

Child Support Gets Calculated How?

Factors and Tables and Worksheets, Oh My!

by Marci R. Carroll, Esq.

Ever wonder if child support obligations were determined using a “Magic 8 Ball”? Not at all. The legislature has attempted to insert a fair degree of objectivity into calculating child support by creating guidelines and a formula. Of course, having guidelines and a formula to follow doesn’t mean that family court judges do not retain a certain amount of discretion or that there is not room for quite a bit of argument as to what figures get plugged in and what exceptions and credits get applied. Moreover, case law further develops the statutory framework created by the legislature. The bottom line is that determining child support is still a complex process to those who do not deal with this issue on a regular basis.

Child support calculation is one of the reasons it is so important to accurately complete the income section of the financial statement and provide income tax return materials and paystubs. And even if you have provided these items for yourself, getting these items out of your co-parent can be another story entirely. The knowledge, skills, and tools of an experienced domestic relations attorney can make the difference in this respect alone.

If you or a friend or family member have been to court before regarding child support, things may have changed substantially since then. Furthermore, the way that West Virginia calculates child support obligations is very different from the way some other states determine that obligation. Beginning around 1988, West Virginia implemented child support guidelines under a model called the Melson Formula. Under the Melson Formula calculation process, the parents’ net income was used after deducting for certain of the parents’ individual living expenses. However, West Virginia switched to using an income shares model beginning in mid-1997. This income shares model is the method still used in West Virginia to calculate child support. The resulting calculation under the income shares guidelines results in a child support obligation that is presumed to be correct, but this presumption is rebuttable, and the court may deviate from the guideline amount under certain circumstances.

Under the current guidelines, the court essentially figures out how much the parents would spend on the minor children’s needs if they were living in the same household and weights this amount by the percentage of monthly gross income earned by the payor parent after applying a number of potential adjustments and credits. Child support is calculated under the income shares model in West Virginia in the following procedure in basic shared parenting allocations, which is also commonly referred to as “Worksheet A.”

“Worksheet A” addresses those parenting plans in which one parent has the minor children the vast majority of the time.

- ◆ Under the income shares model, the courts use the *monthly gross income* (*i.e.*, before deductions for taxes and expenses) of each parent. Regularly recurring income from all sources, including but not limited to employment, is counted. If a parent's income is sporadic, seasonal, or otherwise varies in certain respects, the courts typically average that parent's income for a look-back period of up to three years. Further, since a legislative amendment in the late 1990s, only fifty percent of overtime earned is counted as income for child support calculation purposes. Certain types of income, such as income received by other household members (including new spouses), child support received for the children of another relationship, means-tested assistance (including TANF, SSI, and food stamps), and a child's income, are excluded from a parent's gross income. In some circumstances, the court may even *attribute income* to a parent to be included in that parent's monthly gross income.
- ◆ If a parent has a *previously entered order to pay child support* for other children or is ordered to pay *alimony/spousal support*, those amounts are subtracted from that parent's gross income.
- ◆ Except in a modification situation where application would result in a lower child support obligation, the court may, but is not required to, grant the parents a further standardized deduction from their respective gross incomes for any *additional dependents* they may have.
- ◆ By making these deductions from the parents' respective gross incomes as applicable, the court arrives at each parent's *adjusted gross incomes*.
- ◆ The adjusted gross incomes are then added together to arrive at a *combined adjusted monthly gross income*.
- ◆ Each parent's *percentage share of income* is calculated by dividing that parent's monthly adjusted gross income by the combined adjusted monthly gross income amount.
- ◆ The court then refers to a statutory table based upon the parents' level of combined adjusted monthly gross income and the number of minor children they have in common to find the legislatively set *basic obligation* amount. This figure is the amount of money that the West Virginia legislature has determined that would typically be spent meeting the needs of those minor children if the parents were residing in the same household. Presumably, the legislature factored in certain amounts for the minor children's portion of household expenses such as mortgage or rent payments, food, and utilities.
- ◆ After determining the basic obligation amount, the court will then make some *adjustments* for certain expenses paid directly by either of the parents. These adjustments include, but are not necessarily limited to, seventy-five percent of *child care costs incurred so that a parent may work*, *uninsured extraordinary medical expenses*, the *children's portion of health insurance premium costs* paid by a parent.
- ◆ Each parent's adjustments are figured and then added together and applied to the *basic obligation* amount to arrive at the *total support obligation* for the children by both of the parents.

