



CHILD SUPPORT

MAKING A MOLEHILL OUT OF A MOUNTAIN

By Karen S. Sendelbach



Every child in Michigan has two fundamental rights: the right to have a relationship with each of his or her parents, formulated to be optimal for that particular child; and the right to be financially supported by both parents.¹ This article focuses on the method by which Michigan calculates the appropriate amount of financial support parents are required to provide to their children, and highlights some significant recent changes in the Michigan Child Support Formula.

BACKGROUND AND HISTORY OF THE FORMULA

To qualify for federal funding available to assist with the cost of providing child support enforcement activities (our Friend of the Court system), Michigan was required to create an approved state plan for child support. Approval required the establishment of guidelines “by law or by judicial or administrative action” and their review at least once every four years.² The funding requirement dictates that the guidelines create a rebuttable presumption that the support resulting from their application is correct, and that deviations from the guideline amounts are permitted only on a finding that the guideline amount would be unjust or inappropriate.³

In response, Michigan created the state Friend of the Court bureau pursuant to MCL 552.519(3)(a)(vi) to develop what is now known as the Michigan Child Support Formula. “The [child support] formula shall be based on the needs of the child and the actual resources of each parent.”⁴ The formula makes clear that application of the formula is mandatory, but that the courts have the authority to deviate from the formula when its application is “unjust or inappropriate.”⁵ Thus, reference to the formula as a “guideline” is misleading, as its application is mandatory barring specific deviation by the court.

One can imagine the debate that occurred over the initial construction of the Michigan Child Support Formula. Ultimately, Michigan opted to implement an “income shares model” for child support. The income shares model bases the needs of a child on the marginal cost to a family resulting from raising that child. The marginal cost for children is calculated from data of the Consumer Expenditure Surveys conducted by the United States Department of Agriculture. The income of two adults at a certain standard of living is compared to the income necessary to sustain the same



standard of living for two adults and one child. The difference between those incomes is the marginal cost of the child.

The income shares model requires both parents to contribute to the marginal cost of their child in proportion to their incomes. For example, if a mother earned twice as much as a father, she would be responsible for providing two-thirds of the marginal costs for that child.

The income shares model uses an arithmetic formula to simplify this calculation. Even simpler, this formula has been reduced to a computer program developed by State Bar of Michigan Family Law Section member and former Friend of the Court Referee Craig Ross. This program requires that simple data regarding the case be entered, and the current child support formula is calculated.

Of course, other states have used different methods to calculate child support. The simplest (and therefore most attractive) method is to require both parents to contribute a base percentage of their incomes to the support of their child. This method was rejected by Michigan, however, as imprecise. The statistical data about parental spending on which the legislature relied showed that, in intact families, the marginal cost of children decreased as family income increased (poorer families spend a much greater percentage of their income on their children than do wealthier families). Therefore, to try to ensure that all children are similarly treated, Michigan found the income shares formula to be the most accurate.

Use of the formula requires three basic sets of data: the income of each parent, and the number of overnights that the child spends with each parent. The costs of childcare and healthcare for the children are shared by both parents in proportion to their incomes, in addition to the cost of child support. Most child support litigation focuses on the definition of income and the number of overnights that the child spends with each parent.

RECENT SIGNIFICANT CHANGES TO THE FORMULA

A recent review of Michigan's formula has been completed, and the Family Law Section was quite involved. Changes to the formula have been accepted by the Supreme Court, and the new formula will be effective October 2008. The new formula and its manual are available to all Family Law Section members through the section's website at MichFam.com.

DEFINITION OF INCOME

The 2008 Michigan Child Support Formula Manual states: "The objective in determining net income is to establish, as accurately as possible, how much money a parent should have available for support. All relevant aspects of a parent's financial status are open for consideration when determining support."⁶

The formula continues to provide an itemized list of all sources that are to be considered income by the formula.⁷ This list expanded the 2004 list of income sources to include items such as the market value of certain "perks" and regular gift income.

