

AMENDMENTS TO

6/11/99

CHAPTER 75-02-04.1  
CHILD SUPPORT GUIDELINES

Section 75-02-04.1-01 is amended as follows:

75-02-04.1-01. Definitions.

1. "Child" means any child, by birth or adoption, to whom a parent owes a duty of support.
2. "Child living with the obligor" means the obligor's child who lives with the obligor most of the year.
3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from means tested public assistance programs.
4. "Custodial parent" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of

custody descriptions such as "shared" or "joint" custody given in relevant judgments, decrees, or orders.

5. a. "Gross income" means income from any source, in any form, but does not mean ~~benefits~~:

(1) Benefits received from means tested public assistance programs such as ~~aid to temporary assistance to needy families with dependent children~~, supplemental security income, and food stamps;

(2) Employee benefits over which the employee does not have significant influence or control over the nature or amount unless:

(a) That benefit may be liquidated; and

(b) Liquidation of that benefit does not result in the employee incurring an income tax penalty; or

(3) Child support payments. ~~Gross~~

b. Examples of gross income includes include salaries, wages, overtime wages, commissions, bonuses, employee benefits, currently deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, ~~capital~~ gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, distributions of retirement benefits, receipt of previously deferred income, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent ~~each exceeds~~ they annually exceed one thousand dollars in value, spousal support payments received, earned income tax credits, ~~each~~ value of in-kind income received on a regular basis, children's benefits, income imputed based upon earning capacity, military subsistence payments, and net income from self-employment.

c. For purposes of this subsection, income tax due or paid is not an income tax penalty.

6. "In-kind income" means the receipt of any valuable right, property or property interest, other than money or money's worth, including forgiveness of debt (other than through bankruptcy), use of property, including living quarters at no charge or less than the

customary charge, and the use of consumable property or services at no charge or less than the customary charge.

7. "Net income" means total gross ~~monthly~~ annual income less:

a. ~~Federal~~ A hypothetical federal income tax obligation based on ~~application of standard deductions and tax tables~~ the obligor's gross income, reduced by that part of the obligor's gross income that is not subject to income tax under the internal revenue code, and applying:

(1) The standard deduction for the tax filing status of single;

(2) One exemption for the obligor;

(3) One additional exemption for each child actually claimed on a disclosed income tax return or one additional exemption for each child, as defined in this section, if a tax return is not disclosed; and

- (4) Tax tables for a single individual for the most recent year published by the internal revenue service, reduced by one child tax credit for each child's exemption considered under paragraph 3 of this subdivision;
- b. State A hypothetical state income tax obligation ~~based on application of standard deductions and tax tables~~ equal to fourteen percent of the amount determined under subdivision a without reduction for child tax credits;
- c. A hypothetical obligation for Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RRTA) tier I and tier II, and medicare deductions or obligations based on that part of the obligor's gross income that is subject to FICA, RRTA, or medicare tax;
- d. A portion of premium payments, made by the person whose income is being determined, for health insurance policies or health service contracts, intended to afford coverage for the child or children for whom support is being sought, determined by dividing the payment by the total number

- of persons covered and multiplying the result times the number of such children;
- e. Payments made on actual medical expenses of the child or children for whom support is ~~being~~ sought to the extent it is reasonably likely similar expenses will continue;
  - f. Union dues ~~where~~ and occupational license fees if required as a condition of employment;
  - g. Employee retirement contributions, deducted from the employee's compensation, ~~other than FICA~~ where and not otherwise deducted under this sub-section, to the extent required as a condition of employment; ~~and~~
  - h. Employee expenses for special equipment or clothing required as a condition of employment or for lodging expenses incurred when engaged in travel required as a condition of employment (limited to thirty dollars per night ~~or actual lodging costs, whichever is less~~), ~~incurred on a regular basis, but not reimbursed by the~~ employer; and

- i. Employer reimbursed out-of-pocket expenses of employment, if included in gross income, but excluded from adjusted gross income on the obligor's federal income tax return.
8. ~~"Net income from self employment" means gross income of any organization or entity which employs the obligor, but which the obligor is to a significant extent able to control, less actual expenditures attributable to the cost of producing income to that organization or entity.~~
9. "Obligee" includes, for purposes of this chapter, an obligee as defined in subsection 8 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support.
- ~~10.~~ 9. "Obligor" includes, for purposes of this chapter, an obligor as defined in subsection 9 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.

