MINNESOTA FAMILY SUPPORT & RECOVERY COUNCIL

2019 ANNUAL CONFERENCE

CSO PEA Workshop

Melissa Fischer, DHS Program Support
Kim Foster, DHS Help Desk
Mary Van Nevel, DHS Training
Tara Borton, DHS Policy and Planning

9/16/2019 — MFSRC Annual Conference — 1

What is the PEA?

- The Parenting Expense Adjustment reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child.
- Since August 1, 2018, the adjustment in Minnesota is a formula that uses each parent's share of the basic support obligation and each parent's annual overnights.
- The formula will give the amount of support owed AND will identify which parent should pay it.
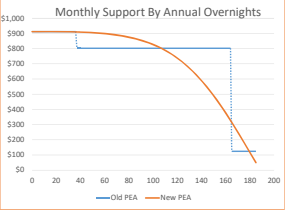
9/16/2019 — MFSRC Annual Conference — 2

What is the PEA?

The Formula

$$\frac{(A_O)^3 \cdot (B_S) - (B_O)^3 \cdot (A_S)}{(A_O)^3 + (B_O)^3}$$

A_O = Parent A's **O**vernights
B_O = Parent B's **O**vernights
A_S = Parent A's pro rata Basic **S**upport obligation
B_S = Parent B's pro rata Basic **S**upport obligation

Old vs. New PEA

Monthly Support By Annual Overnights

(chart with values $0 to $1,000 on y-axis, Annual Overnights 0 to 200 on x-axis; Old PEA, New PEA)

9/16/2019 — MFSRC Annual Conference — 3

What is the PEA?

- Overnights number is an annual average over two years and may included "overnight equivalents"
- If a parent has more than 55% parenting time, but the formula identifies them as obligor, they do not need to pay.
- In those cases where you cannot get to overnights AND there is already an order using the old adjustment, you can use the old adjustment.
- If a parenting time order cannot be used to count overnights, this is a reason to modify parenting time

And now for something completely different!

Have you seen the PEA tool? Did you know you can use it on your phone?

mn.gov/dhs/child-support-calendar/

Feel free to use it now as we go through some scenarios. There is no right answer. (But beware! There may be a wrong answer.)

Devin and Maico

- The court order states that the Devin has 27% parenting time with the following schedule:
  - Devin shall have parenting time every week from Friday after school until Sunday at 5:00 pm. Additionally, Devin shall have every other Thanksgiving from 8:00 am Thursday morning through 5:00 Saturday and every New Years from 5:00 pm New Year's Eve through 5:00 pm New Years Day.

Devin's Time

- Fridays/Saturdays = 52 nights.
- Thanksgiving = 1.5 nights
- New Years = 1 night
- Total = 54.5/365 = 15%
- Court finding 27% versus actual count of 15% .

9/16/2019   MFSRC Annual Conference   7

Table chats: Mark and Shannon

- Mark shall have sole legal and physical custody of the child. Shannon shall have supervised visits every Sunday from 12:00 to 4:00. When Shannon leaves treatment on October 1, she will have parenting time every Saturday at 6:00 p.m. until Sunday at 4:00 at her mother's house. After 6 months of consistent parenting time, Shannon's time will be extended to include Sunday nights until school starts Monday morning.

9/16/2019   MFSRC Annual Conference   8

Mark and Shannon

- Sunday from 12:00 to 4:00.
- *When Shannon leaves treatment* on October 1, she will have parenting time every Saturday at 6:00 p.m. until Sunday at 4:00.
- *After 6 months of consistent parenting time*, Shannon's time will be extended to include Sunday nights until school starts Monday morning.

9/16/2019   MFSRC Annual Conference   9

Table chats: Mary and Jacob

- Mary and Jacob are awarded joint legal and physical custody of son (dob: 8/12/2019). Jacob shall have parenting time Monday through Thursday from 3:30 pm (or until the child is picked up from daycare) until 6:00 pm and Saturday from 12:00 to 4:00. Beginning March 1, 2020, Jacob shall have parenting time Monday through Thursday from 3:30 pm until 6:00 pm, and Saturday at 12:00 pm until Sunday at 8:00 am. Beginning September 1, 2020, Jacob shall have parenting time Monday through Thursday from 3:30 until 6:00 pm and every other weekend from Friday at 3:30 until Sunday at 6:00 pm.

9/16/2019   MFSRC Annual Conference   10

Mary and Jacob

- Jacob shall have parenting time Monday through Thursday from 3:30 pm until 6:00 pm and Saturday from 12:00 to 4:00.
- *Beginning March 1, 2020*, Jacob shall have parenting time Monday through Thursday from 3:30 pm until 6:00 pm, and Saturday at 12:00 pm until Sunday at 8:00 am.
- *Beginning September 1, 2020*, Jacob shall have parenting time Monday through Thursday from 3:30 until 6:00 pm and every other weekend from Friday at 3:30 until Sunday at 6:00 pm.

9/16/2019   MFSRC Annual Conference   11

How to approach step-ups?

