

MCAA HOT TOPICS

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POTENTIAL INCOME

518A.32 Potential Income

Subdivision 1. General

This section applies to child support orders, including orders for past support or reimbursement of public assistance, issued under this chapter, chapter 256, 257, 518B, or 518C. 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.

518A.32 Potential Income

Subdivision 1. continued:

For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis. As used in this section, "full time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers, due to custom, practice, or agreement, use a normal work week of more or less than 40 hours in a week.

518A.32 Potential Income

Subdivision 2. Methods. Determination of potential income must be made according to one of three methods, as appropriate:

- (1) 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;
- (2) if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or

518A.32 Potential Income

Effective March 1, 2016 - Section 518A.32, subd. 2 (3), was amended to read:

(3) the amount of income a parent could earn working ~~full time at 150~~ 30 hours per week at 100 percent of the current federal or state minimum wage, whichever is higher.

Decision making Process

Actual Income – Starting point every time

Past History – Best predictor of future income

Type of Industry – Typical number of hours

Other Factors – Educational background, prior criminal history, prior receipt of public assistance, etc.

Goal - Fair, enforceable orders

Summary

Can no longer use 150% of minimum wage as the default starting point, it is now 100%

Need to either use or rebut the presumption that “full time” is 40 hours a week – exception for industry standards

Can also look at past history of party along with other factors like educational background, prior incarceration, prior receipt of public assistance, etc.

Using 30 hours may be more appropriate if party does not have a demonstrated history of working 40 hours per week

MEDICAL SUPPORT-ONLY MODIFICATIONS

Medical Support Only Modifications

The “Problem(s)”:

- ◉ Consistently rising health care costs
- ◉ Koser v. Koser
- ◉ Cases affected by interface issues?

Medical Support Only Modifications, continued

One solution:

Laws of Minnesota 2015, Chapter 71, Article 1,
Sections 72, 76-77, 79-80.

Codified at Minnesota Statutes, section 518A.39,
subd. 8; 518A.41, subd. 14-15; 518A.46, subd. 3-3a
(AKA “Medical Support-Only Modification”)

Effective January 1, 2016.

Medical Support-Only Modifications, continued

Medical support terms AND determination of dependency exemption may be modified, without modification of the entire order, if:

- The order has been established or modified “in its entirety” within 3 years of the date of the motion

AND

- Upon a showing of any one of several grounds:

Medical Support-Only Modification, continued

Grounds for Medical Support-Only Modification:

- (1) a change in the availability of appropriate health care coverage or a substantial increase or decrease in health care coverage costs;
- (2) a change in the eligibility for medical assistance;
- (3) a party's failure to carry court-ordered coverage, or to provide other medical support as ordered;

Medical Support-Only Modifications, continued

Grounds for Medical Support-Only Modification (continued):

- (4) the federal child dependency tax credit is not ordered for the parent who is ordered to carry health care coverage; or
- (5) the federal child dependency tax credit is not addressed in the order and the noncustodial parent is ordered to carry health care coverage.

Medical Support-Only Modifications, continued

Other provisions:

- May be made retroactive only for the period while the moving party has the motion pending, but only from the date of service on the other party and on the county attorney (if public assistance is being furnished or the county attorney is an attorney of record).
- Court need not hold an evidentiary hearing.
- The PICS stated in the order being modified shall be used to determine the modified medical support.

Medical Support-Only Modification, continued.

Contents of pleadings for medical support-only modifications differ from those for “regular” establishment or modification.

- Compare Minnesota Statutes section 518A.46, Subdivision 3, (a) (contents of pleadings for “regular” actions) with Subdivision 3a (a) (contents of pleadings for medical support-only modifications).

Medical Support-Only Modification, continued

INITIATING PARTY: “REGULAR” ACTION

- Names, addresses and birth dates
- Social Security numbers
- Obligor’s other obligations
- Employer information
- Gross income per statute
- Other income
- Health insurance coverage
- Types/amounts of public assistance
- Other information relevant to calculation under 518A.34

INITIATING PARTY: “MED MOD ONLY”

- Names, addresses and birth dates
- Social Security numbers
- Employer information
- Gross income per prior order
- Health insurance coverage
- Other information relevant to calculation under 518A.41

Medical Support-Only Modifications, continued.

Contents of required public authority filings for medical support-only modifications differ from those for “regular” establishment or modification.

- Compare Minnesota Statutes section 518A.46, Subdivision 3, (b) (required public authority filings for “regular” actions) with Subdivision 3a (b) (required public authority filings for medical support-only modifications).

