

Department of Human Services Files Significant Rule Changes to the Income Shares Child Support Guidelines.

Modifications to Tennessee's Income Shares Child Support Guidelines were filed with the Secretary of State by the Department of Human Services on March 23, 2006, and will become effective on June 26, 2006. While not making any changes to the basic premise of the Income Shares Model, the new rules change some of the calculations specific to Tennessee's guideline model and clarify some important provisions of the existing rules. These modifications are the result of the recommendations made by the Income Shares Advisory Committee which the Department was directed to establish by the General Assembly by 2005 Public Chapter 403. The Committee was composed of judges, practitioners in the child support field, advocates, legislators, and child support program administrators.

For instance, the rule for imputing income to a parent has been modified to more clearly state that there is no presumption that a parent is willfully or voluntarily unemployed or underemployed, and to provide criteria for determining whether income should be imputed to the parent for this reason. For example, if a parent chooses to stay at home to raise a child, there is no presumption of voluntary unemployment. The rules provide criteria for determining whether the parent is voluntarily unemployed and whether income should be imputed to that parent, including such things as the age of the children, the parent's prior caretaker role in the intact family, and the time the parent may have been out of the workforce to care for the children.

The new rules also simplify the process for calculating credits against gross income for support provided to qualified other children of a parent. A separate credit for pre-existing orders will no longer be calculated – these amounts will now be included in the calculation for “not-in-home” children. Consistent with this change, the “pre-existing order” section has been removed from the Credit Worksheet. For purposes of calculating the “not-in-home children” credit, the rules will now permit consideration of in-kind remuneration. Previously, only monetary support could be counted towards the credit. The credit for children residing with each parent 50% of the time (182.5 days) will be included in the calculation for “in-home” children.

The most significant change is probably the new methodology for calculating the parenting time adjustment, which results in a day-for-day adjustment for both decreasing and increasing the Alternate Residential Parent's (ARP's) share of the basic child support obligation. The methodology for decreasing the support obligation recognizes the additional child-rearing expenses incurred in the household of the ARP, starting at 92 days of parenting time (rather than the current threshold of 121 days). Under the revised guidelines, the Primary Residential Parent's (PRP's) share of these additional expenses serves as an adjustment to the ARP's support obligation to the PRP. In cases where the PRP's income is greater than the ARP's and the ARP exercises significant amounts of parenting time, the PRP could owe a support obligation to the ARP. In cases where the parents have the same income and parenting time, there will be no Basic Child Support Order (BCSO) amount owed from one parent to the other, however, the additional expenses for the children, such as uninsured medical expenses or child care costs, could still generate a support obligation in that circumstance. An increase to an ARP's support obligation for exercising significantly less than standard visitation will now begin at 68 days, rather than the current threshold of 53 days.

Along with changes to the parenting time adjustment, the new rules also modify the definition of a “day” as well as the process for calculating a parent’s average parenting time. A “day” of parenting time is now the majority of a 24-hour period, rather than a calendar day, and the expenditure of resources for this period is now presumed. This change will accommodate both the “overnight” and “day only” time periods that exceed twelve hours. The new rules will also permit the adding together of significant levels of parenting time that do not separately comply with the definition of a “day.” Average parenting time will now include all children with whom a parent is spending less than 50% of the time. By definition, this necessarily excludes children residing with each parent 50% of the time. The parenting time adjustment for children residing with each parent 50% of the time will be calculated separately.

Changes have also been made to the calculation of additional expenses. Recurring uninsured medical expenses have been relocated to the section of the Child Support Worksheet with the other mandatory expenses to be automatically pro-rated according to each parent’s percentage of income. Childcare expenses not automatically deducted from a parent’s payroll should be paid to the provider by a child’s PRP. Accordingly, in standard parenting situations, any non-payroll-deducted childcare expense being paid by the ARP will be reassigned by the Worksheet for payment by the PRP. This payment requirement does not apply to situations in which the child resides with each parent exactly 50% of the time. In order to capture actual amounts owed by a parent, the Worksheet will no longer calculate each parent’s pro-rata share of all additional expenses but, instead, will now capture each parent’s pro-rata share of the expenses being paid by the other parent. This change eliminates the need for the current “Line 14” adjustment. The Adjusted Support Obligation (ASO) will now represent an actual obligation for each parent. In most cases, the smaller amount will be subtracted from the larger, and the difference will be owed by the parent with the larger obligation. In non-parent-caretaker situations with both parents available to provide support, each ASO will represent an obligation owed by the respective parent to the non-parent caretaker.

Also, incorporated into these new rules is the change to the definition of “significant variance,” required for modification of a child support order, that was initially accomplished through an emergency rule based upon a recommendation of the Advisory Committee. This rule change has maintained, as applied to Flat Percentage orders, the additional significant variance criteria initially implemented on January 18, 2005, and originally scheduled to expire on January 1, 2006. As a result of the change, in order to modify under Income Shares an order initially established under the Flat Percentage Guidelines, a significant variance requires a 15% (or 7.5% for low income individuals) change in the amount of the order **plus** one of the following: (1) a 15% change in the income of the ARP, (2) a change in the number of children for whom the ARP is legally responsible, (3) a child under the order becoming disabled, or (4) the parent’s voluntarily agreeing to modify the order in accordance with the Income Shares Guidelines. Accordingly, modification of a Flat Percentage order requires some change in the circumstances of the case other than just a change in the amount of the support obligation due solely to implementation of the Income Shares guideline model, thereby providing some protection to parties receiving or paying support under Flat Percentage orders. For orders initially established under Income Shares, a significant variance requires only a 15% (or 7.5%) change in the amount of the order as this change would necessarily result from some change in the circumstances of the case other than a change in the guidelines model.

Finally, also upon recommendation of the Advisory Committee, the availability of the hardship deviation for modification of orders originally established under the Flat Percentage Model is no longer limited to the first deviation under Income Shares, but can be applied whenever appropriate.

In order to accommodate all of these rule changes, the Child Support Worksheet has been reformatted. The columns have been re-designated as Mother (A), Father (B), and Non-Parent Caretaker (C). The PRP / ARP designations now appear only in the "Identification" section of the Worksheet – because the PRP can now owe a support obligation, the PRP / ARP designation is no longer synonymous with obligee / obligor. In non-parent caretaker situations, support can now be calculated for both parents on the same Child Support Worksheet rather than having to use two worksheets as previously required. The same worksheet can also be used to calculate support in either a standard or split parenting situation in conjunction with a situation in which the children spend 50% of their time with each parent. Total amounts that were previously captured in Column C on the Worksheet have either been relocated or removed.

The income section of the Worksheet now includes a space for consideration of Social Security benefits received by a child on the account of a parent. The "low-income" indicator has been relocated to the "Presumptive Child Support Order" section, which now also includes a "flat-percentage" indicator. Upon entering a "Y" in the field provided for the "flat-percentage" indicator, the significant variance will be determined based upon a comparison of the current order and the parent's pro-rata share of the BCSO, rather than the PCSO, since the Flat Percentage Guidelines did not include consideration of parenting time or additional expenses.

As was the case when the Income Shares model was first implemented, support can be calculated by using the internet calculator or the Excel Worksheet. Updates to these tools will be implemented on June 26, 2006, and can be accessed on the Department's website at: <http://www.state.tn.us/humanserv/>.

A more detailed explanation of the new rules can be found at the Department's website at <http://www.state.tn.us/humanserv/rule05-11incomesharesamendfinaltext.pdf>.