

CHAPTER 75-02-04.1

75-02-04.1-01. Definitions.

1. "Child" means any child, by birth or adoption, to whom a parent owes a duty of support.
2. "Child living with the obligor" means the obligor's child who lives with the obligor most of the year.
3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from public assistance programs that are means tested or provided in the form of subsidy payments made to adoptive parents.
4. a. "Gross income" means income from any source, in any form, but does not mean:
 - (1) Benefits received from public assistance programs that are means tested such as the temporary assistance for needy families, supplemental security income, and supplemental nutrition assistance programs, or that are provided in the form of subsidy payments made to adoptive parents;
 - (2) Employee benefits over which the employee does not have significant influence or control over the nature or amount unless:
 - (a) That benefit may be liquidated; and
 - (b) Liquidation of that benefit does not result in the employee incurring an income tax penalty;
 - (3) Child support payments;
 - (4) Atypical overtime wages or nonrecurring bonuses over which the employee does not have significant influence or control;
 - (5) Overseas housing-related allowances paid to an obligor who is in the military to the extent those housing-related allowances exceed the housing allowance in effect at the Minot air force base; ~~or~~
 - (6) Nonrecurring capital gains; or
 - (7) Early withdrawals from retirement accounts.
- b. Examples of gross income include salaries, wages, overtime wages, commissions, bonuses, employee benefits, currently deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, distributions of retirement benefits, receipt of previously deferred income to the extent not previously considered in determining a child support obligation for the child whose support is under consideration, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent they annually exceed one thousand dollars in value, spousal support payments received, refundable tax credits, value of in-kind income received on a regular basis, children's benefits, income imputed based upon earning capacity, military subsistence payments, and net income from self-employment.
- c. For purposes of this subsection, income tax due or paid is not an income tax penalty.

5. "In-kind income" means the receipt from employment or income-producing activity of any valuable right, property or property interest, other than money or money's worth, including forgiveness of debt (other than through bankruptcy), use of property, including living quarters at no charge or less than the customary charge, and the use of consumable property or services at no charge or less than the customary charge.
6. "Net income" means total gross annual income less:
 - a. A hypothetical federal income tax obligation based on the obligor's gross income, reduced by that part of the obligor's gross income that is not subject to federal income tax and reduced by deductions allowed in arriving at adjusted gross income under the Internal Revenue Code, and applying:
 - (1) The standard deduction for the tax filing status of single; and
 - (2) Tax tables for a single individual for the most recent year published by the internal revenue service;
 - b. A hypothetical state income tax obligation equal to eleven percent of the amount determined under subdivision a;
 - c. A hypothetical obligation for Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RRTA) tier I and tier II, Medicare, and self-employment tax obligations based on that part of the obligor's gross income that is subject to FICA, RRTA, Medicare, or self-employment tax under the Internal Revenue Code;
 - d. A portion of premium payments, made by the person whose income is being determined, for health insurance policies or health service contracts, including coverage for dental and vision care, intended to afford coverage for the child or children for whom support is being sought, determined by:
 - (1) If the cost of single coverage for the obligor and the number of persons associated with the premium payment are known:
 - (a) Reducing the premium payment by the cost for single coverage for the obligor;
 - (b) Dividing the difference by the total number of persons, exclusive of the obligor, associated with the premium payment; and
 - (c) Multiplying the result times the number of insured children for whom support is being sought; or
 - (2) If the cost of single coverage for the obligor is not known:
 - (a) Dividing the payment by the total number of persons covered; and
 - (b) Multiplying the result times the number of insured children for whom support is being sought;
 - e. Payments made on actual medical expenses of the child or children for whom support is sought to the extent it is reasonably likely similar expenses will continue;
 - f. Union dues and occupational license fees if required as a condition of employment;
 - g. Employee retirement contributions, deducted from the employee's compensation and not otherwise deducted under this subsection, to the extent required as a condition of employment;