Medical Support-Only Modification, continued.

PUBLIC AUTHORITY; SET IN EX
PRO: “REGULAR ACTIONS”

- ◉ DEED/Wage Match info
- ◉ Statement of charging on IV-D cases
- ◉ Types/amounts of public assistance received by parties
- ◉ Other information relevant to determination of support

PUBLIC AUTHORITY; SET IN EX
PRO: “MED MOD ONLY”

- ◉ Statement of charging on IV-D cases
- ◉ Amount of medical assistance received by parties.
- ◉ Other information relevant to determination of medical support

Medical Support-Only Modifications, continued.

Other practical issues:

⦿ Extent/nature of review

- One party requests R&A for med-only mod
 - Obvious facts suggest full review is appropriate
 - Other party requests full R&A

⦿ Countermotions for other relief

- County served med-only mod
 - Case review/response indicates other relief is appropriate

Medical Support-Only Modifications, continued.

- “Substantial increase or decrease” in costs
 - What does this mean?
 - Any relationship to subd. 2 criteria?
 - At what point should the public authority deny med-only mod R&A because the increase/decrease is deemed not “substantial”?

Medical Support-Only Modifications, continued.

⦿ Dependency exemption issues

- Does section 518A.41, subd. 14, as amended, impose any duty on the public authority to address this?
- If so, does an attorney for the public authority know enough to satisfy Rule 11 before signing pleadings?
- See Minnesota Statutes section 518A.38, subd. 7 (b) for the factors the court may consider in awarding the dependency exemption.

Medical Support-Only Modifications, continued.

- “[I]n its entirety within three years” issues:
 - What does “in its entirety” mean?
 - All substantive terms actually established or modified?
 - All substantive terms merely before the court?
 - Is the med mod-only remedy a “one-off” or can parties seek that relief more than once in the three years since the “full order”?

Medical Support-Only Modifications, continued.

Other solutions:

- Stipulations
- “Regular” modifications, even with respect to medical terms.
 - See, e.g., section 518A.39, subd. 2 (a) (3), (5) & (6) and subd. 2 (b) (2)-(4).
- Countermotions

Medical Support-Only Modifications, continued.

“If you ask one question, it will lead you to another, and another, and another. It's like peeling an onion.”