- "…time a child is scheduled to spend with the parent during a calendar year according to a court order averaged over a two year period."
- "The percentage of parenting time may be determined by calculating the number of overnights or overnight equivalents that a parent spends with a child pursuant to a court order."
- "The court may consider the age of the child in determining whether a child is with a parent for a significant period of time."

9/16/2019   MFSRC Annual Conference   12

Step-up considerations

Things to consider
- Is the step up schedule contingent or will the order progress regardless of extenuating circumstances?
- When to start your 2 year average?
- Is a review hearing appropriate?

9/16/2019   MFSRC Annual Conference   13

Table chats: Jay and Chris

- Jay is an accountant with a 8:00-5:00 job and Chris is a police officer working the night shift from 7:00 pm to 3 am. Their court ordered schedule is as follows:

- The parties are granted joint legal and physical custody of the minor children. The children's primary residence for school purposes shall be Jay's home. Chris shall have parenting time during the school year from after school Monday until Chris drops the children at school Wednesday morning. He will also have parenting time every other Saturday and Sunday from 8:00 to 5:00 p.m. each day. During the summer, Chris will have parenting time from 9:00 am until 5:30 pm Monday through Friday and every other Saturday and Sunday from 8:00 to 5:00.

9/16/2019   MFSRC Annual Conference   14

Jay and Chris

- The children's primary residence for school purposes shall be Jay's home.
- Chris has parenting time during the school year from after school Monday until he drops the children at school Wednesday morning.
- Chris has parenting time every other Saturday and Sunday from 8:00 a.m. to 5:00 p.m.
- During the summer, Chris will have parenting time from 9:00 am until 5:30 pm Monday through Friday and every other Saturday and Sunday from 8:00 to 5:00.

9/16/2019   MFSRC Annual Conference   15

Table chats: Pat and Adrian

- In week 1, Adrian shall have parenting time Sunday, Tuesday, Thursday and Friday and Pat shall have Monday, Wednesday, and Saturday.
- In week 2, Adrian shall have parenting time Sunday Monday, Wednesday, and Friday and Pat shall have Tuesday, Thursday, and Saturday.
- Parenting time exchanges shall be the morning following parenting time, except following Adrian's Monday and Wednesday time, exchanges shall be at 7:30 p.m. When Adrian's work schedule allows, exchanges will be in the morning.

9/16/2019   MFSRC Annual Conference   16

Pat and Adrian

	MON	TUE	WED	THUR	FRI	SAT	SUN
WEEK 1	Pat	Adrian	Pat	Adrian	Adrian	Pat	Adrian
WEEK 2	Adrian*	Pat	Adrian*	Pat	Adrian	Pat	Adrian

*evening exchange (no overnight), unless Adrian's work schedule differs

9/16/2019   MFSRC Annual Conference   17

Overnight Equivalents

- overnight equivalents are calculated by using a method other than overnights if the parent has significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. Chris has parenting time during the school year from after school Monday until he drops the children at school Wednesday morning.
- When is it appropriate to give credit for overnights equivalents?
- If you do not count equivalents, can you use other strategies to ask the court to address this issue?

9/16/2019   MFSRC Annual Conference   18

Dani and George

- Parties share joint physical custody of the 2 minor children with primary residence being with Dani. The parties have a variable schedule they follow for their parenting time because of the ages of their children and their respective work schedules. Presently Dani has their younger child all day during the week and both children Monday and Thursday overnights. George has the children every Friday overnight and the parties alternate Saturdays and Sundays. All major holidays are shared equally.

9/16/2019   MFSRC Annual Conference   19

Dani and George: 2 Weeks

	MON	TUE	WED	THUR	FRI	SAT	SUN
WEEK 1	Dani	Dani?	Dani?	Dani	George	Dani	Dani
WEEK 2	Dani	Dani?	Dani?	Dani	George	George	George

9/16/2019   MFSRC Annual Conference   20

Dani and George

- Do you have all the information you need?
- What are your options?
  - Plead out a default (Assume Dani gets the nights?)
  - Ask the parties if they agree?
  - Set a hearing?
  - Motion for a clarification? (controversial and untested)

9/16/2019   MFSRC Annual Conference   21

7

Miriam and Silas

- In talking with the parties, both parents in an establishment action tell you that ROP Dad, Silas, has been having parenting time every other weekend and he also picks the kids up from school and keeps them until Miriam gets home from work at 6:00 pm. They agree that they would like Silas to benefit from a PEA for 120 overnights, though they have no parenting time order and no plans to bring an action in district court.

Miriam and Silas

- Encourage parenting time order!
- Deviation is possible if parties agree

Parenting Time Expeditor

- The previous court order references a parenting time agreement with a schedule and gave the 12% adjustment. The order also provided that the parties should resolve parenting time disputes with a parenting time expeditor. The parties subsequently did see an expeditor, changed their parenting time schedule and signed a new parenting time agreement which was not filed with the court. The parents request a review to take advantage of the new PEA. If the new schedule is used, the case would qualify for a modification.

PT Expeditor: What to do?

- Connect with your County Attorney
- See if the underlying order may allow you to count it
- Encourage parties to reduce it to an order
- Educate the bench and bar in your jurisdiction about this issue.