- h. Subject to documentation, unreimbursed employee expenses for:
 - (1) Special equipment or clothing required as a condition of employment;
 - (2) Lodging expenses, not exceeding ~~ninety-three~~ninety-six dollars per night, incurred when engaged in travel required as a condition of employment; or
 - (3) Noncommuting mileage incurred for driving a personal vehicle between work locations when required as a condition of employment, computed at the rate of ~~fifty-six~~sixty-five and one-half cents per mile, less any actual mileage reimbursement from the employer; and
 - i. Employer reimbursed out-of-pocket expenses of employment, if included in gross income, but excluded from adjusted gross income on the obligor's federal income tax return.
7. "Obligee" includes, for purposes of this chapter, an obligee as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support on behalf of a child.
 8. "Obligor" includes, for purposes of this chapter, an obligor as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.
 9. "Parent with primary residential responsibility" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of descriptions such as "shared" or "joint" parental rights and responsibilities given in relevant judgments, decrees, or orders.
 10. "Self-employment" means employment in one or more related activities that results in an obligor earning income from any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control. For purposes of this chapter, it also includes any activity that generates income from rental property, royalties, business gains, partnerships, trusts, corporations, and any other organization or entity regardless of form and regardless of whether such activity would be considered self-employment activity under the Internal Revenue Code.
 11. "Split parental rights and responsibilities" means a situation where the parents have more than one child in common, and where each parent has primary residential responsibility for at least one child.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; April 1, 2010; July 1, 2011; September 1, 2015; January 1, 2019; July 1, 2023.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-02. Determination of support amount - General instructions.

1. Except as provided in section 75-02-04.1-08.2, calculations of child support obligations provided for under this chapter consider and assume that one parent acts as a primary caregiver and the other parent contributes a payment of child support to the child's care. Calculation of a child support obligation under section 75-02-04.1-08.2 does not preclude a court from apportioning specific expenses related to the care of the child, such as child care expenses and school activity fees, between the parents. An apportionment under this subsection is in addition to the child support amount determined by application of this chapter.

2. Calculations assume that the care given to the child during temporary periods when the child resides with the obligor or the obligor's relatives do not substitute for the child support obligation.
3. Net income received by an obligor from all sources must be considered in the determination of available money for child support.
4. The result of all calculations which determine a monetary amount ending in fifty cents or more must be rounded up to the nearest whole dollar, and must otherwise be rounded down to the nearest whole dollar.
5. In applying the child support guidelines, an obligor's monthly net income amount ending in fifty dollars or more must be rounded up to the nearest one hundred dollars, and must otherwise be rounded down to the nearest one hundred dollars.
6. The annual total of all income considered in determining a child support obligation must be determined and then divided by twelve in order to determine the obligor's monthly net income.
7. Income must be sufficiently documented through the use of tax returns, current wage statements, and other information to fully apprise the court of all gross income. Where gross income is subject to fluctuation, regardless of whether the obligor is employed or self-employed, information reflecting and covering a period of time sufficient to reveal the likely extent of fluctuations, not to exceed five years, must be provided.
8. Calculations made under this chapter are ordinarily based upon recent past circumstances because past circumstances are typically a reliable indicator of future circumstances, particularly circumstances concerning income. If circumstances that materially affect the child support obligation have changed in the recent past or are very likely to change in the near future, consideration may be given to the new or likely future circumstances.
9. Each child support order must include a statement of the net income of the obligor used to determine the child support obligation, and how that net income was determined. ~~If a child support order includes an adjustment for extended parenting time under section 75-02-04.1-08.1, the order must specify the number of parenting time overnights.~~
10. A payment of children's benefits made to or on behalf of a child who is not living with the obligor must be credited as a payment toward the obligor's child support obligation in the month (or other period) the payment is intended to cover, but may not be credited as a payment toward the child support obligation for any other month or period. The court may order the obligee to reimburse the obligor for any overpayment that results from the credit provided in this subsection.
11. No amount may be deducted to determine net income unless that amount is included in gross income.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011; January 1, 2019; July 1, 2023.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-07. Imputing income based on earning capacity.

