

Oregon Child Support Guidelines

1991 Commentary

This commentary is provided for users of the Oregon Child Support Guidelines, OAR 137-50-137 to 137-50-490, as revised effective January 1, 1991. The commentary is not a part of the rule. The drafters of the guidelines are publishing the commentary to explain the reasoning which was involved in making certain decisions about these rules. The commentary will also point out certain assumptions implicit in the guidelines. To some extent, the commentary is simply a restatement or paraphrasing in a manner which is intended to make these rules easier to understand.

1991 COMMENTARY TO OAR 137-50-320

The January 1991 revisions include new language in section (1) which refers to the statutory authority for the rules.

Section (3) of this rule is new and specifically excludes stepchildren from the definition of nonjoint child. For further discussion of the stepchild issue, see below at discussion of OAR 137-50-400.

1991 COMMENTARY TO OAR 137-50-330

Section (2) of this rule has been recast in a manner which is intended to draw attention to the fact that the child support amounts set by these rules are presumptive and should be reset if the result of the formula is unjust or inappropriate.

During the year that these guidelines have been in effect, a common complaint has been that the guidelines are inflexible or that they provide no method for resetting support once the initial amount has been determined to be unjust or inappropriate. While there are limitations by the authorizing legislation as to the factors which may be considered in rebutting the presumptive amount, there is authority to provide a method which may be used in quantifying those factors which are found to be applicable in a particular case. We have provided a worksheet which may be used in any case. A worksheet has been provided which may be used in any case where a rebuttal of the presumption is undertaken.

Please note that while the manner in which this formula sets the presumptively correct support amount is fixed, the use of the method provided for determining an alternative amount when the presumptively correct amount has been rebutted is discretionary. Decision makers are free to find other solutions to the problem of resetting the support amount after a finding that the formula amount is unjust or inappropriate.

As contemplated by OAR 137-50-330(2)(b) there are two factors to be considered in any rebuttal argument. The first is how do the factors listed in 137-50-330(2)(a)(A) through (J) affect the income of the parent? Do those factors effectively increase or decrease the parent's income? The second is how do the needs of the child affect the "Basic Support Obligation"? Should that amount be more or less than specified by the scale? Under the discretionary method set forth in worksheet F, a dollar amount may be attached to each one of ten criteria which affect the parent's income (ability to pay) and the basic support obligation (needs of the child). This being done, a new child support obligation can be

calculated using a “new” adjusted gross income figure and a “new” basic child support figure.

1991 COMMENTARY TO OAR 137-50-330(2)(a)(I)

Finally, OAR 137-50-330(2)(a)(I) provides as a factor to be used in rebuttal, “the tax consequences, if, any, to both parents resulting from spousal support awarded and determination of which parent will name the child as a dependent” (emphasis added). This language has raised questions about how to handle the dependency exemption.

The answer is that the formula and scale assumes that the custodial parent will receive the dependency exemption. If the assumption is correct. No further consideration need be given to this issue.

If in a particular case, however, this exemption goes to the noncustodial parent, there may be a reason to increase that parents adjusted gross income in the manner provided for by worksheet F.

1991 COMMENTARY TO OAR 137-50-340

This rule has not been changed. However, a question has often been raised about why Oregon decided to use “gross income” in its guideline instead of “net income,” which is after all what the parent has available to meet his or her financial obligations. The answer is that the basic child support obligations set forth in OAR 137-50-490 have been set by considering what net incomes are for given gross income amounts. That is, the support amounts are set as if net incomes were being considered.

1991 COMMENTARY TO OAR 137-50-350

The drafters are aware that in certain cases determining gross income for persons involved in the operation of a business is a difficult problem. The problem is best addressed by the discovery process and by the fact finding authority of the decision maker.

1991 COMMENTARY TO OAR 137-50-360

When either one of the parents is unemployed or working less than full time or there is no direct evidence of employment, this rule creates a presumption that the parent’s income can be based on demonstrated ability to earn. If there is no evidence which demonstrates the level of earning ability, then income based upon full time work at the minimum wage may be presumed. This rule does not allow the creation of either of these presumptions if the parent is working full time, even if current earnings are less than what the parent has earned in the past or may earn in the future. This presumption may be rebutted by a showing that the parent is unable to obtain full time work at minimum wage.

1991 COMMENTARY TO OAR 137-50-370

Income verification should be done in every case where doubt exists about the amount of a parent’s earnings. As in OAR 137-50-340, however, disputes and uncertainty about income are best resolved by the discovery process provided for by the statute governing the judicial or administrative action in process.

1991 COMMENTARY TO OAR 137-50-380

This rule has been changed. The rule in effect until January 1, 1991, provided for a simple reduction of the parent's gross income by the amount of any child support order that parent had with respect to a nonjoint child.

The criticism of the process was that it did not provide for equal treatment of all the parent's children. Since there is a requirement to consider preexisting support orders and also to insure that the child for whom we seek support benefits from income and resources of the parent on an equitable basis, the approach adopted in 1989 has been changed. The guideline now allows a reduction of gross income in consideration of preexisting support orders, in an amount equal to the lesser of:

1. The actual amount of the preexisting support order; or
2. That child's (i.e. the child to whom the preexisting support is owed) pro rata share of the basic child support amount that parent would owe to all his or her children if he or she had one support order for all these children.