- ◆ Each parent's *percentage share of income* is then multiplied by the *total support obligation* amount to arrive at *each parent's share of the total child support obligation*.
- ◆ The payor parent is the parent who has to pay child support to the other parent. The parent who receives the child support payments in "Worksheet A" scenarios is the parent who has the minor children the vast majority of the time.
- ◆ The court then takes the payor parent's *share of the total child support obligation* and applies that parent's *adjustments* to finally determine the *recommended child support order*.

However, if the payor parent's adjusted monthly gross income is less than \$1,550, an additional ability to pay calculation is completed. Generally, the amount of child support ordered even under this additional computation should not be less than fifty dollars per month.

If the parents fall under an extended shared parenting allocation (*i.e.*, each parent has the children for more than one hundred twenty-seven days per year), the calculation gets even more complicated. "Worksheet B" is utilized in these situations. Certain additional adjustments are made such as multiplying the *basic obligation* by 1.5 and applying weighting factors for the number of overnights with each parent. The payor parent is no longer always the parent who has the minor child more than the other parent, as is the case under "Worksheet A." What is important to remember, however, is that "fifty-fifty" parenting time does not necessarily mean that neither parent will pay the other child support. Further, when negotiating or mediating parenting time issues, neither parent should be influenced by child support calculation issues; your attention as a parent at that point should be focused on your children.

When entering a child support order, the court should set forth such details as the monthly support obligation to be paid by a parent, the frequency that the support is to be paid, the effective date of the obligation, and whether automatic income withholding is to be implemented. The court will also include other related details, such as which parent is to provide health care coverage for the minor children, which parent is to receive the income tax dependency exemption for the minor children, and how uninsured medical expenses for the minor children are to be allocated between the parents.

Under current family court procedural rules, a child support award, except in paternity cases, is generally not supposed to be made retroactive before the date of service of the motion for this type of relief.

As you can see by now, calculating child support is far from simple even with the formula guidelines. Having the patience and dedication to gather documentation to either corroborate or disprove the parents' guesstimates of their incomes and carefully monitoring all of the factors and details that go into correctly calculating child support can make a difference. Having an experienced domestic relations attorney in your corner

who is familiar with the ins and outs of this complex process can make an even bigger difference in ensuring that you are paying or receiving your fair share of child support.

Law Offices of Marci R. Carroll • Suite 500 • WesBanco Building • Fairmont, WV 26554-3168
Phone: **(304) 367-9482** • Fax: **(304) 367-9633** • Internet: <http://www.mrcfamilylaw.com>
Copyright © 2004 Marci R. Carroll, Esq. • All Rights Reserved

DISCLAIMER: The information contained in this article is for informational purposes only, focuses on West Virginia domestic relations law, and is not intended to be a complete representation of the law applicable to the issue discussed herein. Our web site contains advertising material. Further, the area of domestic relations law has been rather fluid in recent years. Facts and circumstances, as well as their application to the law, vary from case to case. What would be appropriate and advisable in one case could very well prove inapplicable or disastrous in another case. Further, the application and interpretation of statutes, case law, rules, and other law varies among venues and individual family court judges. Reading this article certainly is no substitution for obtaining the legal advice of a licensed domestic relations attorney regarding specific issues or circumstances in a case.

The information you obtain at this site is not, nor is it intended to be, legal advice and does not constitute or form an attorney-client or other legal relationship between the Law Offices of Marci R. Carroll and persons or entities using or viewing this web site or portions thereof. You are not a client of the Law Offices of Marci R. Carroll until and unless you have executed and returned to us a signed Engagement Letter and the full case advance required. You should consult an attorney for individual advice regarding your own situation and should not rely on this web site to substitute for the advice of the Law Offices of Marci R. Carroll or another qualified attorney regarding the particular facts and circumstances of your domestic relations matter. Marci R. Carroll, Esq., is designated as the responsible attorney for this site. Please refer to our web site for additional legal notices.

DISTRIBUTION: You may reproduce materials, including this article, available at this web site for your own personal use and for non-commercial distribution. All copies must include the above copyright notice, full identification of our office and contact information, and any disclaimer or notice posted on the site that is applicable to the copied information.