1. For purposes of this section:
 - a. "Earnings" includes in-kind income and amounts received in lieu of actual earnings, such as social security benefits, workers' compensation wage replacement benefits, unemployment insurance benefits, veterans' benefits, and earned income tax credits; and

- b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than this state's statewide average earnings for persons with similar work history and occupational qualifications.
2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than the greater of:
 - a. ~~Six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications~~A monthly amount equal to one hundred sixty-seven times the federal hourly minimum wage; or
 - b. ~~A monthly amount equal to one hundred sixty-seven times the federal hourly minimum wage~~Six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications.
 3. Except as provided in subsections 4, 5, 6, and 7, gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.
 - a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.
 - b. An amount equal to six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications.
 - c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years ~~before commencement of the proceeding before the court~~, for which reliable evidence is provided.
 4. Monthly gross income based on earning capacity may not be imputed under subsection 3 if:
 - a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child:
 - (1) For whom the obligor has primary residential responsibility;
 - (2) Who is under the age of thirteen; and
 - (3) For whom there is no other adult caretaker in the obligor's home available to meet the child's needs during absence due to employment.
 - b. ~~Current~~A current medical ~~records confirm~~statement confirms the obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings equal to at least one hundred sixty-seven times the hourly federal minimum wage.
 - c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
 - d. The obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and ~~is not underemployed~~those earnings are similar to or greater than the statewide average earnings for persons with similar work history and occupational qualifications.

- e. The obligor is under eighteen years of age or is under nineteen years of age and enrolled in and attending high school.
 - f. The obligor is receiving:
 - (1) Supplemental security income payments;
 - (2) Social security disability payments;
 - (3) Workers' compensation wage replacement benefits;
 - (4) Total and permanent disability benefits paid by the railroad retirement board;
 - (5) Pension benefits, as defined in subsection 9, paid by the veterans benefits administration; or
 - (6) Disability compensation paid by the veterans benefits administration based on an overall disability rating of ~~one hundred~~ eighty percent.
 - g. It has been less than one hundred eighty days since the obligor was released from incarceration under a sentence of at least one hundred eighty days.
 - h. The obligor is incarcerated under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing.
5. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable within one hundred miles [160.93 kilometers] of the obligor's actual place of residence, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.
6. If the obligor fails, upon reasonable request made in any proceeding to establish or review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, and if that information cannot be reasonably obtained from sources other than the obligor, income must be imputed based on the greatest of:
- a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.
 - b. An amount equal to one hundred percent of this state's statewide average earnings for persons with similar work history and occupational qualifications.
 - c. An amount equal to one hundred percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years ~~before commencement of the proceeding before the court,~~ for which reliable evidence is provided.
7. Notwithstanding subsections 4, 5, and 6, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years ~~before commencement of the proceeding before the court,~~ for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed. For purposes of this subsection, a voluntary change in employment is a change made for the purpose of reducing the obligor's child support obligation and may include becoming unemployed, taking into consideration the obligor's

standard of living, work history, education, literacy, health, age, criminal record, barriers to employment, record of seeking employment, stated reason for change in employment, likely employment status if the family before the court were intact, and any other relevant factors. The burden of proof is on the obligor to show that the change in employment was not made for the purpose of reducing the obligor's child support obligation.

8. Imputed income based on earning capacity is an example of gross income and is subject to the deductions from gross income set forth in subsection 6 of section 75-02-04.1-01.
9. For purposes of paragraph 5 of subdivision f of subsection 4, "pension benefits" means only needs-based payments made by the veterans benefits administration to war-time veterans whose income is below a yearly limit set by Congress and who are age sixty-five or older or have a total and permanent disability.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011; September 1, 2015; January 1, 2018; [July 1, 2023](#).

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-08.1. Adjustment for extended parenting time.

1. For purposes of this section, "extended parenting time" means parenting time between an obligor and a child living with an obligee scheduled by court order to exceed an annual total of one hundred overnights. If a child support order includes an adjustment for extended parenting time under this section, the order must specify the number of parenting time overnights.
2. Notwithstanding any other provision of this chapter and as limited by subsection 3, if a court order provides for extended parenting time between an obligor and a child living with an obligee, the support obligation presumed to be the correct child support amount due on behalf of all children of the obligor living with the obligee must be determined under this subsection.
 - a. Determine the amount otherwise due under this chapter from the obligor for those children.
 - b. Divide the amount determined under subdivision a by the number of those children.
 - c. For each child, multiply the number of that child's parenting time overnights times .32 and subtract the resulting amount from three hundred sixty-five.
 - d. Divide the result determined under subdivision c by three hundred sixty-five.
 - e. Multiply the amount determined under subdivision b times each decimal fraction determined under subdivision d.
 - f. Total all amounts determined under subdivision e.
3. An adjustment for extended parenting time is not authorized if the parents of a child for whom support is being determined have equal residential responsibility according to section 75-02-04.1-08.2.

