north dakota department of human services

Child Support Enforcement

Child Support Guidelines
Fact Sheet – Changes to Guidelines
Revised October 1, 2008

The amount of child support a person is required to pay in North Dakota is set by a court according to child support guidelines. The guidelines are adopted by the Department of Human Services through administrative rule. State and federal laws require the Department of Human Services to review the guidelines every four years to ensure that the application of the guidelines results in appropriate child support amounts being ordered by the court.

As part of the quadrennial review process, the Department convened a drafting advisory committee in 2006. The members of the committee included two legislators, a district court judge, a tribal court judge, an attorney in private practice, a parent who receives child support, and a parent who pays child support.

Based on the recommendations of the advisory committee, the Department proposed several changes to the child support guidelines. The guidelines had already been reviewed at several four-year intervals since they were adopted. As a result, the proposed changes included several clarifications and comparatively few substantive changes. Several proposed changes were prompted by judicial interpretations of the guidelines. A number of significant areas of the guidelines have been left unchanged, and those areas are listed below.

The Department held a public hearing on the proposed changes on November 16, 2006. In addition, comments were accepted through the close of business on November 27, 2006. Numerous comments were received during the comment period. Those comments were reviewed by the Department and some additional changes to the guidelines were proposed based on some of those comments. The proposed amendments were reviewed by the Attorney General's office and approved as to their legality. Final adoption of the proposed amendments occurred on June 27, 2008, resulting in revised guidelines. The revised guidelines were reviewed by the Legislative Assembly's Administrative Rules committee on September 11, 2008.

The revised guidelines are effective on October 1, 2008. The changes that resulted in the revised guidelines are summarized below, and can also be found on the Department's website at http://www.nd.gov/dhs/services/childsupport/progserv/guidelines/guidelines.html.

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Summary of Changes Resulting from the Quadrennial Review

Substantive Changes

- Imputation of income – N.D. Admin. Code § 75-02-04.1-07.
  - Replaced "prevailing amounts earned in the community" standard for imputation (defined as employment within 100 miles of the obligor's residence) with a "statewide average earnings" standard for persons with similar work history and occupational qualifications.

  - Replaced the "look-back" period for imputing wages based on an obligor's greatest monthly earnings in any twelve consecutive month period from thirty-six months to twenty-four months. **Note:** Conforming changes were made to the provisions in the self-employment section that address whether a self-employment loss can be used to reduce income that is not related to self-employment. The "look-back" period in those provisions was also reduced from thirty-six months to twenty-four months. N.D. Admin. Code §§ 75-02-04.1-05(6)(c) and -05(7)(c).

  - Define "voluntary change in employment," for imputing income to an obligor at one hundred percent of the obligor's greatest average monthly earnings in any twelve consecutive months, as a change made in bad faith, i.e., "a change made for purposes of reducing the obligor's child support obligation." An obligor whose income has been reduced as a result of a change in employment has the burden of proving that the change was not made to reduce the obligor's child support obligation.

  - Imputation of income to an obligor who is a minor (or under age 19 and still attending high school) is based on a twenty-hour work week, rather than a forty-hour work week.

  - Income is not required to be imputed to an uncooperative obligor at a rate of ten percent increase per year if reliable information regarding the obligor's income can be reasonably obtained from sources other than the obligor.

- Extrapolation of future income based on recent past events less than twelve months in duration is confirmed as an appropriate method of determining an obligor's gross income under the guidelines. N.D. Admin. Code § 75-02-04.1-02(8). Compare Korynta v. Korynta, 2006 ND 17; Logan v. Bush, 2000 ND 203.

- An offset of obligations in a split custody or equal physical custody case is suspended during any months when a child for whom the obligation was determined is on public assistance and the right to support has been assigned to the State. This change reiterates that an offset in a split custody or equal physical custody case is a method of payment only and does not reduce the child

support obligation of each parent or the amount of support that may be assigned to the State. N.D. Admin. Code §§ 75-02-04.1-03, 75-02-04.1-08.2. Compare Simon v. Simon, 2006 ND 29.

- The deduction from gross income for lodging expenses incurred when engaged in travel required as a condition of employment has been increased from thirty dollars per night to fifty dollars per night or actual documented lodging costs, whichever is greater. N.D. Admin. Code § 75-02-04.1-01(7).

- Subsidized adoption payments are excluded from an obligor's gross income as a form of public assistance benefits. N.D. Admin. Code § 75-02-04.1-01.

Clarifications

- Actual earnings for purposes of imputing income to an obligor include in-kind income. N.D. Admin. Code § 75-02-04.1-07(1).

- Fluctuation of income provisions apply to cases with employed obligors whose wages are subject to fluctuation, as well as self-employment cases. N.D. Admin. Code § 75-02-04.1-02(7).

- Income from self-employment under the guidelines is an example of gross income, and should be reduced by any appropriate deductions to determine an obligor's net income. If an amount was already deducted to determine net income from self-employment, it may not be deducted again in determining net income. N.D. Admin. Code § 75-02-04.1-05.

- Imputed income under the guidelines is an example of gross income, and should be reduced by any appropriate deductions to determine an obligor's net income. Compare Kobs v. Jacobson, 2005 ND 222. N.D. Admin. Code § 75-02-04.1-07.

Areas Where No Changes are Proposed

- Self-employment (except for the conforming change and clarification noted above)

- Foster Care

- Extended Visitation

- Multiple-family calculations

- Imputation to incarcerated obligors

- The schedule of child support amounts

Technical Changes

- Two incorrect words in N.D. Admin. Code § 75-02-04.1-13 are corrected.

For More Information: Contact James C. Fleming, Deputy Director/Chief Legal Counsel, or Paulette Oberst, Policy Administrator, North Dakota Department of Human Services – Child Support Enforcement Division, at 701-328-3582.