CHAPTER 75-02-04.1
CHILD SUPPORT GUIDELINES

SECTION 1. Subsection 5 of section 75-02-04.1-01 is amended as follows:

5. a. "Gross income" means income from any source, in any form, but does not mean:
   (1) Benefits received from public assistance programs that are means tested such as temporary assistance for needy families, supplemental security income, and food stamps, or that are provided in the form of subsidy payments made to adoptive parents;
   (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; or
   (4) Atypical overtime wages or nonrecurring bonuses over which the employee does not have significant influence or control.

   b. Examples of gross income include salaries, wages, overtime wages, commissions, bonuses, employee benefits, currently deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, distributions of retirement benefits, receipt of previously deferred income to the extent not previously considered in determining a child support obligation for the child whose support is under consideration, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent they annually exceed one thousand dollars in value, spousal support payments received, refundable tax credits, 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.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; April 1, 2010.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

SECTION 2. Section 75-02-04.1-09 is amended as follows:

75-02-04.1-09. Criteria for rebuttal of guideline amount.

1. The child support amount provided for under this chapter, except for subsection 2, is presumed to be the correct amount of child support. No rebuttal of the guidelines may be based upon evidence of factors described or applied in this chapter, except in subsection 2, or upon:
   a. The subsistence needs, work expenses, and daily living expenses of the obligor; or
   b. Except as provided for in subdivision m of subsection 2, the income of the obligee, which is reflected in a substantial monetary and nonmonetary contribution to the child's basic care and needs by virtue of being a custodial parent.
2. The presumption that the amount of child support that would result from the application of this chapter, except for this subsection, is the correct amount of child support is rebutted only if a preponderance of the evidence establishes that a deviation from the guidelines is in the best interest of the supported children and:
   a. The increased need if support for more than six children is sought in the matter before the court;
   b. The increased ability of an obligor, with a monthly net income which exceeds twelve thousand five hundred dollars, to provide child support;
   c. The increased need if educational costs have been voluntarily incurred, at private schools, with the prior written concurrence of the obligor;
   d. The increased needs of children with disabling conditions or chronic illness;
   e. The increased needs of children age twelve and older;
   f. The increased needs of children related to the cost of child care, purchased by the obligee, for reasonable purposes related to employment, job search, education, or training;
   g. The increased ability of an obligor, who is able to secure additional income from assets, to provide child support;
   h. The increased ability of an obligor, who has engaged in an asset transaction for the purpose of reducing the obligor's income available for payment of child support, to provide child support;
   i. The reduced ability of the obligor to provide support due to travel expenses incurred predominantly for the purpose of visiting a child who is the subject of the order taking into consideration the amount of court-ordered visitation and, when such history is available, actual expenses and practices of the parties;
   j. The reduced ability of the obligor to pay child support due to a situation, over which the obligor has little or no control, which requires the obligor to incur a continued or fixed expense for other

than subsistence needs, work expenses, or daily living expenses, and which is not otherwise described in this subsection;

k. The reduced ability of the obligor to provide support due to the obligor's health care needs, to the extent that the costs of meeting those health care needs:

(1) Exceed ten percent of the obligor's gross income;

(2) Have been incurred and are reasonably certain to continue to be incurred by the obligor;

(3) Are not subject to payment or reimbursement from any source except the obligor's income; and

(4) Are necessary to prevent or delay the death of the obligor or to avoid a significant loss of income to the obligor; or

l. ~~The reduced ability of the obligor to provide support when calculation of the obligation otherwise reflects consideration of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control; or~~

~~m~~. The reduced needs of the child to support from the obligor in situations where the net income of the obligee is at least three times higher than the net income of the obligor.

3. Assets may not be considered under subdivisions g and h of subsection 2, to the extent they:

a. Are exempt under North Dakota Century Code section 47-18-01;

b. Consist of necessary household goods and furnishings; or

c. Include one motor vehicle in which the obligor owns an equity not in excess of twenty thousand dollars.

4. For purposes of subdivision h of subsection 2, a transaction is presumed to have been made for the purpose of reducing the obligor's income available for the payment of child support if:

a. The transaction occurred after the birth of a child entitled to support;

b. The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and

c. The obligor's income is less than it likely would have been if the transaction had not taken place.

5. For purposes of subdivision j of subsection 2, a situation over which the obligor has little or no control does not exist if the situation arises out of spousal support payments, discretionary purchases, or illegal activity.

6. For purposes of subdivisions a through f of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter.

7. For purposes of subdivisions g through ~~l~~ k of subsection 2, any adjustment shall be made to the obligor's net income.

8. For purposes of subdivision ~~m~~ l of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter

after taking into consideration the proportion by which the obligee's net income exceeds the obligor's net income.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; July 1, 2008; April 1, 2010.
General Authority: NDCC 50-06-16, 50-09-25
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