~~11.~~ 10. "Split custody" means a situation where the parents have more than one child in common, and where each parent has sole custody of at least one child.

History: Effective February 1, 1991; amended effective January 1, 1995;

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7; 50-09-02(12); 42 USC 667

A new subsection to section 75-02-04.1-02 is created as follows:

12. No amount may be deducted to determine net income unless that amount is included in gross income.

History: Effective February 1, 1991; amended effective January 1, 1995;

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

Section 75-02-04.1-05 is amended as follows:

75-02-04.1-05. Determination of net income from self-employment.

- ~~1. Expenses attributable to the cost of producing income vary from business to business. Deducting expenses from the gross income of the business determines the adjusted gross income, according to internal revenue service terminology. Net income from self-employment~~

means total income, for internal revenue service purposes, of the obligor and the obligor's business, reduced by the amount, if any, of that total income that is not the obligor's income from self-employment, plus:

a. Business expenses attributable to the obligor or a member of the obligor's household for:

(1) Employee's or proprietor's benefits, pensions, and profit-sharing plans; and

(2) Travel, meals, or entertainment; and

b. Payments made to a member of the obligor's household, other than the obligor, to the extent the payment exceeds the fair market value of the service furnished by the household member.

2. "Member of the obligor's household" includes any individual who shares the obligor's home a substantial part of the time, without regard to whether that individual maintains another home.

3. The "obligor's business" includes any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control.

4. If the ~~latest tax return is~~ returns are not available or ~~does~~ do not reasonably reflect the income from the business, a profit and loss ~~statement~~ statements which will more accurately reflect the current status of the business must be used.

~~2. After adjusted gross income from self employment is determined, all business expenses allowed for taxation purposes, but which do not require actual expenditures, such as depreciation, must be added to determine net income from self employment. Business costs actually incurred and paid, but not expensed for internal revenue service purposes, such as principal payments on business loans (to the extent there is a net reduction in total principal obligations incurred in purchasing depreciable assets), may be deducted to determine net income from self employment.~~

~~3-~~ 5. ~~Farm businesses~~ Businesses may experience significant changes in production and income over time. To the extent that information is reasonably available, the

average of the most recent five years of farm business operations, if undertaken on a substantially similar scale, ~~should~~ must be used to determine farm business income.

~~4. Land costs are a significant part of farm expenses. Because farmlands are used both for the production of income and for investment purposes, for the purpose of making determinations under this section, deduction of business costs relating to the purchase of land is limited to the lesser of:~~

~~a. The fair rental value of the land being purchased; or~~

~~b. The total principal and interest payments actually made toward the purchase of the land.~~

History: Effective February 1, 1991; amended effective January 1, 1995;

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

Section 75-02-04.1-06 is amended as follows:

75-02-04.1-06. Determining the cost of supporting a child living with the obligor. The cost of supporting a child living with the obligor, who is not also a child of the obligee, may be

deducted from net income under subsection 4 of section 75-02-04.1-06.1 ~~if this section is followed.~~

- ~~1. When the other parent of a child living with the obligor does not live with the obligor, the cost of supporting that child and is determined by:~~
  - ~~a. Applying applying the obligor's net income and the total number of children living with the obligor to whom the obligor owes a duty of support, to section 75-02-04.1-10+~~
  - ~~b. Dividing the amount determined under subdivision a by the total number of children to whom the obligor owes a duty of support; and~~
  - ~~c. Multiplying the amount determined under subdivision b times the total number of children to whom the obligor owes a duty of support and who are also living with the obligor.~~
- ~~2. When the other parent of a child living with the obligor also lives with the obligor, the cost of supporting that child is determined by:~~