Lemony Snicket, The End

PARENTING EXPENSE ADJUSTMENT

2015 Legislative Session

● Current Parenting Expense

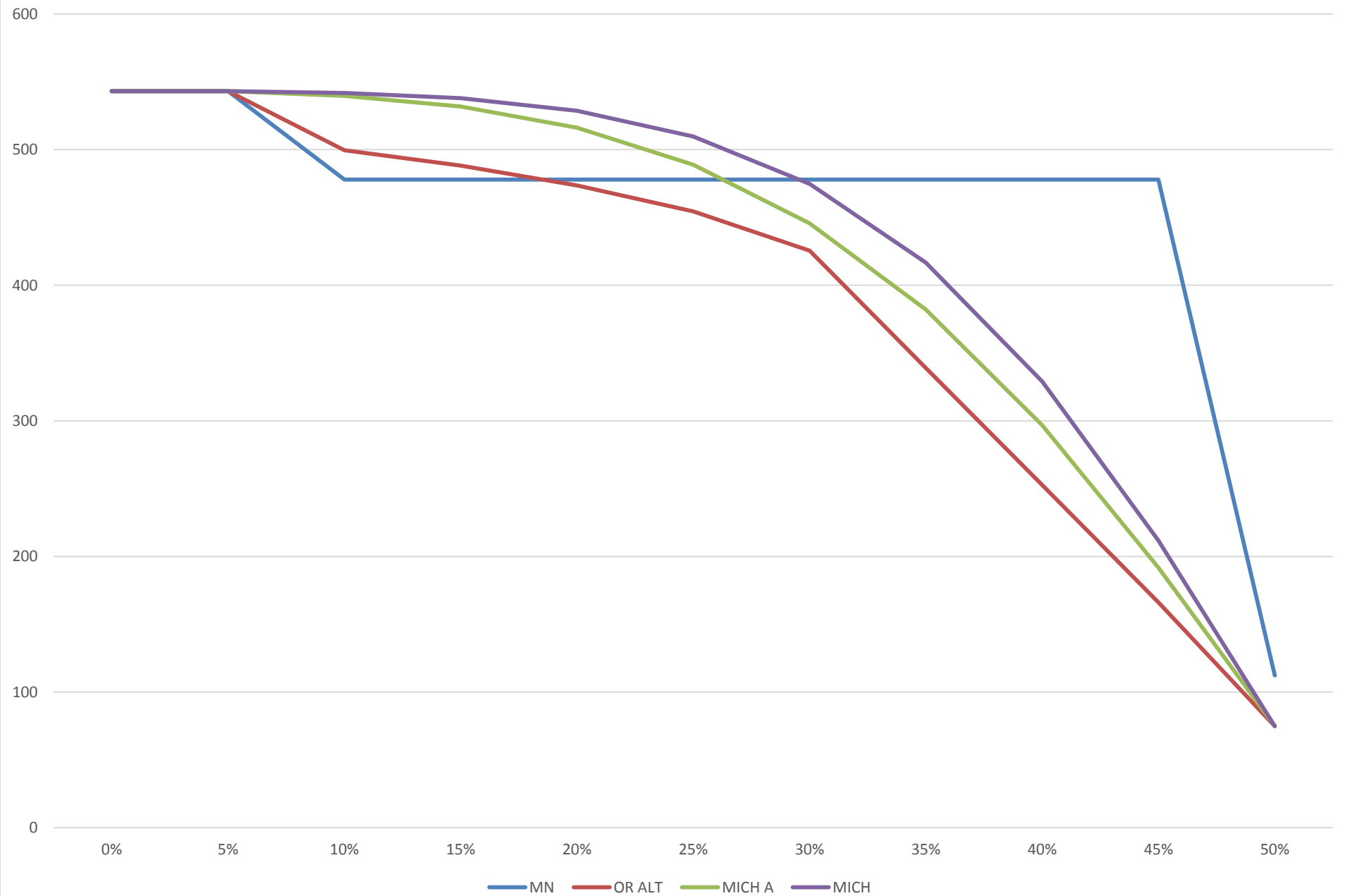
Adjustment viewed as unfair

- Same adjustment for wide variation in time
- Cliff Effect

● Child Support Workgroup

- Review Parenting Expense Adjustment (PEA) and make recommendations

Obligation for 1 child; median income by gender



Parenting Expense Adjustment

- Session Law 189
- Minn. Stat. 518A.36 Effective August 1, 2018
- Michigan model

$$\frac{(\mathbf{Ao})^3 (\mathbf{Bs}) - (\mathbf{Bo})^3 (\mathbf{As})}{(\mathbf{Ao})^3 + (\mathbf{Bo})^3}$$

Where:

Ao – Approximate annual number of overnight equivalents the children will spend with parent A

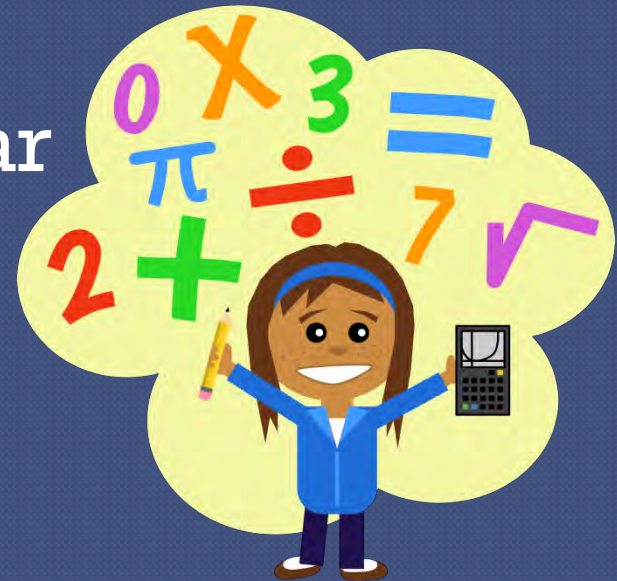
Bo – Approximate annual number of overnight equivalents the children will spend with parent B

As – Parent A's base support obligation

Bs – Parent B's base support obligation

Parenting Expense Adjustment

- Formula will be programmed in PRISM and web calculators
- Use specific number of overnights or “overnight equivalents” for each parent pursuant to court order
- Averaged over a two-year period



Parenting Expense Adjustment

Equal parenting time

- Prior statutory language 518A.36, subd. 3(b) deleted
- Will be calculated using the same formula as other parenting time percentages

Definition of Obligor

- Minn. Stat. 518A.26, subd. 14 (8/1/18)
- Rebuttable presumption of \$0 basic support if parent has more than 55% court ordered parenting time
- Presumption does not apply to 256.87, subd. 1 or 1a actions

