

POTENTIAL INCOME: When It Should And Should Not Be Considered

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Overview

- What is potential income?
- Unemployed/Underemployed: How do we know?
- How to calculate (518A.32 Subd 2)
- Default standard vs. minimum wage
- When not to consider potential income (518A.32 Subd. 3)
- Apply subd 3 factors to these specific situations
 - Full time students
 - Part time students
 - Underemployed due to the economy
 - Receipt of unemployment benefits
 - Partially disabled

Overview (cont.)

- Incarcerated individuals
- Self employed (518A.32 Subd 6)
- Childcare issues related to employment (MSA 518A.32 Subd 5)

What is Potential Income?

- Potential income is not real income
- Potential income is the income a parent could earn but is not actually earning.
- Actual income is income the party actually receives
- Potential Income is not actually received by the party, but hypothetically could be if they were so inclined

M.S.A. 518A.29 (a)

- Calculation of gross income includes potential income under M.S.A. 518A.32

M.S.A. 518A.32, Subdivision 1

- If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income.

Unemployed/Underemployed

- How do we know??
 - There is a rebuttable presumption that a parent can be gainfully employed on a full-time basis.
 - Full-time means a 40 hour work week except in those occupations where by custom or practice most employers use a normal work week of more or less than 40 hours
 - 518A.32, Subdivision 1

How to calculate

- Ability: Use of these three methods
 - The parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community
 - Actual amount of unemployment benefits
 - 150% of federal or state minimum wage, whichever is higher
- M.S.A. 518A.32, Subdivision 2

Default Standard vs. Minimum Wage

- Minimum wage is \$7.25 per hour
- 150% (default standard) is \$10.88 an hour
- When to use default
- When to use minimum wage
- When to use something else

When Not to Consider Potential Income

- the unemployment, underemployment, or employment on a less than full-time basis is temporary and will ultimately lead to an increase in income; or
- the unemployment, underemployment, or employment on a less than full-time basis represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child; or

When Not to Consider (cont.)

- the unemployment, underemployment, or employment on a less than full-time basis is because a parent is physically or mentally incapacitated or due to incarceration, except where the reason for incarceration is the parent's nonpayment of support

Effect of Receipt of TANF

- If the parent is a recipient of TANF, potential income is NOT considered
 - M.S.A. 518A.32, Sub. 4
- What if NCP is recipient of TANF

Specific Scenarios for Discussion

- Full-time students
- Part-time students
- Underemployed due to the economy
- Receipt of unemployment benefits
- Partially disabled
- Incarcerated
- Establishment vs. modification actions

Self Employed Parents

- A self-employed parent is not considered to be voluntarily unemployed, underemployed, or employed on a less than full-time basis if that parent can show that the parent's net self-employment income is lower because of economic conditions that are directly related to the source or sources of that parent's income.
- 518A.32, Subdivision 6

Self-Employed Continued

- When and how do we consider potential income when looking at a self-employed obligor

Caretaking

- If a parent stays home to take care of the children of the action, the court may consider the following when determining if that parent is voluntarily underemployed or unemployed:
 - (1) the parties' parenting and child care arrangements before the child support action;
 - (2) the stay-at-home parent's employment history, recency of employment, earnings, and the availability of jobs within the community for an individual with the parent's qualifications;

Caretaking (cont.)

- (3) the relationship between the employment-related expenses, including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from available jobs within the community for an individual with the parent's qualifications;
 - (4) the child's age and health, including whether the child is physically or mentally disabled; and
 - (5) the availability of child care providers.
- M.S.A. 518A.32 Subd 5

Questions??