The new formula is more specific about imputation of income (assigning income to a party who is voluntarily unemployed or underemployed), stating: "When a parent is voluntarily unemployed or underemployed, or has an unexercised ability to earn, income includes the *potential* income that parent could earn, subject to that parent's actual ability."⁸ Importantly, the new guidelines also recognize that "imputation of potential income should account for the additional costs associated with earning the potential income such as child care and taxes that a parent would pay on the imputed income."⁹

ELIMINATION OF THE "CLIFF" EFFECT

The previous child support formula drew a line in the sand regarding time with children. Only overnights were considered, because they were objectively easier to verify, and whenever one parent had 237 or more overnights with the minor children, he or she was considered the "primary" custodial parent and entitled to "full" child support.

When the other parent had 128 or more overnights, he or she became eligible for application of the Shared Economic Responsibility Formula (SERF). What the SERF did was essentially run the child support that parent A owed to parent B, calculate how much that was per day, and multiply it times the number of overnights that the parent had with the children. The same calculation was done from parent B toward parent A. The larger was subtracted from the smaller, it was amortized over 12 months, and the child support was established.

The impact of this was enormous. Child support could be reduced by over 60 percent through the achievement of one additional overnight if that overnight caused a parent to cross the 128 threshold. This created intense litigation and disputes that had little to do with the best parenting time schedule for the children, but instead, was focused on the manipulation of child support.

Equally troubling was the fact that this formula had little relationship to the practical cost of raising a child. The data on which the formula was based demonstrated that the more time a parent spends with a child, the more money he or she is spending directly on that child—gradually. There

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was no “cliff” in parental spending as there was in the child support formula.

The Family Law Section determined to address this as one of the most significant problems facing family law practitioners. The section created a Child Support Committee, headed by Kent Weichmann and Carlo Martina, who spent hundreds of hours working on proposals to address this issue. They were successful in resolving this complex issue, and the impact on family law will be significant.

First, the 2008 Child Support Formula does not mandate the use of overnights only to determine the contribution that both parents are making toward raising their child. Instead, one of the specific deviation factors is whether a parent provides a substantial amount of a child’s daytime care and directly contributes toward a significantly greater share of the child’s costs than those reflected by the overnights used to calculate the offsets for parental time. This allows the court to really look at what each parent is tangibly contributing to the child.

More significantly, the “cliff” effect was entirely eliminated and replaced by a “slope” effect, which more accurately reflects the actual cost changes when parents move from having one home for their child toward two homes. Consequently, the 2008 formula rejects the use of the SERF, and uses one formula that will apply to all families. Under the new rules, child support begins to reduce when the noncustodial parent has 95 overnights—a much earlier reduction. At 129 overnights, the recipient receives far more child support than he or she did under the SERF, and the previous SERF amount is not realized until 150 overnights. Unlike SERF, the reduction is not capped and will continue as parenting time continues to increase.

This is significant because it removes any motivation for parents to disagree regarding small to medium increments of time. This allows parents to re-focus on the needs of their children, rather than their pocketbooks. This change—although certainly not flashy—may be the most significant improvement in family law in the past decade.

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CONCLUSION

The codification of family support into a child support formula allows the courts to ensure that the children of non-married parents are supported in a way the data shows is comparable to the way children of intact families are treated. The formula provides an efficient and predictable way to calculate the child support that must be transferred between parents. The changes in the 2008 Michigan Child Support Formula are significant and will result in a better family law system for Michigan’s families, and I commend the Family Law Section for the leadership role they took in working to accomplish those changes. ■



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Weichmann for his contributions to her understanding of the Michigan Child Support Formula and to this article.

FOOTNOTES

1. MCLA 722.24, 722.27(A), 552.451, 552.535 et seq.
2. 42 USC 667(a).
3. 42 USC 667(b)(2).
4. MCL 552.519(3)(a)(vi).
5. MCL 552.605(2).
6. 2008 MCSF 2.01(B).
7. 2008 MCSF 2.01(C).
8. 2008 MCSF 2.01(G).
9. 2008 MCSF 2.01(G)(3).

