

What's their potential? Income that is.

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Special thanks to Heidi Chandler,
Assistant Itasca County Attorney

§518A.32 Potential Income



What is potential income?

- Child support must be calculated based on a determination of potential income if:
 - Voluntarily unemployed;
 - Underemployed;
 - Employed on a less than full-time basis; or
 - No direct evidence of any income
- Rebuttably presumed that parent can be employed full-time.



How is potential income determined?

- 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;
- If parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the benefit received;
- Amount of income a parent could earn working 150% of current federal or state minimum wage, whichever is higher.



When is a parent not considered voluntarily unemployed, underemployed or employed on a less than full-time basis?

- When unemployment, underemployment or part-time employment is temporary and will lead to an increase in income;
- When unemployment, underemployment or part-time employment represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child; or
- When unemployment, underemployment or part-time employment is because a parent is physically or mentally incapacitated or due to incarceration.

What if parent is a TANF recipient?

- If parent is a recipient of TANF cash assistance, potential income cannot be used.



Stay-At-Home Parent

- Statutory factors court may consider:
 - Arrangements prior to the child support action;
 - S-A-H work history, how recent, earnings, availability of jobs within the community for a person with S-A-H's qualifications;
 - Cost of care including transportation compared to the income S-A-H parent could receive within the community with qualifications;
 - Child's age & health, including physical or mental disabilities; and
 - Availability of child care providers.



Economic conditions

- A self-employed parent is not considered 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 the economic conditions that are directly related to the source or sources of income

Specific Scenarios

- Default Standard vs. Minimum wage
 - First Scenario: your obligor is unemployed, 18 years old, still attending high school
 - Second Scenario: your obligor unemployed, 18 years old and just graduated from high school
 - Third Scenario: your obligor is 18 years old, just graduated from high school and employed working 20 hours per week making \$9.00 per hour.

Default Standard vs. Minimum wage (cont.)

- Fourth scenario: your obligor was laid off two years ago from an automotive mechanic job. Obligor no longer receives unemployment compensation. Obligor lives in a small town with very few employment opportunities. They made \$14 an hour before being laid off. They have a tech school background in auto mechanic and worked in that business for 10 years before the lay-off.
- Fifth Scenario: the only information you have about your obligor is that they are 31 years old and unemployed. No other information

Specific Scenarios (cont.)

- Incarcerated Obligor
 - First Scenario: your obligor is sentenced to five years in prison.
 - Second Scenario: your obligor is sentenced to five years in prison but they are earning wages in prison (.35 per hour)
 - Third Scenario: your obligor is completing a nine month sentence doing local time in county jail

Specific Scenarios (cont.)

- Student Obligor
 - First Scenario: your obligor is 18 years old, unemployed and attending college full-time
 - Second Scenario: same as first, only attending college part-time
 - Third Scenario: your obligor is 28 years old, unemployed and just started attending college full-time. Obligor used to work full-time in construction earning \$37,500 annually including unemployment and wages. Obligor was involved in a non-work related car accident resulting in an inability to perform the physical type construction work they did before. No medical evidence as to ability to work. Obligor does not receive any type of disability benefits.

Student Obligor (cont.)

- Fourth Scenario: your obligor is a 22 year old college student. They are a junior and employed 18 hours per week at a sporting goods store making \$9.75 per hour.
- Fifth Scenario: your obligor is a 24 year-old recent college graduate now attending graduate school full-time. Never worked during college and does not intend to work during graduate school.
- Sixth Scenario: your obligor is a 38 year old law student. Recently employed full-time in the banking industry earning \$56,000 per year. Voluntarily left job to attend law school. The children are 14 and 16.

Specific Scenarios (cont.)

- **Stay at Home Mom**

- First Scenario: your obligee is a stay at home mom caring for her two subsequent children. Her new husband supports the family. She worked as a legal secretary before she voluntarily quit her job to stay home with her two younger children. She made \$16.25 per hour.
- Second Scenario: same as first only it involves your obligor.
- Third Scenario: your obligee is a stay at home mom who stays home to care for the two children of your action. She has always been a stay at home mom. The kids are 2 and 4.
- Fourth Scenario: same a third scenario above only the kids are 11 and 13

Specific Scenarios (cont.)

- Self Employed
 - Obligor has his own meat delivery/sales business. He employs two drivers and himself. They sell meat from a truck. He owns two meat trucks. He drives the truck as well. His business is an S corp. He has provided three years of tax returns, both personal and corporate. His personal expenses are so intermingled with the corporation you cannot discern his income with any reasonable certainty. He has told you he makes \$500 per week and the personal expenses he provided you support that. His personal expenses did not include a house payment, a car payment, an electric bill or a cell phone.

Minnesota Statewide Salary Survey Information

- <http://www.positivelyminnesota.com/apps/lmi/oes/>

Self Employed (cont.)

- Obligor is self employed as the owner of a tattoo shop. He has not provided any financial information and we have no information as to what his income is. Obligees has told you he has four other tattoo artists working in his shop that he rents space too. They are not his employees, they just rent shop space from him and pay a percentage of their sales to him. He also has a space in the shop where he performs tattoo services.

Thank you

Michelle Lawson
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