

Multiple Family Cases – Other Children of the Obligor Covered by a Support Order – Adjustment Based on Hypothetical Amount for Other Children and Not on Amount the Obligor is Required to Pay for Other Children (IC-CO-01-02)

Child Support Guidelines, N.D. Admin. Code § 75-02-04.1-06.1

Question: Is the multiple-family adjustment for other children of the obligor (i.e., children who are not involved in the proceeding before the court), who are covered by a support order, based on a hypothetical support amount for those other children or on the amount the obligor has actually been ordered to pay as support for those other children?

Answer: A hypothetical support amount. N.D. Admin. Code § 75-02-04.1-06.1 provides the mechanism for determining child support in multiple-family cases. Subsection 3 specifically provides that the first step in the calculation is to determine a hypothetical amount reflecting the cost of supporting children living with the obligor and "a hypothetical amount due to each obligee . . . whether or not the obligee is a party to the proceeding . . ." (emphasis added) Subsection 6 specifically provides that the fact that the obligor is required to pay, or pays, a different amount than the hypothetical amount "is not a basis for deviation from the procedure described in this section."

Basing the multiple-family calculation on a hypothetical support amount balances the interests of the children in the proceeding before the court and the interests of other children of the obligor. The hypothetical approach does not favor any child or group of children as might be the case if the calculation were based on an amount the obligor was actually ordered to pay as support for his or her other children.

Basing the multiple-family calculation on a hypothetical support amount eliminates certain proof problems since it is not necessary to obtain evidence regarding how much support has been ordered or paid for other children of the obligor. The hypothetical approach also avoids disputes over whether the multiple-family adjustment should be allowed and, if so, how much of an adjustment should be given in cases in which the obligor is ordered to pay support for other children but is not complying with that support order.

Basing the multiple-family calculation on a hypothetical support amount means that the calculation can be made with respect to any combination of obligees provided sufficient information regarding the obligor's net income and number of children is available. The results of the calculation will be the same whether the obligor moves to modify all or only one or some of his or her support obligations. The results of the calculation will be the same whether or not the court consolidates the obligor's support obligations.

Reference: Summary of Comments Received in Regard to Proposed Amendments to N.D. Admin. Code ch. 75-02-04.1, Child Support Guidelines, dated November 14, 1994.

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