- ~~a. Applying the combined total net income of the obligor and the other parent and the total number of children to whom the obligor or the other parent owes a duty of support, to section 75-02-04.1-10,~~
- ~~b. Dividing the amount determined under subdivision a by the total number of children to whom the obligor or the other parent owes a duty of support,~~
- ~~c. Multiplying the amount determined under subdivision b times the total number of children to whom the obligor owes a duty of support and who are also living with the obligor,~~
- ~~d. Dividing the obligor's net income by the combined total net income of the obligor and the other parent, and~~
- ~~e. Multiplying the amount determined under subdivision c times the decimal fraction determined under subdivision d.~~

~~3. For purposes of the calculation described in subsection 2, income may not be imputed under section 75-02-04.1-08.~~

~~4. When the other parent of a child living with the obligor also lives with the obligor, no deduction for the cost of supporting that child may be made, under subsection 4 of section 75-02-04.1-06.1, from the obligor's income if the obligor fails to furnish reliable information sufficient to determine the other parent's income.~~

History: Effective February 1, 1991; amended effective January 1, 1995;

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

Section 75-02-04.1-06.1 is amended as follows:

75-02-04.1-06.1. Determination of support amount in multiple-family cases.

1. This section must be used to determine the child support amount presumed to be the correct amount of child support in all cases involving an obligor who:
  - a. Owes duties of support payable to two or more obligees; or

- b. Owes a duty of support to at least one obligee and also owes a duty of support to a child living with the obligor who is not also the child of that obligee.
2. If a court consolidates proceedings involving an obligor and two or more obligees, the court must determine all obligations that may be determined in the consolidated proceeding without regard to whom the initial moving party may be.
3. A hypothetical amount that reflects the cost of supporting children living with the obligor, as determined under section 75-02-04.1-06, and a hypothetical amount due to each obligee under this chapter must first be determined for the children living with the obligor and each obligee, whether or not the obligee is a party to the proceeding, assuming for purposes of that determination:
  - a. The obligor has no support obligations except to the obligee in question; and
  - b. The guidelines amount is not rebutted; and
  - c. The obligor does not have extended visitation.

4. A hypothetical amount due to each obligee under this chapter must next be determined for each obligee who is a party to the proceeding, assuming for purposes of that determination:

a. The obligor's net income is reduced by:

(1) The amount of child support due to all other obligees, as determined under subsection 3; and

(2) The cost of supporting a child living with the obligor, who is not also the child of that obligee, as determined under section 75-02-04.1-06;

b. The guidelines amount is not rebutted; ~~and~~

c. Any support amount otherwise determined to be less than one dollar is determined to be one dollar; and

d. The obligor does not have extended visitation.

5. a. For Except as provided in subdivision b, for each obligee before the court, the support obligation

presumed to be the correct amount of child support is equal to one-half of the total of the two amounts determined, with respect to that obligee, under subsections 3 and 4.

b. Any necessary determination under this section must be made before an adjustment for extended visitation appropriate under section 75-02-04.1-08.1. The "amount otherwise due under this chapter", for purposes of section 75-02-04.1-08.1, is equal to one-half of the total of the two amounts determined, with respect to that obligation, under subsections 3 and 4.

6. The fact, if it is a fact, that the obligor is required to pay, or pays, a different amount than the hypothetical amounts determined under subsections 3 and 4 is not a basis for deviation from the procedure described in this section.

History: Effective January 1, 1995; amended effective  
General Authority: NDCC 50-06-16, 50-09-25  
Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 657

Section 75-02-04.1-07 is amended as follows:

75-02-04.1-07. Imputing income based on earning capacity.

1. For purposes of this section:
  - a. "Community" includes any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; and
  - b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than prevailing amounts earned in the community by persons with similar work history and occupational qualifications.
2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than:  
~~six tenths~~
  - a. Six-tenths of prevailing amounts earned in the community by persons with similar work history and occupational qualifications; or
  - b. One hundred sixty-seven times the federal hourly minimum wage.