Definition of Obligor

- Factors court must consider when party seeks to overcome the presumption:
 - Significant income disparity
 - Benefit and detriment to child and ability of each parent to meet the needs of the child
 - Whether applying the presumption would have an unjust or inappropriate result

Court Ordered Parenting Time

- ◉ Court ordered parenting time requirement not new (518A.36, subd. 1)
- ◉ New criteria for modifying parenting time
 - Minn. Stat. 518.175, subd. 5 (8/1/18)
 - If parenting plan or order cannot be used to determine number of overnights
 - Court “shall” modify

Application to existing cases

- Cases where PEA previously given without court ordered parenting time
 - Minn. Stat. 518A.39, subd. 2 (8/1/18)
 - Rebuttable presumption that the PEA will continue so long as modification not based on change in parenting time
 - 12% PEA: multiply obligor's share of combined basic support obligation by .88
 - Presumed equal: see formula in statute

Application to existing cases

- Minn. Stat. 518A.39, subd. 2 (k) (8/1/18)
 - First modification following implementation may be limited if it would create a hardship for obligor/obligee
 - Hardship includes, but is not limited to, eligibility for assistance

3rd party custody/caretaker

Minn. Stat. 518A.35, subd. 1(c) (8/1/18)

- Child not in custody of either parent, seeking support against one or both parents
- Unless the parent has court-ordered parenting time, PEA formula must not be applied



256.87 cases

- Minn. Stat. 518A.35, subd. 1(d) (8/1/18)
 - Child in custody of parent, support order is sought under 256.87
 - Unless obligor parent has court-ordered parenting time, the support obligation must be determined without application of the PEA

256.87 cases

- Rebuttable presumption of \$0 basic support if parent has more than 55% court ordered parenting time
- Presumption does not apply to 256.87, subd. 1 or 1a actions



Split custody

Minn. Stat. 518A.34(c) (8/1/18)

- Two or more joint children and each parent has at least one child more than 50% of the time
- Calculate each parent's basic support obligation then offset
- COLA each obligation prior to offset

Split custody (child care)

Each parent pays all child care expenses for at least one joint child

- Calculate child care support for each joint child
- Determine each parent's child care obligation and include in court order
- Offset higher with lower obligation

Split custody (medical)

Each parent pays all medical or dental expenses for at least one joint child

- Calculate medical support for each joint child
- Determine each parent's medical support obligation and include in court order
- Offset higher with lower obligation
- Unreimbursed/Uninsured not included in this provision

Child Support Task Force

- 2016 legislative session
- Expires June 30, 2019 unless extended
- Members include legislators, MCAA, MFSRC, parents, DHS, court, tribal IV-D, legal aid, MSBA
- First meeting September 28th
- Meetings open to the public

Child Support Task Force

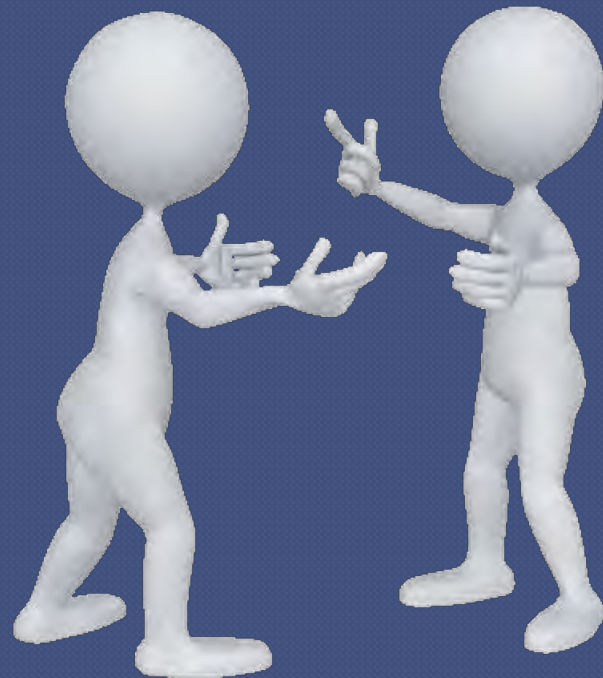
Purpose: advise the commissioner on matters relevant to maintaining effective and efficient child support guidelines that will best serve the children of Minnesota and take into account the changing dynamics of families



Child Support Task Force

- ◉ General Duties listed in statute
 - Review effects of implementing PEA
- ◉ Make recommendations on priority issues listed in statute
- ◉ Report due February 15, 2018 and biennially thereafter

Questions/Discussion



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