History: Effective August 1, 1999; amended effective July 1, 2011; September 1, 2015; January 1, 2019; [July 1, 2023](#).

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-09. Criteria for rebuttal of guideline amount.

1. The child support amount provided for under this chapter, except for subsection 2, is presumed to be the correct amount of child support. No rebuttal of the guidelines may be based upon evidence of factors described or applied in this chapter, except in subsection 2, or upon:
 - a. Except as provided in subdivision m of subsection 2, the subsistence needs, work expenses, and daily living expenses of the obligor; or
 - b. Except as provided for in subdivision ~~np~~ of subsection 2, the income of the obligee, which is reflected in a substantial monetary and nonmonetary contribution to the child's basic care and needs by virtue of being a parent with primary residential responsibility.
2. The presumption that the amount of child support that would result from the application of this chapter, except for this subsection, is the correct amount of child support is rebutted only if a preponderance of the evidence establishes that a deviation from the guidelines is in the best interest of the supported children and:
 - a. The increased need if support for more than six children is sought in the matter before the court;
 - b. The increased ability of an obligor, with a monthly net income which exceeds twenty-five thousand dollars, to provide additional child support based on demonstrated needs of the child, including, if applicable, needs arising from activities in which a child participated while the child's family was intact;
 - c. The increased need if educational costs have been voluntarily incurred, at private schools, with the prior written concurrence of the obligor;
 - d. The increased needs of children with disabling conditions or chronic illness;
 - e. The increased needs of children age twelve and older;
 - f. The increased needs of children related to the cost of child care, purchased by the obligee, for reasonable purposes related to employment, job search, education, or training;
 - g. The increased ability of an obligor, whose net income has been substantially reduced as a result of depreciation and to whom income has been imputed under section 75-02-04.1-07, to provide child support;
 - h. The increased ability of an obligor, who is able to secure additional income from assets, to provide child support;
 - i. The increased ability of an obligor, who has engaged in an asset transaction for the purpose of reducing the obligor's income available for payment of child support, to provide child support;
 - j. The reduced ability of an obligor who is responsible for all parenting-time expenses to provide support due to travel expenses incurred predominantly for the purpose of visiting a child who is the subject of the order taking into consideration the amount of court-ordered parenting time and, when such history is available, actual expenses and practices of the parties;
 - k. The reduced ability of the obligor to pay child support due to a situation, over which the obligor has little or no control, which requires the obligor to incur a continued or fixed

expense for other than subsistence needs, work expenses, or daily living expenses, and which is not otherwise described in this subsection;

- I. The reduced ability of the obligor to provide support due to the obligor's health care needs, to the extent that the costs of meeting those health care needs:
 - (1) Exceed ten percent of the obligor's gross income;
 - (2) Have been incurred and are reasonably certain to continue to be incurred by the obligor;
 - (3) Are not subject to payment or reimbursement from any source except the obligor's income; and
 - (4) Are necessary to prevent or delay the death of the obligor or to avoid a significant loss of income to the obligor.
 - m. The reduced ability of the obligor to provide support when the obligor is in the military, is on a temporary duty assignment, and must maintain two households as a result of the assignment;
 - n. The reduced ~~needs of the child to support from the~~ability of an obligor ~~in situations where the net income of the obligee is at least three times higher than the net income of the obligor~~who is responsible for educational costs for the supported children that are incurred at private schools;
 - ~~o. The reduced ability of an obligor who is responsible for child care costs for the supported children;~~
 - ~~p. The reduced needs of the child to support from the obligor in situations where the net income of the obligee is at least three times higher than the net income of the obligor;~~
 - ~~q. The reduced needs of the child to support from the obligor in situations where the child is residing outside the family home at government expense and the obligation is not assigned to a government agency; or~~
 - ~~e-r.~~ The improved convenience to the parents, and negligible impact to the child, of a nominal increase in the child support obligation of the parent with the smaller obligation as determined under section 75-02-04.1-03 or 75-02-04.1-08.2, not to exceed seventy-five dollars per month, in order for the obligation of each parent to be equal prior to application of the payment offset provided in that section and eliminate any net amount being due except during months when the obligation is assigned to a government agency.
3. Assets may not be considered under subdivisions h and i of subsection 2, to the extent they:
 - a. Are exempt under North Dakota Century Code section 47-18-01;
 - b. Consist of necessary household goods and furnishings; or
 - c. Include one motor vehicle in which the obligor owns an equity not in excess of twenty thousand dollars.
 4. For purposes of subdivision i of subsection 2, a transaction is presumed to have been made for the purpose of reducing the obligor's income available for the payment of child support if:
 - a. The transaction occurred after the birth of a child entitled to support;