3. Except as provided in subsections 4 ~~and~~ 5, and 9, monthly gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.
  - a. An amount equal to one hundred sixty-seven times the hourly federal minimum wage.
  - b. An amount equal to six-tenths of prevailing gross monthly earnings in the community of persons with similar work history and occupational qualifications.
  - c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court, for which reliable evidence is provided.
4. Monthly gross income based on earning capacity may be imputed in an amount less than would be imputed under subsection 3 if the obligor shows:

- a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child:
  - (1) Who is in the physical custody of the obligor;
  - (2) Who is under the age of fourteen; and
  - (3) For whom there is no other adult caretaker in the parent's home available to meet the child's needs during absence due to employment.
  
- b. The obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
  
- c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful

employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.

5. Gross income based on earning capacity may not be imputed if the obligor shows that the obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed.
6. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable in the community, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.
7. If the obligor fails, upon reasonable request made in any proceeding to establish a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, income based on earning capacity equal to the greatest of subdivisions a through c of subsection 3 must be imputed.

8. If the obligor fails, upon reasonable request made in any proceeding to review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, income must be imputed based on the greatest of:
  - a. Subdivisions a through c of subsection 3; or
  - b. The obligor's net income, at the time the child support order was entered or last modified, increased at the rate of ten percent per year.
  
9. Notwithstanding subsections 4, 5, and 6, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court, for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed.

History: Effective February 1, 1991; amended effective January 1, 1995;

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 657

New section 75-02-04.1-08.1 is created as follows:

75-02-04.1-08.1. Adjustment for extended visitation.

1. For purposes of this section, "extended visitation" means visitation between an obligor and a child living with an obligee scheduled by court order to exceed sixty of ninety consecutive nights or an annual total of one hundred sixty-four nights.
  
2. Notwithstanding any other provision of this chapter, if a court order provides for extended visitation between an obligor and a child living with an obligee, the support obligation presumed to be the correct child support amount due on behalf of all children of the obligor living with the obligee must be determined under this subsection.
  - a. Determine the amount otherwise due under this chapter from the obligor for those children.
  
  - b. Divide the amount determined under subdivision a by the number of those children.
  
  - c. For each child, multiply the number of that child's visitation nights times .32 and subtract

the resulting amount from three hundred sixty-five.

d. Divide the result determined under subdivision c by three hundred sixty-five.

e. Multiply the amount determined under subdivision b times each decimal fraction determined under subdivision d.

f. Total all amounts determined under subdivision e.

History: Effective

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

A new subdivision 1 to subsection 2 of section 75-02-04.1-09 is created as follows:

1. The reduced ability of the obligor to provide support when two or more of the obligor's children are in foster care or guardianship care.

History: Effective February 1, 1991; amended effective January 1, 1998;

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

Section 75-02-04.1-11 is amended as follows:

75-02-04.1-11. Parental responsibility for children in foster care or guardianship care. It is important that parents maintain a tie to and responsibility for their child when that child is in foster care. Financial responsibility for the support of that child is one component of the maintenance of the relationship of parent and child. Parents of a child subject to a guardianship order under North Dakota Century Code chapters 27-20 or 30.1-27 remain financially responsible for the support of that child.

1. In order to determine monthly net income, it is first necessary to identify the parent or parents who have financial responsibility for any child entering foster care or guardianship care, and to determine the net income of those financially responsible parents. If the parents of a child in foster care or guardianship care reside together, and neither parent has a duty to support any child who does not either reside with the parents or receive foster care or guardianship care, the income of the parents must be combined and treated as the income of the obligor. In all other cases, each parent is treated as an obligor, and each parent's support obligations must be separately determined. If an obligor under this section has a child living with the obligor, the support obligation must

be determined through applications of sections 75-02-04.1-06 and 75-02-04.1-06.1.

2. Each child in foster care or guardianship care is treated as an obligee, and support obligations must be separately determined for each such child.

~~3. If the support obligations determined under this section for a child or children in foster care exceed the cost of foster care, the support obligations must be reduced (proportionately if there is more than one obligor) to an amount equal to the cost of foster care.~~

History: Effective February 1, 1991; amended effective January 1, 1995; \_\_\_\_\_.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667