1991 COMMENTARY TO OAR 137-50-390

This rule has been changed. Spousal support is deducted from the gross income of the parent ordered to pay it and added to the income of any recipient of spousal support. In any proceeding (such as a dissolution) in which both child support and spousal support are being determined, spousal support must be determined first, so that the gross incomes of the parents may be adjusted accordingly to allow for a correct determination of child support under these guidelines.

1991 COMMENTARY TO OAR 137-50-400

This rule has been changed. In the previous version, a deduction from gross income for Nonjoint children was allowed. The amount of the deduction was determined by finding the basic support amount for the number of nonjoint children based upon the income of the parent. The process discussed above at OAR 137-50-380 is now adopted. That is, a hypothetical basic support amount is calculated based upon the parent's income (not combined income of the parent and another person) and the total number of children for whom that parent is responsible, but excluding stepchildren. Then the pro rata amount for the nonjoint children is deducted from the parent's gross income. The result is an adjusted gross income amount which has built into it a consideration or credit for nonjoint children.

1991 COMMENTARY TO OAR 137-50-410

This rule has not changed. This rule requires that medical and dental insurance be ordered when it is available to the obligor through employer or union if it is requested by the obligee, or obligee's assignee. This rule also provides that the support order may be reduced by an amount not to exceed the cost to the obligor of adding the child or children to the group policy. Since whether or not to reduce the amount of support in consideration of the cost of the insurance is discretionary, the drifters believe consideration of the factors listed in OAR 137-50-330 - (2) will provide a rational basis for making the decision whether or not to reduce the support. Some parents will clearly be able to handle the full support amount

plus additional amounts for insurance coverage, and some will not. The drafters believe this question must be considered on a case-by-case basis.

1991 COMMENTARY TO OAR 137-50-420

The rule which was published in October 1989 required that the full cost of child care be added to the basic Support obligation to be prorated between the parents. In the amendment, effective January 1, 1991, we require the addition to basic support of out-of-pocket costs, after the federal and state tax credits and any other subsidy (such as Employment Related Day Care Assistance provided by Adult and Family Service Division).

1991 COMMENTARY TO OAR 137-50-430

This section has not changed. This section allows adding to the basic child support obligation an amount which recognizes recurring medical costs which are not covered by insurance.

That is, if the child's health is such, or the insurance coverage is such that there are uninsured costs which can be anticipated, then the basic support may be increased in a way which recognizes this fact.

Furthermore, this rule allows for an increase to the basic support amount to recognize the cost of medical insurance to the custodial parent. These are equitable considerations. There is no required formula for their application.

[1991 COMMENTARY TO OAR 137-50-440]

This rule has been repealed. The drafters believe that in general, the basic support obligation is sufficient to provide for the educational needs of the child. When that is not true, a proponent may make a showing under OAR 137-50-330 (2) which may be sufficient to cause an addition to the basic support amount based on the actual needs of the child.

1991 COMMENTARY TO OAR 137-50-450

When the parents agree in writing or the court orders that each parent will have physical custody not less than 35% of the time, then the support obligation must be calculated pursuant to this rule.

It is important to understand that the shared physical custody covered by this rule is not necessarily the same thing as "Joint Custody." Parents who have joint custody may or may not, have shared physical custody at the level required for the application of this rule.

The assumption underlying this rule is that there is a direct relationship between child support, the amount of time each parent has physical custody of the child and parental income. Therefore, under this rule, if each parent had the child 50 percent of the time and parental incomes were equal, then there would be equal, offsetting support obligations and no support would actually be paid, assuming each parent contributed equally to the needs of the child. However, if each parent and physical custody 50 percent of the time, and one parent's income were greater than the other parent's, then the parent with the larger

income would pay some support.

This rule also recognizes that the establishment of two residences for the child costs more than the typical situation where one parent has physical custody, and the other exercises only visitation but does not provide a second residence for the child, nor incurs the extra costs implied in shared physical custody. The formula therefore requires that the basic support obligation be increased by fifty percent to recognize the extra cost of such an arrangement.

Finally, this rule recognizes that in some families, shared physical custody at levels about 25 percent will merit some credit in favor of the noncustodial parent. Such a credit should be granted only if it can be shown that the noncustodian's direct contribution significantly reduces the cost of support to the custodial parent. Such direct contributions may be for clothing, school needs, transportation or other items normally paid for by the custodial parent.

1991 COMMENTARY TO OAR 137-50-460

This rule has not changed. It provides a method of calculating support where each parent has full custody of one or more of the joint children.

1991 COMMENTARY TO OAR 137-50-470

This rule assumes that any parent, regardless of financial circumstance, should pay at least \$50 for that parent's child or children. This is a rebuttable presumption. The \$50 amount set here could be lowered or raised based upon a showing that this amount is unjust or inappropriate.

[1991 COMMENTARY TO OAR 137-50-480]

This rule has been repealed. This rule established the low income noncustodial parent's obligation as a flat percentage of that person's income; or the amount derived from the "regular" calculation; whichever was less.

It is better to calculate support for all parents the same way. Therefore, this rule is repealed. The lower third of the scale set forth in OAR 137-50-490 (that is up to combined income to \$3,350) has been adjusted in a manner calculated to approximate the results of calculations done previously under repealed OAR 1237-50-480.

1991 COMMENTARY TO OAR 137-50-490

See discussion above regarding OAR 137-50-480 for changes to "Scale." No other substantive changes have been made to this rule.