenditure of resources
- Parenting time adjustment = Shared parenting

43 O.S. 118B

- Determination of Income
- “Gross Income” is used to calculate child support
- “Gross Income” equals all earned and passive income “from any source” except as specifically excluded

What Is Income?

- **Earned Income:**
 - Just what it sounds like!
 - Inclusive list
 - Military pay included
- **Passive Income**
 - All other income
 - Pensions, rent, trust, social security, etc.
 - Inclusive list

What Is Income?

- Excluded income:
 - Money for benefit of children
 - Child support paid for other children
 - Adoption Assistance subsidy
 - Income of the child from any source
 - Foster care payments for other children
 - Means-tested public assistance
 - TANF, Food Stamps, State Disability
 - SSI (Supplemental Security Income)

Computing Gross Income

- All actual income, plus overtime and supplemental
- Average of last three years
- Minimum wage for 40 hour work week (\$1257)
- Imputed amount
- Standard: Most equitable of the four options
- Unless: if parent is permanently incapacitated, must use actual monthly gross income

Imputing Income

- A court may impute “if equitable”
- Is parent willfully or voluntarily under- or unemployed?
- Is there no reliable evidence of income?
- What is the employment history of the parent?
- What is the parent’s education level?
- What is the parent’s lifestyle?

Self-Employed Parents

- All income from business operation, independent contractor, sales of goods/services, rental property
- Minus business expenses
- Tax determination of income does not = child support determination of income
- Must deduct FICA tax withholding

Fringe Benefits

- Shall be counted as income if they “significantly reduce personal living expenses”
- Include company car, housing, room and board
- BAS, BAH, variable housing allowance are considered income
- Do not include: health insurance, retirement contributions made by employer

Social Security and Child Support

- If parent is disabled or retired and child receives benefit (SSDI or SSA benefit, not SSI)
- Add child's benefit to disabled/retired parent's gross income
- Offset child's benefit from final CS amount
- If $CS > SSA$, obligor pays difference
- If $CS < \text{or} = SSA$, obligor owes no further CS

Social Security and Child Support

- “Extra” amount goes to child
- Retained by caretaker
- Cannot be used to decrease child support order or reduce arrearages
- Use one calculation for all children
- Court may determine whether to credit SSA lump sum payments against CS arrears

43 O.S. 118C

- Credit for other children
- Sets forth two classes of children for whom credit may be given: children under a previous support order and children in parent's home
- Clarifies method of calculating credit for in-home children and documentation necessary to get credit for other children

Qualified Children

- Biological, legal, adopted child of parent
- Born prior to children in this case
- Parent is actually supporting
- Not a child before the court in this case
- Both parents may have qualified children

Out of Home Children

- Parent must establish existence of order
- Parent must show actual payments
- Credit given dollar-for-dollar up to ordered amount
- Average payments for last twelve months

In Home Children

- Must establish legal duty of support and at least 50% residence with parent
- “hypothetical child support order”
 - Use gross income of claiming parent
 - Find guideline chart amount
 - Multiply by 75%
 - Result = dollar-for-dollar credit from gross income

43 O.S. 118D

- Calculation of child support guidelines
- Clarifies that physical custody determines child support obligation, regardless of legal status (joint custody, etc.)
- Split custody: do two calculations and offset
- Miscellaneous provisions moved to this section (transportation expenses, SOSO form, etc.)

43 O.S. 118E

- Parenting Time Adjustment
- Adjustment given for overnights. Adjustment is presumptive rather than mandatory
- CP may have child support obligation if he/she has child less than 60% of time
- Variable factor for shared parenting calculation:
 - 121 – 131 = 2.0
 - 132 – 143 = 1.75
 - 144 or more = 1.5
- Provides remedy for CP if NCP fails to exercise ordered overnights

43 O.S. 118F

- Medical support
- Clarifies that court must set medical support order (required by federal Deficit Reduction Act)
- Defines health insurance
- Defines “accessible health insurance”
- Sets forth hierarchy of choices for court to explore when setting medical support

Medical Support Hierarchy

- Employer sponsored or other group health insurance
- Alternative Coverage:
 - Available through third party
 - Indian Health Services
 - Military (DEERS, TriCare)
- If no HI, custodial parent must apply for Soonercare and court enters cash medical order

Cash Medical Support

- Two types:
 - In lieu of insurance
 - Fixed, ongoing medical expenses
- In lieu of insurance:
 - Amount determined based on combined income of parents and percentage of FPL (federal poverty level)
 - Either \$0 or \$115/mo/child pro-rated by percentages

Cash Medical Support

- Cash medical must be able to terminate when child is enrolled in insurance and parent has notified other parent and OCSS
- If children are on SoonerCare, cash medical payment goes to OHCA as reimbursement for costs of SoonerCare program
- If no SoonerCare, cash medical goes to CP, and acts as offset against unreimbursed expenses

Cash Medical Support

- Cash medical in lieu of insurance is based on number of children not covered by insurance
- If child has insurance and is on SoonerCare, no cash medical
- If child has IHS, no cash medical

Indian Health Services

- Considered to be insurance under the statute
- No cash medical order should be entered
- BUT: if OCSS is a necessary party,
 - If CP requests,
 - If other insurance is available,
- OCSS will request court to order insurance
- CP may also request additional insurance
- Look at accessibility: does it meet child's health care needs?

Fixed Medical

- Second type of cash medical support
- If out-of-pocket expenses are static and defined, can include monthly average in guidelines
- Usually for asthma, orthodontia, physical therapy, etc.
- If end date is known, can include in order

Changes to Medical Support

- Parties must communicate changes in enrollment or cost within 30 days of change
- Parent desiring adjustment must move to modify (except to terminate cash medical)
- Failure to notify = may be denied credit or reimbursement

Overpayments/Underpayments

- If obligor underpays because of a change, amount established as judgment
- If overpaid, obligor can get credit by:
 - Offset against arrears
 - Credit against prospective support over 36 month period

43 O.S. 118G

- Child Care Expenses
- Clarifies that child care expenses are to be annualized and included as part of current monthly support
- Private child care allocated by percentages
- OKDHS child care subsidy is calculated differently

43 O.S. 118H

- Deviation factors
- Allows deviation if in the best interests of the child and other factors are present
- Requires findings by court when deviating
- Allows deviation for
 - extreme economic hardship
 - Extraordinary medical needs of child in parent's home
 - Children in foster care
- Deviation for extraordinary educational expenses and other extracurricular expenses

43 O.S. 1181

- Modification of Child Support Orders
- Requires material change of circumstances
 - Change in needs of child
 - Change in income of parents
 - Changes in child care or medical costs
 - Child aging out
- Modification effective as of filing date
- No retroactive modification

43 O.S. 1181

- Arrears from temporary order should be reduced to judgment, but failure to do so does not prohibit collection of T.O. arrears (since 1998)
- CS must be ordered for all children and orders should not be “per child”
- No automatic modification for children aging out

More information

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