- b. The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and
 - c. The obligor's income is less than it likely would have been if the transaction had not taken place.
5. For purposes of subdivision k of subsection 2, a situation over which the obligor has little or no control does not exist if the situation arises out of spousal support payments, discretionary purchases, or illegal activity.
 6. For purposes of subdivisions a through f and ~~subdivision e~~ subdivisions q through r of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter. When section 75-02-04.1-03 or 75-02-04.1-08.2 applies, the adjustment must be made to the parent's obligation before the lesser obligation is subtracted from the greater obligation.
 7. For purposes of subdivisions g through ~~m~~ o of subsection 2, any adjustment shall be made to the obligor's net income.
 8. For purposes of subdivision ~~n~~ p of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter after taking into consideration the proportion by which the obligee's net income exceeds the obligor's net income. When section 75-02-04.1-03 or 75-02-04.1-08.2 applies, the adjustment must be made to the parent's obligation before the lesser obligation is subtracted from the greater obligation.

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Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-11. Parental responsibility for children in foster care or guardianship care.

It is important that parents maintain a tie to and responsibility for their child when that child is in foster care. Financial responsibility for the support of that child is one component of the maintenance of the relationship of parent and child. Parents of a child subject to a guardianship order under North Dakota Century Code chapter ~~27-20~~ 27-20.1 or 30.1-27 remain financially responsible for the support of that child.

1. In order to determine monthly net income, it is first necessary to identify the parent or parents who have financial responsibility for any child entering foster care or guardianship care, and to determine the net income of those financially responsible parents. If the parents of a child in foster care or guardianship care reside together, and neither parent has a duty to support any child who is not also a child of the other parent, the income of the parents, including imputed income of each parent, if applicable, must be combined and treated as the income of the obligor. In all other cases, each parent is treated as an obligor, and each parent's support obligation must be separately determined.
2. Unless subsection 3 applies to the obligor, the net income and the total number of children are applied to section 75-02-04.1-10 to determine the child support amount. That child support amount is then divided by the total number of children to determine the child support obligation for each child in foster care or guardianship care. For purposes of this subsection, the "total number of children" means:
 - a. If a child entering foster care or guardianship care resides in the obligor's home, the total number of children residing in the obligor's home to whom the obligor owes a duty of support, including the child or children entering foster care or guardianship care, plus any

other full siblings of the child or children entering foster care or guardianship care to whom the obligor owes a duty of support who are not residing in the obligor's home; or

- b. If no child entering foster care or guardianship care resides in the obligor's home, the child or children entering foster care or guardianship care plus the full siblings of the child or children entering foster care or guardianship care to whom the obligor owes a duty of support.
3. If an obligor owes a duty of support to any child other than the child or children described in subdivision a or b of subsection 2, as applicable to that obligor, the support obligation must be determined through application of section 75-02-04.1-06.1 such that:
 - a. The total number of children, as described in subdivision a or b of subsection 2, as applicable to that obligor, are treated as one obligee; and
 - b. The amount resulting from the application of section 75-02-04.1-06.1 for the children described in subdivision a or b of subsection 2, as applicable to that obligor, is divided by the total number of such children to determine the child support obligation for each child in foster care or guardianship care.
 4. For purposes of subsection 2, a full sibling of the child or children entering foster care or guardianship care is a brother or sister who has both parents in common with the child or children entering foster care or guardianship care.

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